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VOLUNTARY LABOR ARBITRATION  
OPINION AND AWARDWISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Mediation/Arbitration

between

LENA EDUCATION ASSOCIATION

and

LENA SCHOOL DISTRICT

CASE 5, NO. 35985  
MED/ARB - 3630  
Decision No. 23320-BHearing HeldOctober 14, 1986  
Lena School District  
Lena, WIAppearances

For the Board:

James A. Morrison, Esq.  
Morrison & Coggins, S.C.  
P.O. Box 406  
Marinette, WI 54143Mediator/ArbitratorSteven Briggs  
3612 N. Hackett Ave.  
Milwaukee, WI 53211

For the Association:

Ronald J. Bacon, Esq.  
Executive Director  
United Northeast Educators  
1540 Capitol Drive  
Green Bay, WI 54303

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BACKGROUND

The undersigned was notified by a May 5, 1986, letter from the Wisconsin Employment Relations Commission of his selection as Mediator/Arbitrator in an interest dispute between the Lena School District (Board) and the Lena Education Association (Association). The dispute between the parties concerns certain items to be included in their teacher Agreement which expired on June 30, 1985.

Pursuant to statutory responsibilities, the undersigned conducted a public hearing on the evening of October 14, 1986. Mediation attempts which followed the public meeting did not result in settlement, and the parties proceeded immediately to the arbitration phase of the proceeding. Both parties were afforded full opportunity to present evidence and argument in support of their respective positions on the issues, and both filed timely Posthearing Briefs. The Board filed a timely Reply Brief; the Association did not file a Reply Brief. The record was declared closed on December 17, 1986. Based upon a detailed consideration of the record, and relying upon the criteria set forth in Section 111.70 (4)(cm), Wisconsin Statutes, the Arbitrator has formulated this Award.

ISSUES

The following issues remain in dispute: Agreement duration, length of the school day, maintenance of standards clause, pay periods, salary, specification of Summer workdays for Guidance Counselors and the Agriculture teacher, and State Retirement System contribution language.

## DISCUSSION

### The External Comparables

Both parties cite the Marinette-Oconto (M & O) Athletic Conference as the primary group of school districts to be used for comparison purposes. It is composed of the following districts:

Coleman  
Gillett  
Lena  
Niagara  
Peshtigo  
Suring

The Board also relies on twenty six school districts in the CESA 8 region as a secondary comparables pool. However, since it provided insufficient data in support of expanding the group of comparables beyond the M & O Athletic Conference, the undersigned rejects the use of CESA 8 districts for comparison purposes.

The Association's reliance upon statewide data for comparison purposes is also not sufficiently supported in the record. While statewide salary data are sometimes useful for general comparison purposes, nothing in the record has convinced the Arbitrator that there is compelling reason to rely upon them in the instant case. Lena School District competes for teachers with other districts in the local labor market, and it is simply unrealistic to compare its salaries with data bases including teacher salaries from such metropolitan areas as Milwaukee or Madison, barring special circumstances.

### Maintenance of Standards

The parties' current Agreement contains the following Maintenance of Standards clause at Article VI, Paragraph E:

All conditions of employment and professional advantages shall be maintained at not less than the highest minimum standards in effect in the District at the time this agreement is signed, provided that such conditions shall be improved for the benefit of teachers as required by the expressed provisions of this and future agreements. This agreement shall not be interpreted or applied to deprive teachers of employment and/or professional advantages heretofore enjoyed unless expressly stated herein.

Board Position. The Board's final offer would delete the above language from the Agreement. It acknowledges the burden to convince the undersigned that the clause should be removed, and claims that its salary offer, which is higher than the Association's, is sufficient justification for doing so. The Board believes that the above clause has already and will continue to erode its ability to control the school district. It points to four grievances since 1982 stemming from interpretation of the Maintenance of Standards clause as evidence of the turmoil it has caused, and notes that no other district in the M & O Conference has such a clause.

Moreover, the Board feels that the Maintenance of Standards clause is the most important issue between the parties, and argues that the Association must have given it the highest priority as well or it would not have constructed a salary offer lower than the Board's.

Association Position. The Association argues that the Maintenance of Standards clause has never cost the District additional new dollars. Of the four related grievances filed, the Association only prevailed in one at the arbitration step, and that loss at arbitration cost the District no more than what it had already been paying.

Discussion. It is clear from the record in this case that the Maintenance of Standards clause has been the focus of some conflict between the parties, at least since 1982. Between 1982 and the latter part of 1986, four grievances were filed over its application and interpretation. Two of those cases went to arbitration, with the District prevailing in one and the Association in the other. The undersigned could find no indication in the record as to when the clause first appeared in the parties' collective bargaining agreement, though it is clear that it was negotiated voluntarily.

In any event, the fact that the Board has lost one case in arbitration in four years under the Maintenance of Standards clause has not convinced the undersigned that its terms are unduly restrictive on the District administration. The clause was negotiated voluntarily between the parties, and it is assumed that their respective spokespersons at the bargaining table were responsible professionals with comprehensive knowledge of labor agreement negotiation and administration. The undersigned is very reluctant to disturb the outcome of those negotiations by third-party fiat absent compelling evidence that the Maintenance of Standards clause has caused significant harm to such of their common interests as education quality, cost effectiveness or employment security.

The Board also argues that the Maintenance of Standards clause will cause problems for the parties in the future, citing "changes in the wind" and its need to be able to respond to them in an unfettered fashion. It implies that its ability to reduce costs as appropriate is severely hampered by the clause, and emphasizes the need to minimize costs generally. At the same time though, the Board proposes a salary package the cost of which exceeds that proposed by the Association. And both parties' salary offers exceed any conventional measure of the cost of living by several percentage points. The future costs of retaining the Maintenance of Standards clause are based upon the Board's speculation and cannot be precisely specified; the future costs of the salary offers may be calculated with precision. The Arbitrator is thus not absolutely convinced that deletion of the Maintenance of Standards clause would result in a greater cost saving to the District than adoption of the Association's salary offer.

### Salary

As can be seen from the following Board-generated table, both parties' salary offers advance Lena teachers' respective ranking in the M & O Conference on commonly accepted benchmark salaries:

TABLE 1

LENA'S RANK ON BENCHMARKS  
MARINETTE-OCONTO ATHLETIC CONFERENCE

	1984-1985		1985-1986			
	salary (\$)	rank	Board salary (\$)		Association salary (\$)	
BA Base	14,025	7	16,210	1	15,625	3
BA 6th	17,775	7	19,570	1	19,375	4
BA Max	20,900	8	22,370	6	22,500	6
MA Base	15,125	8	17,860	1	16,825	5
MA 9th	20,885	7	23,080	4	22,585	6
MA Max	24,085	7	25,980	5	25,785	5
Sch Max	24,910	8	27,498	5	26,685	6

Board Position. The Board maintains that the appropriate salary comparison is between the parties' respective offers and the 1984-1985 salary schedule, not between the two offers themselves, since both offers reflect significant upward movement for Lena teachers. It also notes that Lena teachers enjoy a longevity payment of \$200 per year at a lane maximum, which will significantly improve the schedule maximum over time.

Moreover, the Board notes that on a historical basis the negotiated salary increases for Lena teachers have been competitive with those reached in Conference districts. It also points out that its salary offer was intended to be very generous, so as to compensate Lena teachers for loss of the Maintenance of Standards clause.

The Board also proposes changes in two lane definitions: BA+15 would become BA+16 and MA+15 would be changed to MA+16. It argues that such lane changes would "bring them into symmetry" with the balance of the schedule, and that at most only six people would be affected.

Association Position. The Association argues that Lena teachers have traditionally negotiated lower pay rates than those agreed upon in other Conference districts as a trade off for such language items as the Maintenance of Standards clause. Thus, it is not reasonable for the District to assume it can "buy off" the clause for what amounts to about a \$98 per teacher differential between the Board's and Association's final offers. In addition, while the Board's offer modifies the salary schedule itself by changing two lanes, the Association's offer maintains the status quo on this point.

Discussion. Both of the parties' salary offers appear generous when compared against Conference settlements, those in the private sector for the same period, and conventional measures of the cost of living. The Association's appears to be the more reasonable for at least two reasons. First, it maintains the status quo with regard to the structure of the salary schedule. Under the current lane system, a teacher taking five 3-credit college courses would qualify for advancement to the BA+15 lane. Were the Board's offer to be adopted, the same teacher would have to take an additional course to enter the BA+16 lane. Moreover, it is misleading to conclude that this change would affect a maximum of six teachers, since it would govern the lane placement in the future of all teachers who have not yet reached the BA+15 lane. The same reasoning can be applied to the proposed change at the masters' level. On balance, there is not sufficient evidence in the record to support the need for the Board's proposed lane definition change.

A second reason leading to the conclusion that the Association's salary offer is the more reasonable concerns the Board's overall reasoning in this case. Stripped to the bare bone, the Board's main argument is that its salary offer is large enough to buy out the language changes it seeks. The Arbitrator does not agree. The Board seeks to eliminate the Maintenance of Standards clause, change salary schedule lane definitions, lengthen the work day (by 93 hours per year per teacher), change the pay period structure, change the STRS contribution language, and place a fixed maximum on the number of days the agricultural teacher and guidance counselors may work during the summer months. The status quo on all of these items was negotiated voluntarily between the parties, and it would be inappropriate for a third-party to change that status quo across the board with a stroke of the pen. Interest arbitration was designed in part to simulate the outcome of free collective bargaining, and the undersigned is not at all convinced that the Board would be able to persuade any union anywhere that its salary offer is a sufficient trade-off for all of the above items.

Finally, the the Association's argument that Lena teachers have historically accepted lower salaries in exchange for certain language items (including Maintenance of Standards) is credible. For example, in 1982-1983, 1983-1984, and 1984-1985, Lena was at or near the bottom of the Conference on all of the benchmarks.

For all of the above reasons, the Arbitrator concludes that the Association's salary offer is the more reasonable.

#### Other Issues

In comparison to the salary and Maintenance of Standards issues, the remaining ones are of lesser importance to the parties. Probably the most significant of them is the length of the school day. The Board proposes to extend it by one-half hour because Lena teachers "have the shortest school day" in the Conference and some teachers leave school at the same time as the students, making it impossible for teachers to interact with parents, colleagues and administrators. In counterpoint, Association President Barb Dietsche testified that when the secretarial staff leaves at 3:30 p.m., there is no one to answer the telephone anyway, so parent calls to teachers after the current school day has ended are highly unlikely.

Extending the school day by one-half hour results in a 93-hour workload increase per teacher per year. The current day begins at 8:00 a.m. and ends at 3:35 p.m., requiring each teacher to be at school about 7 1/2 hours per day. Extending the day to eight hours equates to about a 6 1/2% increase in their workday. The undersigned could not possibly adopt the Board's salary offer (about 9.5% by the Board's calculation) using the reasoning that it represented a sufficient "buy out" for several language deletions and additions when just one of those items would require Lena teachers to increase their work time by 6 1/2%.

Based upon the foregoing analysis, and having concluded therefrom that the Association's final offer is the more reasonable on the salary, Maintenance of Standards and workday issues, there is no need to add a detailed discussion of the remaining issues, all of which have been characterized by the parties as minor in comparison.