

SEP 18 1986

BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Petition of CLINTONVILLE SCHOOL DISTRICT to Initiate Mediation-Arbitration Between Said Petitioner and CLINTONVILLE EDUCATION ASSOCIATION	WISCONSIN EMPLOYMENT RELATIONS COMMISSION Case 17, No. 35090 MED/ARB-3294 Decision No. 23051-A MEDIATOR-ARBITRATOR Stanley H. Michelstetter II
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Appearances:

Mr. Ron Bacon, Executive Director, United Northeast Educators, appearing on behalf of the Association.

Mr. William G. Bracken, Director of Labor Relations, Wisconsin Association of School Boards, Inc., appearing on behalf of the Employer.

MEDIATION-ARBITRATION AWARD

Clintonville school district, herein referred to as the "Employer," having petitioned the Wisconsin Employment Relations Commission to initiate Mediation-Arbitration pursuant to Section 111.70 (4)(cm) Wis. Stats.^{1/} between it and the Clintonville Education Association, herein referred to as the "Association," and the Commission having appointed the Undersigned as Mediator-Arbitrator on November 20, 1985; and the Undersigned having conducted mediation on February 11, 1985, without success and hearing having been scheduled March 25, 1986, and, having been held, without the presence of the Arbitrator by consent of the parties on that date. The parties each filed post hearing briefs the last of which was received May 15, 1986.

ISSUES

This dispute involves the parties 1985-86 collective bargaining agreement. The parties' final offers are incorporated herein by reference as if fully set out. The following is a summary of the issues between the parties.

1. Salary: both parties proposed to modify the existing salary schedule by deleting the zero and first steps of the 1984-85 schedule and adding an additional step at the top experience level of the schedule. The Employer proposes that all employees whose placement occurs at step zero and one would advance to step two (the new step one of the schedule). All other teachers would advance normally. The Association does the same, except that employees may not advance to the new top step in 1985-86. Only employees receiving longevity in 1984-85 would receive it in 1985-86. The schedule proposed by the Employer is attached hereto and marked Appendix A. The schedule proposed by the Association is attached hereto and marked Appendix B. The 1984-85 schedule is attached hereto and marked Appendix C.

2. The parties proposed to change the current payment for additional assignments as follows:

TASK	CURRENT PAYMENT	ASSO. PROPOSAL	EMPL. PROPOSAL
Jr. High	12.50	15.00	13.75
Sr. High	15.00	18.00	16.50

3. The Employer proposes to retain the existing language relating to health insurance coverage and carrier:

"ARTICLE VIII-INSURANCE

8.1 HOSPITALIZATION - MAJOR MEDICAL INSURANCE AND DENTAL INSURANCE

A. A joint insurance committee composed of two Board mem-

^{1/} Section 111.70(4)(cm), has since been amended; however, those amendments are not effective for this dispute.

bers, two teachers, and an administrator selected by the four shall evaluate and select the carrier of the insurance and set the limits of coverage."

The Association proposed to add the following language:

"ARTICLE VIII

8.1 A. Add after second sentence: The limits of coverage shall not be less than those provided by WPS/HMP Medical Insurance group number 30690.1 and WEA Trust Dental Insurance group number 7030421.0."

4. The Association proposes to retain the existing emergency leave provision:

"ARTICLE X - LEAVES OF ABSENCE

...

10.2 EMERGENCY LEAVE

- A. No deduction will be made from the salary of any teacher for absence due to the death of a member of his or her immediate family; a maximum of three days may be allowed for the death and funeral of the following relatives: Spouse, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, son, daughter or grandchild.
- B. A maximum of two days may be allowed for attending the funeral of a grandmother or grandfather.
- C. Emergency leave for illness in the immediate family shall be allowed in case of critical illness, in case of a sudden call for suspected critical condition, in the necessity of taking a member to the hospital, or in making of arrangements for care due to sudden illness.
- D. In exceptional cases, the Board may provide for additional leave through the Superintendent.
- E. In all cases of absence, a form or blank properly filled out by the absent teacher should be used.
- F. Deduction of the entire salary for the time absent will be made in cases not covered by the above.

The Employer proposes to replace Subsection C, and D and create Subsection G in their entirety.

"CLINTONVILLE SCHOOL BOARD FINAL OFFER #3

...

2. 10.2 Emergency Leave

Change sections below as follows:

- C. Emergency leave for illness in the immediate family shall be allowed in case of critical illness, in case of a sudden call for suspected critical condition, in the necessity of taking a member to the hospital or in making of arrangements for care due to sudden illness. This type of emergency leave with pay shall be limited to three (3) days annually.
- D. The Superintendent may provide for additional leave without pay for exceptional cases. This action shall not be subject to the grievance procedure.
- G. Total emergency leave with pay shall not be more than five (5) days annually per employee."

5. The Employer proposed to retain the current superseniority provision for coaches which states:

"ARTICLE XI - LAYOFF PROCEDURE

...

11.1 H. Experience shall be granted to teachers contracted to extracurricular activities in the Clintonville system at the rate of 1/3 year per year as head coach and 1/5 year per year as assistant coach.

Head coaches are defined as:

Baseball, Head Coach
Basketball, Head Coach
Basketball, Girls, Head Coach
Cross Country, Head Coach
Football, Head Coach
Golf, Head Coach
Gymnastics
Intramurals, Senior High
Intramurals, Junior High
Tennis, Head Coach
Tack, Head Coach
Volleyball, Head Coach
Wrestling, Senior High
Athletic Director
Annual (Yearbook)
Debate
Forensics, Director
Senior Class Play"

The Association proposes to eliminate further accrual by adding the following language: "Experienced earned for coaching through 1984-85 shall be retained, however, no new seniority shall accrue."

6. The Association proposes to improve the current early retirement benefit to:

A. reduce the current early retirement eligibility from 62 years and 15 years of service to 60 years and 15 years of service;

B. limit the benefit to no more than the 5 most senior employees unless the Employer wishes to allow more to do so;

C. increases the provision's limit from 2 to 5 consecutive years per employee;

D. permit the employee to chose between board paid participation in current health insurance or supplemental payments to the Wisconsin Retirement System.

The proposals represent the following cost factors: The Employer's proposal is \$1,639.00 salary only per returning teacher or 7.7% increase. Its total package is \$2,352.00 per returning teacher and 8.3%. Association's proposal is \$2,007.00 salary only per returning teacher and 9.4% salary increase. Its total package is \$2,807.00 per returning teacher or 10.0%.

DISCUSSION

Wages

Positions of the Parties

The Association takes the position that the primary group of comparison schools should be the Bay Athletic Conference (Ashwabenon, Pulaski, Marinette, New London, Seymour, Shawano-Greshan, Howard-Sumacio, Depere, West Depere.) In its view, the arbitrator ought not use the comparison schools adopted in the prior award between the parties. It notes that in several cases arbitrators have changed comparability groups from prior awards. Its principal argument is that reciprocity between Clintonville and the nonconference districts have been rejected in the awards involving the nonconference schools and arbitrators have used Clintonville as a comparable in awards involving con-

ference schools. In its view, the failure to adopt the conference would frustrate voluntary collective bargaining here and elsewhere. It has produced data to demonstrate that the athletic conference schools are indeed comparable. It also indicates that the salary level at Clintonville relates more closely to the conference than the smaller schools in the comparability group adopted by the prior arbitrator. It argues that the smaller schools adopted by the arbitrator are almost half the size of Clintonville. The Association then argues that the wage and benefit level of Clintonville is among the lowest of the Bay Athletic Conference and that the Employer's offer is less than all of the voluntary settlements in the Bay Athletic Conference. In its view unit employees are entitled to a catch up increase of at least the same dollar amount (total dollar value of package per returning teacher) as those of conference schools. It sees merely receiving the same percentage as perpetuating the wage inequity in the conference. It takes the position that the other relevant factors (cost-of-living, and interest of the public) should be given less weight of the pattern of the settlements. It argues that in its comparison group the settlement pattern is \$1,955 to \$2,172 per returning teacher and that the Employer's offer is less than that of any comparable employer. It denies that there is any difficulty to pay in Clintonville; for example, it notes that Clintonville's tax rate is fifth of ten in its comparability pool and its equalized value per member is third highest. It also notes that Clintonville has made substantial savings from staff reduction of 3.5 full time equivalents. It denies that the Employer has demonstrated that conditions in Clintonville are worse than elsewhere. It argues only sixteen percent of the residents of Clintonville are employed in agriculture. It notes that the distribution of the Employer's offer, increasing beginning salaries while granting the existing teachers disproportionately lower level increases, is not in the public interest. Both parties proposed eliminating the first two steps in the salary schedule; however, the Association has a step at the top which will be implemented the contract year following. It argues that by comparison to its comparability group the maximum salaries are by far too low. Further, it notes that the total dollar offer of the Employer is low. It strenuously argues that bench mark comparisons should be made to the actual placement of teachers and not to the artificial step on the restructured schedule.

The Employer takes the position the primary comparison group should be the group adopted by Arbitrator Miller in the prior award between the parties (Bonduel, Pulaski, Marinette, New London, Seymour, Shawano-Gresham, Hortonville, Manawa, Marion, Oconto, Oconto Falls, Schiocton). In its view arbitrators have refused to change comparability groups even when they individually might have established a different one. It produces data to demonstrate that the group it proposes is comparable. It notes that the parties during the intervening years have used its group in bargaining to reach voluntary agreements. The Employer takes the view that it has relatively high cost per pupil, high levy tax rate, and a low pupil-teacher ratio, while the income of its county residents is low. In the current national economic context, it concludes that the 10% offer of the Association is unrealistic and should not be adopted. It alleges Clintonville is a rural school district with a significant portion of its population engaged in agriculture. In view of the national farm crisis it is inappropriate to increase the tax burden on farmers. In its view, the public interest demands that salaries be held in check. Thus, it believes that in this case the arbitrator should place more weight on the economic conditions and the past record of the Board in agreeing to high settlements in the past several years, then on the 1985-86 pattern of settlements. In its view, its offer is more comparable to the adjustments to salary schedule, dollars per returning teacher and percentage increases to salary and total package among its comparable school districts for 1985-86; it denies past increases or wage are relevant. It alternatively, argues that its offer adequately makes strides toward improving the relative ranking of Clintonville at the bench marks in the restructured schedule. It notes in the last settlement the Association received the fifth highest of area settlements. Finally, the Employer argues that there is no pri-

vate or other school sector comparability for the Association's offer' (including its internal comparability at 6.6% salary, 7.3% total package for administrators; and support Union final offer at 7.24% and 8.89%.) It also argues that changes in the consumer price index heavily favor its position. The Employer also believes the overall compensation criterion supports its position. It notes most comparable employers have deductible health insurance which Clintonville does not have. Thus, employees here save the deductible, but the Employer is paying the highest health insurance benefit in the area. It argues these two figures added together make up any deficit in the salary structure.

Primary Comparisons

A fundamental purpose of the mediation-arbitration process is to encourage resolution of interest disputes short of arbitration. This purpose is greatly enhanced by stability in bargaining relationship. For this reason, this arbitrator and most arbitrators are reluctant to change the primary comparison group established by agreement of the parties or by a well reasoned prior arbitration award between the parties. While different comparison groups may be used for the same parties for specialized points, a party proposing to change an established primary comparison group ought to bear the burden to prove valid reasons for change. An example of a legitimate reason would be a substantial change in circumstances.^{2/} Each party offered data only to support its proposed comparables. This data is for different school years, and therefore, in most categories of comparison is not useful. The following is the best comparative data available: (it is assumed in these categories of comparison there has been little change between years)

Sch. Dist.	Ass'n	Er.	Primary & Sec.	Loca.	Enrollment in 83-84 or 84-85	FTE
Aswaubenon	x			N	3,080	
Howard-Suamie	x			N	2,527	
DePere	x			N	1,658	
West DePere	x			N	1,715	
Pulaski	x	x	x	2	2,533	158.45
Marinette	x	x	*	N	2,585	141.25
New London	x	x	x	1	2,360	128
Seymour	x	x	x	2	2,253	131.60
Shawano-Greshan	x	x	x	2	2,334	136.25
Bonduef		x	x	1	837	48.56
Hortonville		x	*	2	1,468	80.70
Manawa		x	x	1	864	54.00
Marion		x	x	1	843	50.50
Oconto		x	*	N	1,083	65
Oconto Falls		x	*	N	1,642	95.21
Shiocton		x	x	1	812	50.75

Clintonville 1,451 93.10

1= Contiguous
2= Second Tier
N= Beyond 1st

The problem faced by Arbitrator Miller was that there were few schools directly comparable to Clintonville. The Bay Athletic Conference consists of schools which are primarily larger and most of which are in, or are close by, the Green Bay metropolitan area. Thus, other than DePere and West DePere, all other school districts in the school conference have at least 700 more students. Both DePere and West DePere are suburbs of

^{2/} The Employer took the position in its brief that the parties have used the established comparability group in the intervening voluntary settlement since the prior award. While there clearly have been voluntary settlements there is no evidence this comparability group was used as a basis of settlement.

Green Bay^{3/}. On the other hand, the school districts in the immediate vicinity of Clintonville are either much smaller or larger than Clintonville. In response to this, Arbitrator Miller chose to rely primarily on location. Since none of the school districts were the same size, Arbitrator Miller adopted a cross section in schools equally larger and smaller. His secondary group is based primarily on equivalence of size. The secondary group however, is located outside of Clintonville's immediate area. This approach under the facts of the case was clearly the most appropriate group in view of the facts and circumstances which usually differentiate teacher wages in Wisconsin, location, size, urban environment. I would anticipate that Clintonville properly would be among the lowest paying of the Bay Athletic conference Schools. Thus, this comparison group would not be useful.

While reciprocity may be useful in area-wide bargaining strategy, it is only a secondary factor to be considered among factors which labor relations dictates predicts similar treatment. This case is a good example of a situation where reciprocity should not be given weight. The other schools in the Bay Athletic Conference which are not in the Green Bay urban area are schools for which there are no close comparisons. Thus, the expansion to cover a larger area is the best practical alternative for those other schools; although, not the ideal comparability group. Even arbitrators dealing with conference schools have balked at the degree of comparability in the conference.^{4/} Clintonville being in the conference and among the larger school districts in this part of the state is a natural comparable, but less precise comparable in that group. Unlike the larger Bay Athletic Conference Schools, Clintonville has both larger and smaller schools around it which form a reasonable cross section in its area. Interest arbitration is far from an exact science. Semetry would be nice, but is not always achievable.

There is not any dispute that the offer of the Employer is closely comparable to the size of increase granted similar employees in similar units; the Association seeks what it believes is an appropriate catch up adjustment. It is clear that the unit salaries are substantially below that of comparable employees. Thus, of the thirteen in the comparability group,^{5/} the following are the comparisons:

	BA Base	BA+7	BA Max	MA Base	MA+10	MA Max	Sch Max
Rank	13	12	8	11	9	6	8
Av. w/o Clintv.	14,724	18,086	21,744	15,960	21,808	25,123	26,046
Clintv.	14,000	17,210	21,490	15,410	20,855	25,090	25,800
Diff. from Av.	-724	-876	-254	-550	-953	-32	-246

The comparability group devised by Arbitrator Miller is a cross section comparability group. Its purpose is to evenly divide factors which tend to influence wage rates. In such a group one would strongly anticipate that a comparably paid unit would be close to average. Particularly considering the distribution of the unit, unit employee's wage rates were substantially low in 1984-85 (40% of the unit are at the maximums, 60% in the schedu-

^{3/} While all comparability groups have to have their low end, the degree of disparity between Clintonville and the remainder of the conference is substantial.

^{4/} Arbitrator Vernon in DePere Schools (19728-A) 12/82, @ pages 6-7; Arbitrator Zeidler, Pulaski, Community School District (20099-A) 4/83 p. 8; Richard U. Miller, Ashwaubenon (20227-A) 7/83, p. 15.

^{5/} The Employer treats primary and secondary comparables together. Comparison to strictly the primary comparables does not vary the results herein.

le ranges. 47% of the unit is in the first two columns of the BA and 35% of the unit is in the MA ranges.)

Seven of the comparable districts settled for 1985-86. They are Bonduel, Hortonville, Manawa, Marinette, Marion, New London, Shawano-Greshen. This is a fairly representative distribution. By comparison to the average size of increase, the offer of the Employer is clearly comparable and that of the Association is high.

	Settle Av.	Er.	Ass'n.
Salary incr. p/returning tchr.	\$1,767	\$1,639	\$2,007
Salary incr. ttl. pkg. p/r/tchr.	8.1%	7.7%	9.4%
ttl. pkg. p/r/tchr.	2,311	2,352	2,807
ttl. pkg.	8.1%	8.3%	10.0%

The offer of the Association is .3% higher than the highest salary increase and 1.4% above the highest total package.

Both the Employer and the Association make adjustments to the salary schedule. By eliminating the first two steps of the old salary schedule and adding a new step at the top of the schedule. The purpose for eliminating the first steps is to effectively resolve wage rate problems for new employees. Both parties advance present employees from their old positions to the increment level they would have received had the old schedule been in effect. Employees in the new schedule who have seven years of service are, therefore, paid at step number 5, not step 7. Both parties add a step to the schedule. The Association saves total cost by not allowing current employees at maximum levels to advance to the top step in 1985-86.^{6/} The Employer urges artificial comparisons to the new schedule, while the Association urges comparisons between actual placements of teachers here and elsewhere. While the correction of past inequities for future employees is a very worthwhile action of the parties, I have made comparisons to the actual earnings (placement of employees).

	Settled Av/Incr.	Er. F/Off	Ass'n F/Off	1984-85 diff. from Average	relationship to 1984-85 Av/at each Benchmark ER. ASS'N.	
BA	1,029	2,005	2,070	-724	+252	+165
BA 7	1,184	975	1,260	-876	-1,085	-800
BA Max	1,393	1,600	1,780	-254	-47	+133
MA	1,118	2,189	2,290	-550	+521	+622
MA 10	1,386	1,045	1,535	-953	-1,294	-804
MA Max	1,563	1,730	1,990	-32	+135	+395
Sch Max	1,633	2,000	2,010	-246	+121	+131

(Note: The schedule changes also impact the comparison. Adjustments at BA +7 and MA +10 represent the impact of the schedule on all employees except new employees, immediate recent hires, and employees at the maximum. Adjustments at the maximum represent only employees at the maximum.)

I note that the schedule created by the Association's proposal places Clintonville above average at all benchmarks which affect new employees as they progress. This impact will tend to correct itself over the years in succession negotiations.

In this context, comparisons to dissimilar employees have no weight. Under the circumstances of this case, the comparison factor heavily favors the Association. Based upon the weight of the evidence, I conclude the Association's catch up position is warranted by the comparability criterion. Unit wages are significantly behind comparable wages. The Association more nearly corrects this. The total package cost of the Association position is not unreasonable for a catch up package.

^{6/} Adoption of the Association's proposal herein does not necessarily constitute endorsement of this proposal.

Total Compensation

Different groups of employees and employers allocate their packages of wages and benefits differently. The total compensation factor is designed to insure that the total compensation of employees is compared in a manner which gives full credit in a fair way. The Employer pays \$43.13 per month for family plan health insurance more than the average or comparable employers and \$20 per month more than the second highest. It pays the equivalent of family premium for an equivalent of 89 full time employees. It is otherwise generally comparable as to benefits. Even considering this factor, the comparison still favors the Association.

Interest and Welfare of the Public

The public has two primary and sometimes conflicting interests in education. One is obtaining education at the most reasonable price and the second is obtaining and maintaining quality education including encouraging the retention and hiring of competent staff.

Clintonville school district is located primarily in Waupaca County with parts in Outagamie and Shawano County. 58% of its land is classified as rural, although this does not necessarily mean that 58% of its taxes comes from agricultural sector. Its 1982 per capita income is higher than, or comparable to, many of the school districts in the area and unemployment in 1985 tended to be slightly higher than some of the surrounding counties. The following is the comparison:

Counties	Per Capita Income	% of Unemployment
Waupaca	\$6,679	7.5
Shawano	5,575	6.3
Outagamie	8,773	6.1
Oconto	5,815	8.9
Brown County	8,857	6.1
Marinette Co.	6,506	7.9

Clintonville school district, like many of the school districts around it, suffers from the nation's pernicious farm crisis. Many farmers in the area are caught with costs of production which exceed their rate of return on their crops. Like surrounding areas many farmers face farm foreclosure. It appears Clintonville and surrounding school districts share some problems with unemployment within this economic setting, it is important for Clintonville to be careful with tax dollars.

Clintonville seeks to maintain a high quality educational program. In this regard, Clintonville ranks 11 of 373 K12 school districts in the state and is by far number 1 among its comparables in comparison costs of education. Clintonville maintains the lowest pupil-teacher ratio at 15.6 students per teacher compared with the average of 17.1. In 1983-84 Clintonville had \$153,894 equalized evaluation per member compared to an average of \$137,063 for the comparables. In 1983-84 its tax rate was 10.52 compared to an average of 10.43. In the context, it does not appear that the adoption of the offer of the Association would cause the creation of an undue tax rate by comparison to its comparable districts, cause the elimination of vital programs or result in long term deficit financing.

The Employer has reduced its total staff by 3 full-time equivalent teachers. In 1985-86 it hired 10 teachers. It also hired a large number of teachers in 1984-85. It appears that there has been a high degree of turn-over; however, the turn-over is not explained in this record. On this record, I am satisfied that the public interest is best served by maintaining salary levels at an appropriate level as suggested by the cross section of comparable school districts.

Extra Pay

This issue is minimal and is given no independent weight herein.

Super Seniority for Coaches

The Association takes the position that the current clause is ambiguous and has led to litigation with respect to layoff and that there is a history of lack of uniformity in hiring coaches. It concludes its proposal is necessary to eliminate the confusion. It views layoff as likely. It also argues the language lacks any comparability.

The Employer argues that the Association has not demonstrated a need for change. It argues the awards in question clarify the existing language. It notes the language has remained unchanged from 1979 to 1980 to the present. It believes that this is an appropriate award for extra-curricular service created by the parties. It argues that the Association Exhibit 103 does not show that any teachers are at risk and, if the Association's position is adopted, the Employer will have a hard time filling the extra-curricular positions.

The current layoff provisions provide for additional (super seniority) seniority for service in specified coaching positions. The Association proposes to stop accrual credit. The Association's reason for needing a change is that the clause has lead to litigation that the board has not had a uniform policy for hiring coaches. The Employer denies the Association has shown a need for change. The clause has existed continuously since 1979-80. There have been two arbitrations with three relevant issues. The first award dealt with what circumstances, constituted as being a coach, the second award dealt with retroactive application and permitting. It is well established that a party proposing a change must show a need for change in that its proposal is appropriate with respect to the need. While ambiguities in the provision have lead to litigation, as interpreted, the clause is sufficiently clear that its future enforcement does not require its repeal. The proposal of the Association as written would not remedy the inequities, if any did exist, in the selection of coaches. Therefore, the Association has not shown a need for change.

Cost-of-Living

From July, to 1984 to 1985 the relevant consumer price index changed 3.8%. The total package offer of the Employer is 8.3% while the Association's is 10%. Employer Exhibits 21 and 22 tend to indicate that salary adjustments plus step adjustments in each year since 1981-82 have been greater than the cost-of-living. The cost-of-living factor clearly favors the position of the Employer.

Emergency Leave

The Employer takes the position that it is necessary to limit the amount of emergency leave an individual may take to

1. limit the employer's exposure;
2. make the existing benefit more comparable since no other school district has unlimited emergency leave and the support staff recently agreed to limit the benefit;
3. consistent with other provisions in the current teacher contract providing limits on leaves;
4. a few employees have received over 5 days in the past.

The Association seeks to keep the current benefits. It notes that in main the Employer is trying to limit the amount of emergency leave and make eligibility its sole determination without review in arbitration. It urges the Employer has failed to demonstrate the need for a change. Further, "take back" would have a negative impact. It notes Clintonville allows only 90 days sick leave accumulation whereas other districts allow much larger accumulations. It argues the support staff has a vacation benefit it could use in lieu of this benefit, which teachers can

not do.

The current emergency leave provision grants employees the right to an unspecified amount of leave for specific emergencies. The most general enumeration of which is "critical illness." The Employer seeks to limit this provision in two important ways:

1. limit the number of mandatory leave days to three, and
2. make additional leave of two days available solely in the discretion of the Employer and without pay.

It is well established a party must demonstrate a need for a change. In adopting the current ambiguous language the Employer has accepted determination on a case by case basis. Since 1980-81 there has been only three employees who have receive over five emergency days in one year (8, 27, 6 days over 5 respectively). There have been no showing that there has been conflict over this provision or that any excessive leave was ever sought. The Employer has failed to demonstrate a need for change.

Early Retirement

The Association takes the position that it seeks an increased early retirement benefit (primarily reduction of the age of early retirement from age 60 to 62 with 15 years of service)^{7/} while it concedes that a majority of its comparable districts do not yet have this benefit, it does argue two of the six do already have some form of early retirement at age 60. However, it argues that the current benefit is among the worst of all comparables since it does not have a voluntary early retirement stipend, WRS contribution with health insurance, or the payment of health insurance without WRS contribution. The Association herein seeks the improved age of early retirement in lieu of improving other aspects.

The Employer takes the position that the final offer of the Association is defective and can not be adopted. It argues it is defective in two respects: First, it refers to Section 40.02 (42)(f) Wis. Stats. in 18.1 (A) and (D) which reference is wrong in that Section 40.02 (42)(f) applies not to early retirement, but normal retirement at the earliest age of sixty-two. Second, it argues that the phrase "alternative to A through G above," ambiguously could here mean that A. the threshold limits of fifteen years service do not apply, B. the five year exposure limit does not apply. The Employer, alternatively, argues that the Association has not established a need for change. Finally, it argues that this benefit is not supported by comparisons and it will be very costly. It argues turnover savings should not be considered as an offset, particularly, where, as here, the Employer tends to hire experienced teachers.

The Employer has challenged the legality of the Association's early retirement proposal. The provisions of Section 111.77(4)(cm) did not grant final authority to Mediator-Arbitrator to determine as a final matter between the parties whether a proposal is lawful. However, for the purposes of determining whether or not a proposal is adopted, one of the factors to be considered is "the lawful authority of the municipal employer." Thus, for the purposes of Section 111.70(4)(cm) the Arbitrator is conferred with authority to make at least an initial determination as to whether or not a proposal is lawful. The current agreement Section 18.1 A and B permits voluntary early retirement at age 62 and requires the Employer to make contributions to the state teacher's retirement system as required by Section 42.245(2)(bm), Wis. Stats. (1979). The contributions required under this provision are, apparently, well defined, by department rules. The Association changes this to age 60 and references solely Section 40.02(42)(f) as authority.

^{7/} The Association's position is that its proposed language in Article 18, Section 18.1 which states "Alternative to A through G above," is, in essence, properly read as "as an alternative to the statutory early retirement benefit specified in A through G, above,", Association's brief, page 56.

Section 40.02(42)(f), Wis. Stats. merely references age 62 as the "normal retirement date" for benefit calculation a teacher under a plan created under old Section 42.245(2)(bm)8/. Thus, this reference does not authorize a retirement benefit before age 62. The purpose of the Association's proposal is to give an employee the right to retire at age 60, but receive, at the employee's choice, either benefit levels enhanced by additional employer contributions or paid health insurance. Although the reference to 40.02(42)(f), Wis. Stats. is clearly inadequate, other provisions of chapter 40 do permit retirement at age 60 and permit the employer to make additional contributions. Section 40.23(1)(a), Wis. Stats. authorizes a teacher to voluntarily retire at age 55 and receive a pension commencing essentially upon retirement. With section 40.02(42)(f), it clear an employer can authorize an employee to retire at age 62 with enhanced contributions made by the employer. However, nothing in Section 40.23 prohibits retirement at an earlier age. Section 40.05(1)(a)5 permits additional contributions by employers on behalf of employees. There is no statutory limit on the amount of contributions. Thus, it appears that the proposal of the Association is permitted by statute. However, because nothing in Chapter 40 appears to define precisely what contribution should be made and what benefit levels should be established for an early retirement under this provision at age 60, it appears the Association's proposal is ambiguous and may lead to future litigation. Based upon the record at hand, it does not appear that the Association's proposal is unlawful. Its proposal is ambiguous; however, based upon the existence of other age 60 retirement plans in the area relying on the state system, it is unlikely the the ambiguity in this case requires that the entire final offer of the Association be denied.

The proposal of the Association contains an additional ambiguity created by poor drafting. Section 18.1 H of its proposal provides for the health insurance benefit. This benefit is provided "as an alternative to A through G above." Provision A through G include limiting factors and, depending upon the interpretation of the quoted phrase, it is unclear whether the limiting factors apply when the health insurance benefit option is taken. The Association has explained this ambiguity in its brief. While it is inappropriate to permit a party to change its final offer, unintentional ambiguities do occur. Where the meaning of the language can either be explained in the record or ascertained from the proposal, the policy of promoting peaceful labor relations and permitting a party a full opportunity to have its proposal evaluated on its merits, militates strongly against the dismissal of a final offer on the basis of ambiguity. Accordingly, I am satisfied that the Association has fully explained the ambiguity in this case.

The Employer indicates that it views the instant proposal as costly. Based upon current health insurance costs, this proposal could generate \$2,400 per year additional cost for each person who retires early. Since at the most, only five people may retire early in one year, this proposal can add \$12,000 per year, each year to the Employer's costs (.4% total package). Offsets may or may not come if younger, less experienced teachers are hired.

Of the twelve other schools, five provide for early retirement below age 62 (one at age 61, the other below age 61). The benefits provided early retirees vary greatly; however, as to the age of retirement comparability supports the Employer. Seven provide for health insurance paid for by the Employer at least until age 65. Only one provides for a choice of benefits--Marinette--similar to that offer here. While the existing plan here is somewhat less than other places, the primary improvements sought by the Association are not comparable. Bases upon the foregoing discussion, I find the position of the Employer on this issue preferable.

8/ The provision was revealed.

WEIGHT

Section 111.70(4)(cm), Wis. Stats. requires that I select the final offer of one party or the other. I am not permitted to change the final offer or adopt a compromise without the consent of both parties. While the statutory criteria are clear, the weight to be applied to the criteria and the importance of particular proposals is left to the Mediator-Arbitrator. In this case, the salary issue is the prime issue. The only other issue which I find has substantial weight in here is the early retirement issue. On the whole, the catch-up position of the Association is heavily supported by comparisons. On the basis of the wages to be actually received by teachers, the Association's proposal is heavily favored herein. There are aspects to the Association's salary proposal, most notably its proposed top step which are not justified. Further, the Association's position with respect to early retirement is not justified. In my judgment, the need for equitable salaries to preserve and promote the retention of qualified teachers out weighs the negative aspects of the Association's position. On this basis, the Association's final offer is adopted.

AWARD

That the final offer of the Association be, the same, hereby is, adopted.

Dated at Milwaukee, Wisconsin this 17th day of September, 1986.


Stanley H. Michelstetter
Mediator-Arbitrator

Appendix A

CLINTONVILLE BOARD FINAL OFFER

9/27/85

CEA SALARY SCHEDULE 85-86

EXP.	BA	MA+10	BA+20	BA+30	MA	MA+10
0	14915	15265	15615	15965	16365	16765
1	15460	15825	16190	16555	16980	17400
21	16005	16385	16765	17145	17595	18035
32	16550	16945	17340	17735	18210	18670
43	17095	17505	17915	18325	18825	19305
54	17640	18065	18490	18915	19440	19940
65	18185	18625	19065	19505	20055	20575
76	18730	19185	19640	20095	20670	21210
87	19275	19745	20215	20685	21285	21845
98	19820	20305	20790	21275	21900	22480
109	20365	20865	21365	21865	22515	23115
1110	20910	21425	21940	22455	23130	23750
1211	21455	21985	22515	23045	23745	24385
1312	22000	22545	23090	23635	24360	25020
1413	22545	23105	23665	24225	24975	25655
1514	23090	23665	24240	24815	25590	26290
1615					26205	26925
1716					26820	27560

LONGEVITY BONUS OF \$350 ABOVE LAST STEP

18,185

BB

	B	B+10	B+20	B+30	M	M+10
	14970	15330	15690	16050	16460	16870
	15520	15895	16270	16645	17080	17510
1	16070	16460	16850	17240	17700	18150
2	16670	17075	17480	17885	18370	18840
3	17270	17690	18110	18530	19040	19530
4	17870	18305	18740	19175	19710	20220
5	18470	18920	19370	19820	20380	20910
6	19070	19535	20000	20465	21050	21600
7	19670	20150	20630	21110	21720	22290
8	20270	20765	21260	21755	22390	22980
9	20870	21380	21890	22400	23060	23670
10	21470	21995	22520	23045	23730	24360
11	22070	22610	23150	23690	24400	25050
12	22670	23225	23780	24335	25070	25740
13	23270	23840	24410	24980	25740	26430
14	23870	24455	25040	25625	26410	27120
15					27080	27810
16					27750	28500

CLINTONVILLE UNION F.O. 1985-6

NOTES: Teachers on old steps 0 and 1 placed on new 1.

Staff on old 13, 14 on Bachelor's Lane and 15, 16 on Master's Lane placed on new 13, 15 respectively (same step).

All other staff receive regular increment (old steps and new steps have same number due to renumbering).

EXHIBIT "A"
CLINTONVILLE PUBLIC SCHOOL DISTRICT
Clintonville, Wisconsin 54929

SALARY SCHEDULE
1984-85

<u>Experience</u>	<u>BA</u>	<u>BA+10</u>	<u>BA+20</u>	<u>BA+30</u>	<u>MA</u>	<u>MA+10</u>
0	14,000	14,340	14,680	15,020	15,410	15,800
1	14,535	14,890	15,245	15,600	16,015	16,425
2	15,070	15,440	15,810	16,180	16,620	17,050
3	15,605	15,990	16,375	16,760	17,225	17,675
4	16,140	16,540	16,940	17,340	17,830	18,300
5	16,675	17,090	17,505	17,920	18,435	18,925
6	17,210	17,640	18,070	18,500	19,040	19,550
7	17,745	18,190	18,635	19,080	19,645	20,175
8	18,280	18,740	19,200	19,660	20,250	20,800
9	18,815	19,290	19,765	20,240	20,855	21,425
10	19,350	19,840	20,330	20,820	21,460	22,050
11	19,885	20,390	20,895	21,400	22,065	22,675
12	20,420	20,940	21,460	21,980	22,670	23,300
13	20,955	21,490	22,025	22,560	23,275	23,925
14	21,490	22,040	22,590	23,140	23,880	24,550
15					24,485	25,175
16					25,090	25,800