

A. Salary

1. The District

The District proposes to increase all wages on each step of the salary schedule 6% effective July 1, 1985 and 6% effective July 1, 1986.

In addition, the Board proposes that all certified instructional aides receive an additional \$.25/hour increase.

2. The Union

The Union proposes the employees receive a 7% increase effective July 1, 1985 and a 6.5% increase for the second year of the contract.

In addition, the Union proposes that all instructional aides with special education licenses, who are required by their duties to possess such a license, receive an additional wage increase of \$.50/hour.

B. Early Retirement

The Union proposes to add a new section to the contract as follows:

"Any employee in the bargaining unit with fifteen (15) years of service may retire at the end of the school year during which he or she reaches the age of sixty-two (62) through sixty-four (64) by June 30 of that year, with the Board paying the entire premium for the health insurance coverage for which the employee is eligible (50% for part-time employees) until the employee becomes eligible for Medicare, with the following limitations:

"A) The benefit will be paid for a maximum of three (3) years, or until the employee becomes eligible for Medicare;

"B) Application for this benefit must be made by May 1 of the year of retirement.

"C) The payment of the health insurance premiums will terminate if the Board is required to pay the retired employee any Unemployment Compensation benefits.

"D) The payment of the health insurance premiums will terminate if the employee gets another job and is eligible for comparable health insurance benefits paid by the Employer."

C. Longevity

1. The Employer

per hour in addition to their base rates for a period of (5) years shall receive an additional longevity payment of five cents (\$.5) per hour (a total of thirty cents (\$.30) per hour) in addition to their base rates."

"All full-time and all part-time employees who have been receiving the longevity payment of thirty cents (\$.30) per hour in addition to their base rates for a period of five (5) years shall receive an additional longevity payment of five cents (\$.5) per hour (a total of thirty-five cents (\$.35) per hour) in addition to their base rates."

D. School Closings

1. The Employer

Under the current contract employees are not compensated when school is closed due to emergencies such as a snow storm except that secretaries and custodians may apply vacation benefits against the loss in wages. The Employer proposes no change in this arrangement.

2. The Union

The Union proposes to delete the current Section 29.01, School Closings - Use of Vacation, and replace as follows:

"School Closings.

"A) Regular full-time twelve (12) month employees shall be allowed up to two (2) noncumulative days per year, without loss of pay, to apply to days on which school is closed due to weather or other emergencies.

"B) School year full-time employees shall be allowed up to one (1) noncumulative days per year, without loss of pay, to apply to days on which school is closed due to weather or other emergencies.

"C) If school is closed for weather or emergencies during the course of a workday, all employees shall be allowed to leave work and shall not suffer a loss of pay for that workday.

"D) Employees may apply available vacation benefits to days on which school is closed due to weather or other emergencies, in the event the other provisions of this section do not apply.

E. Retirement

1. The Union

The Union proposes to maintain the status quo language (Section 17.02) which states:

Retirement Fund: Employees shall be covered by the Wisconsin Retirement Fund when eligible under the rules and regulations of the Fund. The Employer shall pay to the Fund the amount required by law to be paid by the Employer, and in addition, shall pay the full employee's share of contribution to the Fund on behalf of each participating employee.

2. The District

The District proposes the following amendment to Article 17.02:

"Employees shall be covered by the Wisconsin Retirement Fund when eligible under the rules and regulations of the Fund. The Employer shall pay to the Fund the amount required by law to be paid by the Employer, and in

addition, shall pay 6% effective January 1, 1986, of the employee's share of contribution to the Fund on behalf of each participating employee."

F. Health Insurance

Both parties propose in their final offer to implement a \$100 front-end deductible plan with a \$200 family aggregate; with the full premium paid by the Board.

III. ARGUMENTS OF THE PARTIES

A. Comparables

1. The District

The District proposes that the following schools be considered comparable for the purposes of criteria (d):

Elkhorn	East Troy
Menomonee Falls	Muskego
New Berlin	Burlington
Oconomowoc	Kettle Moraine
Hamilton	Whitewater
Waukesha	Waterford

The District believes these schools should be considered comparable because they were found to be comparable by Arbitrator Robert J. Mueller in a previous arbitration in the District, School District of Mukwonago, Dec. No. 16363-A (10/78).

Also, based on this award, the District argues against the inclusion of Greendale and Elmbrook because of their urban nature and argues that the District's comparable group more appropriately balances the rural nature of Mukwonago and the influence of Milwaukee. In contrast, geographically all of the districts included in the Union's comparable pool are located between Mukwonago and Milwaukee. Thus, in their opinion, the influence of Milwaukee is too exaggerated under the comparable pool.

2. The Union

The Union proposes the following schools be considered comparable:

Menomonee Falls	Arrowhead UHS
Waukesha	Elmbrook
New Berlin	Muskego
Oconomowoc	Hamilton
Greendale	Germantown
Kettle Moraine	

The Union notes, as did the Employer, that the Parties agree on seven of the Union's eleven comparables. They assert that the athletic conference, which is the basis for their comparable selection is well established as a traditional group in arbitration. They disregard the Mueller award because it was issued shortly after the mediation/arbitration law was passed and because since then the athletic conference has been held by "scores" of arbitrators as the traditional means of developing comparability. In addition, they detail some of the changes that have occurred in these districts since the Mueller award.

With respect to Germantown, they believe its inclusion is justified because it is within the "cluster" of school districts included in the Union's comparables. Moreover, many of the characteristics of Germantown as a community and Mukwonago as a community are similar. Most significantly, however, both

Mukwonago and Germantown are organized in wall-to-wall bargaining units with all nonteaching personnel represented under one contract by one collective bargaining agent.

B. Salary

1. The District

The District bases their analysis on wage data for 17 of the 21 wage classifications listed in the salary schedule. They believe this sample of 17 is representative of the whole.

Based on adjustments they made in their analysis due to a variety of factors, they conclude the following concerning the actual wage benchmarks. (1) The Board final offer maintains or improves ranking and most often is identical to the ranking premised upon the Union's offer, and (2) the Board final offer is preferable based upon deviation from the average wage. They also note with the exception of the three secretarial series benchmarks, the Board offer best maintains, and most often improves, Mukwonago's relative position compared to the deviation from the average wage rate.

On a wage-only settlement (the percent of an increase versus the actual wage rates) the District argues their offer is more reasonable. They calculate the average percentage increase in their comparable group for similar employees to be 6.09% for 1985-86 and 5.8% in 1986-87. This is nearly identical to the Board's offer of 6.0% for each of the two years whereas the Union's offer of 7.0% and 6.5% exceed the average. On a combined two-year basis, they note the maximum percentage increases averaged among the four classification groupings total 11.89% over two years in their comparable group. Under the Board offer, wages would increase 12.0% and under the Union's offer, the wages would increase 13.5% over two years.

Also relevant to the wage issue is the Employer's argument on the cost of living. Based on their calculation of the total package cost under each offer they conclude the Board of Education's final offer exceeds the rate of inflation in July 1985 by 3.9% (CPI-U) and by 3.7% (CPI-W). The same is true, they submit, when historical increases in wages in Mukwonago are compared to historical increases in the cost of living.

The Employer also believes their offer is supported by the fact it exceeds the settlements of other municipal employees in Waukesha County. All of these settlements in 1985 were between 3.0 and 4.0% and between 4.0 and 6.5% in 1986 and 1987.

It is also asserted that private sector settlements also support the District's offer. They note that private sector first year wage increases in the largest collective bargaining agreements negotiated in 1985 average only 2.3% which is the lowest

With respect to certified aides, the Board notes that both parties agree that certain Instructional Aide positions merit higher hourly rates. However, there is a dispute as to which Instructional Aide positions should receive a premium rate, and how much should be given. The District proposes a \$.25/hour premium be given to all certified aides. The Board feels that this premium rate should be given on an equal basis to all Instructional Aides who have expended their time, effort and money to take additional courses to become certified. The Board feels that to award premium pay only to Special Education-Certified Instructional Aides who are assigned such duties would be grossly unfair to other Instructional Aides who have earned such certification, and who have had to incur the time and expense of obtaining the certification. In this respect, the Board makes two points (1) based on the testimony of Union and District witnesses the duties of Aides assigned special education duties are not materially distinguished from other aides, and (2) certified special education teachers don't receive a premium for their work but instead receive the same premium all teachers do for advanced education.

The Board also believes that a \$.50/hour adjustment is excessive compared to the wage rates received by Aides in the comparables. The Board's final offer will raise the Aides from \$.05/hour less than the average maximum rate to \$.10/hour above the average. In contrast, the Union offer will raise the maximum rate to \$.41/hour over the average.

2. The Union

At the outset the Union asserts that the amount that its final offer exceeds the District's and the average increase of 6% in the comparable is part of a trade off for the Union's concession it made of health insurance.

They believe a quid pro quo--which they assert is not provided by the Employer offer--is appropriate. They calculate that the savings to the District due to the change in health insurance coverage is \$2,039/month or \$24,470 per year. Yet the 6% increase the District's offer provides is only equal to the "average" area settlement. Thus the fact that the Union's offer exceeds the Employer's offer by \$16,837 in the first year is more than offset by the savings in insurance. They also suggest that the Union proposal of 6.5% is well within the mainstream of these settlements with respect to 1986-1987.

They also anticipate that the Board will argue that they have not yet realized a savings due to the fact that the new health insurance policy has not yet been implemented. This is true. However, they contend the failure of the contract to be settled and implemented is shared equally by both Parties. The Union and its members are suffering as well by the failure of the contract to be settled. A prompt settlement of the dispute clearly would have served the interest of both parties if it could have been accomplished. However, the Union's concessions

The Union strongly believes that the special education aides of the District represent a unique grouping of employees, different from a traditional instructional aide working in a regular classroom. They stress that the special education aides work with unique children with special needs, and that the classrooms are designed for and utilized by children with learning disabilities, physical disabilities, emotional problems and mentally retarded conditions. Moreover, the children range in age from preschool to middle school ages and the education programs are specialized and individualized, and the special education aide is an integral part of the development and application of that education program. Thus the special education aides are required to provide teaching assistance to a wide range of students and are required to perform varied tasks. Their duties also include changing of diapers and general assistance with toileting needs of students up to 15 years of age; the monitoring of students who are volatile due to their physical and mental conditions, and the specialized needs of physically disabled students including physical therapy regimens. Additionally, the required certification costs \$50.00.

The Union believes the Board's offer undermines the reason for the proposal, which is to give economic recognition to a group of employees performing work over and above the classification in which they are compensated. Moreover they contend the external comparables support their proposal since under the Union proposal, the Mukwongo special education aides will rank fifth (5th) of 12 and under the Board's proposal the Mukwongo special education aides will rank eighth (8th) of 12.

C. Early Retirement

1. The Union

It is the position of the Union that their proposal ought to be found reasonable on the basis of internal and external comparability and as part of the general tradeoff for the health insurance concession. In view of "a concession of the magnitude of the health insurance", the Union asserts that its early retirement proposal is justified.

They note that the Mukwongo Teacher 1984-86 contract included language on the teacher's early retirement benefit. In terms of external comparables they note that three schools have early retirement provisions providing for paid health insurance. Moreover they imply that language would have limited impact because (1) an examination of the seniority list (Union Exhibit #5) shows that as of June 30, 1986, relatively few employees would meet the 15 year service requirements (five employees). (2) The District's exposure over any three year period would not be significant as naturally limited by the 15 year service requirements as well as 62 years of age and (3) any employee through personal choice may opt to work to age 65 or retire to age 63, further limiting Board exposure to this item.

2. The District

The District notes that arbitrators often require the moving party to show a compelling need before introducing a new benefit into a Labor contract. They submit no such need has been demonstrated.

In fact they assert "The extravagance of the Union final offer is unmistakable". When their external comparables are reviewed the evidence demonstrates that for secretarial positions (1) only 1 of 12 comparable Districts pays the retiree health insurance and then only 100% of the single premium (2) 7 of 12 provide no benefit whatsoever, and (3) 5 of 12 provide health insurance at the employee's own cost. Last a comparison

of Food Service and Aide positions demonstrate that only 1 of 12 pays the retiree health insurance (Aide position) at 100% of the single premium; and 1 of 12 in each category (Aides and Food Service) provides health insurance at the employee's own cost.

D. LONGEVITY

1. The Union

The Union acknowledges that their proposal on longevity significantly alters the structure of the longevity system. However, they maintain it does so at a cost substantially lower than the Board's longevity proposal. This is because the District's plan, which merely offers an additional sixth year step on the salary schedule for each classification applies to more people than their plan. A breakdown of the cost of the respective offers is contained in Union Exhibit #3. The Board offer will affect 65 employees (with six years or more) increasing them each \$.05. The Union proposal, because it contains no increase in the six- to ten-year step, where the majority of employees fall, will affect only 20 employees. Under the Union plan, 18 would get a \$.05 increase and one employee each would receive a \$.10 and a \$.15 increase.

The Union also submits that a true longevity system rewards longer service employees at regular intervals, increasing the reward the longer a person is employed. The Union's proposal constitutes a movement toward an equitable longevity plan that fits the traditional concept of longevity systems more closely. The Union proposal would reward longer service employees and give them a tangible benefit for their long tenure of employment and it does so at a lower cost. Thus, based on equity, the Union's longevity proposal, in their opinion, should be strongly preferred.

2. The District

The District argues that the Union's longevity proposal is another example of how the Union has failed to show a compelling need for change. While the district proposes an increase of \$.05 per hour in the current longevity plan, the Union proposes a new system. Moreover, the new system will be more expensive in the long run. The Board contends that the cost of the Union's longevity structure will continue to rise and, inevitably, surpass the Board's costs as the work force gains additional years of experience, thereby commanding increased longevity rates under the Union's graduated step proposal.

Additionally, the District contends comparable data summarizing longevity benefits received by comparable districts demonstrates a total lack of support for the Union final offer. In fact, absolutely none of the other comparables provide longevity premiums as lucrative as the Board's \$.25/hour final hour. In the Hamilton School District, a large increase is given; however, it is similar to the addition of one step on the salary schedule. Thus, the fact remains that the majority of the comparable school districts do not provide any longevity for their part-time employees, in contrast to the "generous" offer submitted by the Board in the subject case.

E. School Closings

1. The Union

The Union believes its proposal on snow days (two days noncumulative for 12 month employees; one day noncumulative for 10 month employees) is justified based on internal and external comparability, and as part of the general tradeoff for the health insurance package. In contrast to teachers who can make up days of school lost due to snow, twelve-month employees

covered under the Union's agreement cannot because they are working anyway. Therefore, twelve-month employees, lose days when school is closed due to inclement weather.

With respect to ten-month employees, they lose at least every other day when schools are closed due to snow days because only every other snow day is made up by students and because all teacher aides and food service personnel work only when students are in school. Thus, there is equity in their proposal since no other school district employees lose pay due to snow days without the ability to make those days up.

They argue that their snow day proposal addresses an additional inequity. When schools are closed in the course of a day, only bargaining unit employees lose pay for the part of the workday not worked. All other Board employees leave school when it is closed and get paid for the entire day. The Union's proposal would elevate the bargaining unit employees to the same treatment as other School District employees on days school is closed early due to inclement weather. Additionally, the external comparables again show that the Union's proposal is not unique. Both Muskego-Norway and Waukesha Schools provide for noncumulative snow days.

2. The District

The Board submits that the Union's proposal which purports to change the status quo regarding school closings is unsupported and excessive. Again, they argue that the Union is unable to proffer any "compelling need" in support of its proposal to grant, what amounts to, two "free days off" to full-time employees and one "free day off" for school-year employees for school closings.

In addition, they contend the status quo is supported by both internal and external comparables. For instance, Mukwonago teachers must make up all days off due to school closure and no additional compensation is granted. No "free days off" are provided to the teachers nor do they have the option of substituting "vacation days" unlike the employees in the subject case. They also argue there is virtually no support for the Union's offer based upon external comparables. Only Mukwonago provides any paid days off (two for Secretaries, one for Aides and none for Custodians and Food Service employees). In fact, many of the school districts comparables do not even offer the opportunity for employees to substitute vacation leave, as is the status quo in Mukwonago.

F. Retirement

1. The District

The Board acknowledges they bear the burden of persuasion on this issue. However, the Board believes that there exists sufficient and compelling need to warrant such change, premised upon future unpredictability in the Wisconsin retirement laws setting employee contribution rates, and also based upon analysis of comparable districts. In terms of comparables, 10 of 12 districts express the retirement benefit as "6%" with only Mukwonago still utilizing the word "full."

In addition to the comparable support, they argue there is a practical concern and need for the Board to include this change as part of its final offer. It is, simply: any future increases in the employees' portion of the retirement benefit should be open for negotiation, rather than automatically "passed on" as an additional employer expense.

2. The Union

It is the Union's position that the Board's proposal to cap the retirement fund contribution at 6% is completely unjustified. The proposal has no cost impact during the

contract term. Moreover, they argue the Board has not set forth any persuasive arguments to change the status quo.

G. Health Insurance

1. The Union

It is the Union's opinion that the "most significant" item in the final offer is the proposal by both parties to change the health insurance package from a traditional plan to a \$100/\$200 deductible plan on all benefits. They contend this change impacts on the delivery of health care relative to cost distribution and results in a very significant cost savings to the Employer for the health insurance plan.

This issue is so important in the Union's mind that they contend that the fundamental basis of the present dispute is the "price" to be paid by the District for the change in health insurance. The Union believes that this significant change in the level of health care benefit and its corresponding cost savings to the Employer should be traded for several items in its final offer; primarily, wages, early retirement and school closings. They suggest the District expects to receive a most significant alteration of a critical fringe benefit without a quid pro quo and that this is unreasonable.

The Union believes it is important to underline the nature of the former health plan which consisted of two general components: (1) The basic coverage and (2) major medical. The basic coverage included all hospital expenses, surgical expenses, sanitarium expenses, diagnostic x-ray and laboratory expenses; x-ray and radioactive therapy expenses, and emergency medical and accident treatment expenses. The major medical covered all covered services not covered under the basic plan. The coverage for all services under the basic plan was first dollar coverage. No deductibles were applied. The coverage for major medical was a deductible of \$100 per person, maximum of three deductibles per family, and an eighty percent (80%), twenty percent (20%) splitting of the benefits up to \$2000 and 100% thereafter, up to \$250,000. Thus, critical to any analysis of this plan is the recognition that the major medical component of the plan was a "spill-over" benefit package. The vast majority of coverage was to be applied to the basic plan which was "first dollar" coverage.

Under the newly agreed upon plan, the Union submits the structure of benefit delivery is radically altered. Although the scope of covered services is unchanged, the two (2) component system is abolished. All benefits fall under the same umbrella and are subject to deductibles of \$100 per person per year, \$200 family aggregate per year. Without a detailed line-by-line analysis, the Union believes it is sufficient to say that where the vast majority of covered services had previously been covered from first dollar under the old plan, a \$100 per year deductible now applies.

employee. For example, the old plan deductible is \$150 family, which is \$50 less than the new plan deductible of \$200 family. However, this \$50 will be offset by the new plan's 100% benefit level for most medical/surgical procedures. Under the old plan, the employee would be required to pay 20% of the cost for each such procedure.

IV. OPINION AND DISCUSSION

The Union believes the key to the overall dispute before the Arbitrator is the health insurance issue. To this extent the Arbitrator agrees with the Union. The health insurance issue is a key, if not determinative, factor since, much of the Union's offer could not be otherwise justified on independent considerations. For example, among the various reasons is that there is a lack of controlling support in the external comparables for the Union's offer on early retirement, longevity or school closings. Indeed, much of the Union's case rests on the idea that a quid pro quo is necessary for their "concession" and that certain demands (snow days, early retirement and an additional 1% wage increase above the norm) are appropriate tradeoffs.

The Union emphasizes that the Board is seeking a significant change in the health insurance plan. Certainly if a party seeks a significant change in the collective bargaining agreement they should be able to demonstrate the reasonableness of this change based on one or a combination of factors. They include, but are not limited to, intrinsic equity, compelling need or support in the comparables and equity based on "buy out" considerations. Usually, the proposing party seeks the change based on such considerations while the opposing party usually proposes to maintain the status quo and argues that there is a lack of need, lack of comparable support and/or lack of a quid pro quo.

The Union in this case introduces a new twist. Instead of arguing that the status quo on health insurance should be maintained because of a lack of need or an insufficient buyout, they make the same proposal for change as the Employer but tack on their own list of what they believe to be appropriate and reasonable concessions which should be made by the Employer. This is somewhat risky since the Union by proposing specific quid pro quo bears the burden of showing that the "buy outs" they set up for the Employer are reasonably related to the "concession" the Union has offered.

It is the Arbitrator's opinion that the Union has clearly overestimated the leverage and bearing the health insurance plan change should have on this dispute. They have overreached basically for two reasons. First, the change itself has some intrinsic value for the Union. Secondly, the impact on the Employer of the "buyouts" the Union seeks far outweigh the value to the Employer of the change in the health insurance. More importantly, the Union's overreach on the issues of early retirement, snow days and the basic wage increase is so excessive that, considering the fairly reasonable position of the Employer on wages, longevity, retirement and instructional aides, the Union's final offer as a whole must fail.

Accordingly, the Arbitrator's basic reaction to the Union's final offer relative to the District's final offer is tri-fold. First, the health insurance "concession" isn't as dramatic as the Union suggests. They ignore the plain fact that while deductibles now exist where in some cases they didn't before, certain meaningful benefits were also increased. The maximum aggregate benefit was raised from \$250,000 to \$100,000; x-rays and office visits in connection with physicals are covered in full whereas they weren't covered at all before; outpatient treatment costs for nervous or mental disorders were only 50% covered with a \$20 limit per visit and 52 visits during the benefit period whereas they are covered up to 80% with no limitations under the new plan. Under the old plan limited

chiropractic was covered at 80%, under the new plan it is 100%. The same is true for dental extraction and initial replacement and other medical expenses. Thus, this sampling clearly shows that there was some intrinsic value to the health care switch and this militates against the idea that this was a major concession on the Union's part.

The second basis of the Arbitrator's reaction to the final offer is his conclusion that there is greater relative impact on the Employer in the combination of the Union proposals on snow days, early retirement and wages than there is in the value of the health insurance concession. Additionally, as the record reflects, there is little external comparable support for these proposals and appeals to internal comparables are unconvincing.

In terms of the impact, even if we presume the full impact of the health insurance on an individual employee was \$28/month, it is not hard to see that (a) an additional 1% in wages over the norm retroactive to the beginning of the contract, (b) the addition of snow days and (c) the very costly early retirement proposal would, in the long run, outweigh the savings effectuated by changing to the new health care plan. Even without any early retirements, any snow days or any future costs of the longevity the total package cost of the Union's proposal is approximately \$16,000 more than the Board's in the first year and \$9,000 in the second year. This cancels out a good deal of the health care savings. A few retirements, a few snow days and some future impact in the Union's longevity would limit the savings further or possibly wipe it out all together. For instance, the cost of paying health insurance at the family rate is nearly \$2000 per year at present rates or \$6000 for the maximum three-year period provided in the Union's early retirement proposal.

The Union did appeal to the teachers contract as an internal comparable in support of snow days and early retirement. The fact is teachers make up all whole days missed due to snow. The fact that twelve month employees and others in certain circumstances don't have the opportunity to make up snow days is unfortunate. The fact that circumstances such as acts of God negate work opportunities isn't unusual for twelve-month employees and it is not common to hold employers liable for them. In terms of early retirement, the teachers are in a wholly distinguished situation. The fact starting teachers earn a great deal less than veteran teachers presents greater savings opportunities to offset early retirement benefits. In addition, it is quite possible there is more external support in the teacher's comparables for early retirement than has been demonstrated for this unit.


The third and last reaction to the Union's offer is a relative one. The Board's offer on the remaining issues isn't such that it would compel the Arbitrator to accept the Union's "overreach." In other words, if the District's offer were wrought with deficiencies the Arbitrator might have to conclude

not electing to take health insurance. Also, their total compensation includes dental insurance, and life insurance for eligible employees.

Based on the foregoing, the Arbitrator concludes that the Employer offer should be adopted.

AWARD

The Parties 1985-1986 contract shall include the final offer of the Employer.



Gil Vernon, Arbitrator

Dated this 23rd day of February, 1987, at Eau Claire, Wisconsin.