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RELATIONS COMMISSION

MEDIATION/ARBITRATION AWARD

In the Matter of the Mediation/Arbitration between	
STOUGHTON AREA SCHOOL DISTRICT	Re: Stoughton Area School District, Case 27, No. 35233, MED/ARB-3357 Decision No. 23856-A
and	
STOUGHTON EDUCATION ASSOCIATION	

APPEARANCES: For the Employer, Stoughton Area School District: Jack D. Walker of Melli, Walker, Pease & Ruhly, Attorneys at Law, 119 Monona Avenue, Madison, Wisconsin 53703.

For the Union, Stoughton Education Association: Mallory K. Keener, Executive Director, Capital Area Uniserv South, 4800 Ivywood Trail, McFarland, Wisconsin 53558.

This is a proceeding under Sec. 111.70(4)(cm) of the Municipal Employment Relations Act. The Association represents a collective bargaining unit of professional staff of the Employer except for employees whose primary responsibilities are in the area of administration. The parties have bargained for many years. The current dispute arises under a reopener provision of their agreement that runs from 1984 to 1986. The reopener for the 1985-86 school year covers "salary schedule, additive schedule, calendar for 1986-87, WRS contribution, and one other economic issue each."

The parties initiated bargaining pursuant to the reopener provision in April, 1985. After meeting three times to negotiate, they jointly filed a petition asking the Wisconsin Employment Relations Commission to initiate mediation/arbitration. In November, 1985 the WERC investigator/mediator asked the parties to submit final offers. Among the Association's final offers (representing the "one other economic issue" specified by the reopener clause) was this proposal:

> Add new 201.3 as follows:
>
> > All elementary teachers will receive no fewer than 225 minutes per week of preparation time during the student day.

Thereupon the District, on November 15, 1985, filed objections with the Wisconsin Employment Relations Commission on grounds that the number of minutes of preparation time is not a mandatory subject of bargaining and followed this with a petition for a declaratory ruling on November 25, 1985. On December 12 the Association responded with a letter to the Commission that included what was termed a revised "impact" proposal to the District as a substitute for the proposed addition to Section 201.3 of the labor agreement that had been challenged. The new proposal was the same as the proposal in the Association's final offer in this proceeding.

The WERC issued a ruling on May 16, 1986 stating:

> . . . that the instant proposal is a mandatory subject of bargaining because it primarily relates to wages as well as to the impact upon hours and conditions of employment of District preparation time policy choices.

The WERC staff member then resumed her investigation of the dispute and determined in July, 1986 that the parties were at impasse and asked them to submit their final offers again. The parties then submitted their final offers to WERC. These offers are reproduced as Addendum A (the District's final offer) and Addendum B (the Association's final offer) and attached to this report. It should be noted here that the parties are in agreement on the issues of the additive schedule, the calendar for 1986-87, and the Employer's WRS contribution. Thus the issues in this proceeding are preparation time and the salary schedule.

The undersigned was notified by the Chairman of WERC of his appointment as mediator/arbitrator by letter dated August 14, 1986. A mediation session was held in Stoughton on September 9. It was unsuccessful in settling the dispute, and the parties agreed that an arbitration hearing should be held on September 23. At that hearing the parties were given an opportunity to present evidence from witnesses and in documentary form and to cross examine the witnesses. A written record was made of most of the hearing, although the court reporter left the hearing at shortly after midnight for the reason that she had a commitment to appear early the next day at another hearing. The record of the portion of the hearing that was recorded was received in late October. The parties had agreed to have the arbitrator exchange briefs to be postmarked December 6. They later agreed that reply briefs should be postmarked no later than January 16, 1987 and were to be exchanged by the arbitrator. The reply briefs were exchanged on January 21, 1987 and the record is considered closed as of that date.

In terms of salary and benefits the Union estimates the cost of adopting its proposal at 8.4 percent and the District proposal at 6.9 percent. The District's cost estimates are 7.1 percent for its own proposal and 8.4 percent for the Union proposal.

POSITIONS OF THE PARTIES ON THE ISSUES IN DISPUTE

Both parties appear to agree that data from the Badger Athletic Conference schools are the appropriate comparables that the arbitrator is required to consider under Section 111.70(4)(cm)7., although they would give different emphases to the various factors a. through h. and to the interpretation of factor d.

Although it reverses the order of presentation by the parties at the hearing and in their briefs and reply briefs, I will consider first the issue of the salary schedule.

THE UNION'S POSITION ON SALARIES

The Union makes two principal arguments in its comparisons within the athletic conference and another principal argument related to the level of the parties' salary increase proposals compared to state averages. The Union asserts that the best measures of comparability are at the benchmarks that are commonly used in school salary matrix comparisons. Although it provided data on athletic conference salaries back to school year 1981-82 to support its proposal, its principal argument is based on the figures for 1985-86 as compared to 1984-85. The following table presented by the Union compares average benchmark salary increases by dollar amounts and percentages for the Badger Athletic Conference school districts. The conference consists of seven districts: Fort Atkinson, Middleton, Monona Grove, Monroe, Oregon, Sauk-Prairie, and Stoughton.

BENCHMARK SALARY	AVG. SALARY 1984-85	AVG. SALARY 1985-86*	DOLLAR INCREASE	PERCENT INCREASE
BA MINIMUM	$14,429	$15,621	$1,192	8.26%
BA, STEP 7	17,807	19,234	1,427	8.01
BA MAXIMUM	19,480	20,787	1,307	6.71
MA MINIMUM	16,148	17,509	1,361	8.43
MA, STEP 10	22,066	23,850	1,894	8.08
MA MAXIMUM	25,626	27,350	1,724	6.73
SCHEDULE MAXIMUM	27,926	29,987	2,061	7.38

*Excludes Stoughton. The six other districts are settled for 1985-86.

The average dollar increase is $1,551 and the average percentage increase is 7.66. The Union's proposal for each step on the salary matrix is 6.8 percent. The District's proposed increase at each step is 5.3 percent. The Union argues that its proposal is not only below the average of the other districts but is closer to it. Although the Union did not so argue, it might also have indicated that the average dollar increase at the benchmarks was $1,387, as proposed by the Union, somewhat below the average increase at the benchmarks for the comparable districts.

The Union's second principal argument was to show that the rank of Stoughton at the benchmarks has been relatively low since 1981-82 and that it would remain low if the Union's proposal is accepted but would be lower still if the Board's proposal is accepted. The following table shows Stoughton's ranking within the conference:

BENCHMARK SALARY	1981-82	1982-83	1983-84	1984-85	1985-86 PROPOSAL
BA MINIMUM	7	7	5	4	5 UNION 6 DISTRICT
BA, STEP 7	5	7	5	3	5 UNION 6 DISTRICT
BA MAXIMUM	3	3	3	3	3 UNION 4 DISTRICT
MA MINIMUM	6	6	5	4	5 UNION 6 DISTRICT
MA, STEP 10	7	7	7	7	6 UNION 7 DISTRICT
MA MAXIMUM	5	5	4	5	5 UNION 5 DISTRICT
SCHEDULED MAXIMUM	5	5	5	5	4 UNION 7 DISTRICT

The Union points out that adoption of its proposal would improve Stoughton's rank only at the MA, STEP 10 and SCHEDULED MAXIMUM levels and would leave the same or drop Stoughton's rank at all other levels. Adoption of the District's proposal would further erode Stoughton's rank among the other conference districts.

The other principal argument of the Union is that its proposal on salary increases is below the averages of 347 other district settlements within the State of Wisconsin. These figures are shown on the following table:

	DOLLAR INCREASES			PER CENT INCREASES		
	STATE	DISTRICT	UNION	STATE	DISTRICT	UNION
BA MIN	$1,092	$ 760	$ 975	7.4%	5.3%	6.8%
BA 7	1,345	942	1,209	7.3	5.3	6.8
BA MAX	1,481	1,064	1,365	6.8	5.3	6.8
MA MIN	1,260	852	1,092	7.7	5.3	6.8
MA 10	1,689	1,140	1,462	7.5	5.3	6.8
MA MAX	1,776	1,368	1,755	7.0	5.3	6.8
SCHED MAX	1,935	1,444	1,852	7.2	5.3	6.8

In both dollar figures and percentages the Union's salary proposal is shown to be lower than the dollar and percentage figures for settlements in the state at the benchmarks.

The Union argues that in teacher arbitrations the most commonly used comparable salaries are those of other teachers. Settlements in other local units or among private sector establishments and unions in the City of Stoughton should not be given substantial weight. The Union asserts that it is commonly recognized that it has been necessary in recent years to raise teachers' salaries faster than increases in the cost of living in order to retain talented people in the profession and to enhance the quality of education. Nor does the Union believe that there is any serious question of the District's ability to pay. Union testimony indicated that within the conference Stoughton was first in state aid, second in state aid per member, and third in the level of the levy rate and equalized valuation. The Union

does not believe that any of the commonly applied tax and expenditure figures indicate that the District and the Stoughton area are in a precarious financial condition so as to influence the bestowal of an award in this case.

The Union introduced a substantial amount of testimony at the hearing from an expert witness who demonstrated that at the beginning, middle, and top levels of the salary matrix the Stoughton teacher salaries had declined substantially in terms of constant dollars since 1973. This testimony also purported to show that the Stoughton teacher salaries in terms of constant dollars had fallen behind the increases for Wisconsin and Dane County personal incomes and U.S., Wisconsin, and Dane County per capita incomes.

THE DISTRICT'S POSITION ON SALARIES

The District has devoted a part of its brief in this matter to explain that the salary schedules proposed by both parties are in need of revision. During the WERC mediation in October, 1985, the parties almost reached agreement on a compacted salary schedule that would have made entering rates more attractive to new teachers and provided incentive for incumbent teachers to obtain more educational credits and thereby advance horizontally on the schedule. The near-agreement also included a proposal by the District for a side letter covering preparation time for elementary school teachers. The purpose of describing the near-settlement was to show that the District had been willing to settle the wage issue at a cost of 7.86 percent. When the settlement did not occur, the District reverted to its current final offer costing 7.1 percent while the Union reverted to a proposal on salaries costing 8.4 percent.

The District disputes the use of benchmarks for comparability of salary schedules, pointing out that the arbitrator who first promoted the technique has abandoned it in a recent case. The District's principal criticism of the benchmark comparison technique relates to a recent settlement in the Oregon School District where each teacher was granted a $2,000 salary increase, thus effectively eliminating the rationale of a schedule calculated by a horizontal and vertical percentage index of a beginning base salary. According to this argument the Oregon schedule should not be included in the comparables because the schedule no longer exists at Oregon. A somewhat similar argument is made in favor of eliminating Middleton from the comparables since in that settlement the entire first line of the matrix was eliminated, although the parties retained a fictional base figure for calculation of the other salaries in the matrix. Since the District believes that benchmark comparisons are invalid, the ranking of Stoughton in comparison with other districts in the athletic conference is also invalid and not meaningful.

The principal argument of the District, however, relates to the interpretation of three of the factors to be considered by arbitrators as listed in the statute, Section 111.70(4)(cm)7., c., d., and e. Through a variety of exhibits and testimony the District pointed out that Stoughton is a rural community with a high percentage of AFDC recipients, a high percentage of rural inhabitants (at a time when the agricultural sector is generally in economic difficulty), and the highest percentage of citizens over 65 years of age of any community in the athletic conference. The District also introduced Bureau of the Census statistics purporting to show

that Stoughton has the lowest per capita income among the cities in the athletic conference and that its per capita income is only 65 percent of the per capita income of Monona Grove, the city with the highest per capita income. While the District does not argue inability to pay, it asserts that the Union's salary proposal is unreasonable in light of the economic condition of the community.

As to Subparagraph d. the District points out that it consists of two parts (which have recently been separated into two paragraphs by the Wisconsin legislature),* the second part of which includes consideration of comparison of "wages, hours and conditions of employment . . . with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities." In this connection the District points out that the District's building custodians unit, represented by AFSCME, negotiated a wage increase for 1985-86 of 4.9 to 5.1 percent. District school administrators received an 8.3 percent increase for 1985-86 (which is about the same as the Union's proposal in this proceeding if STRS is included), but in each of the previous three years the administrators' increases had been lower than that of the teachers.

The District introduced a considerable amount of wage data indicating that the City of Stoughton had settled for 1985-86 with the Teamsters Union representing public works, office employees, police officers, and fire fighters for around 4 percent in all cases and that its unrepresented employees received increases of similar size in percentage terms.

Among private sector employers in the Stoughton area the District introduced wage statistics purporting to show that increases among both bargaining unit and non-bargaining unit employees ranged from a low of 3.4 percent to a high of 5 percent for the years 1985 and 1986. These employers included Uniroyal, Inc., Stoughton Hospital, Skaalen Sunset Home, Nelson Industries, Inc., and Zalk-Josephs Fabricators, Inc.

The District introduced numerous exhibits in support of its argument that private sector settlements nationwide have been substantially below the percentage raise figures proposed by both parties in this proceeding. One issuance of statistics by the Conference Board, dated June 27, 1986, purported to show that exempt salary increases in six major industries had a median increase of between 5 and 7 percent in 1985 and were estimated to be between 5 and 6 percent in 1986. A Bureau of Labor Statistics release dated January 27, 1986 stated that "major collective bargaining contracts settled in private industry during 1985 provided average wage adjustments of 2.3 percent in the first contract year and 2.7 percent annually over the life of the contract. . . ."

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*Although the District claims that the amended law separating Subparagraph d. into two subparagraphs is applicable to this dispute, I agree with the Union that this proceeding started before passage of the amendment to the law and that the old wording applies. It should be emphasized, however, that the amendment merely separates one paragraph into two.

In commenting on teacher increases the District introduced an American Management Association publication called Compflash, dated July, 1986, that quoted a National Education Association report stating that "Average pay for teachers rose 7.3% to $25,257 in 1985-86, the fifth year in a row it outpaced inflation. . . ." The District points out that the 7.3 percent figure is only three-tenths of a percentage point above the District offer if the increased STRS contribution is excluded and is two-tenths of a percentage point lower if STRS is included, based on the Union's calculations, figures that are somewhat lower than the estimates as calculated by the District.

The District argues that Subsection e. of the factors to be considered by the arbitrator implies that the percentage wage proposal closest to the percentage increase in consumer prices is to be preferred in making a choice between the two proposals. Since the Bureau of Labor Statistics Consumer Price Index (all-cities) rose only 3 percent in the year preceding August, 1985, and the CPI (all-urban) had increased only 3.4 percent in the year preceding August, 1985, the District's proposal, which would more than double those figures but yet is closer than the cost of the Union's proposal, should be preferred by the arbitrator.

DISCUSSION OF THE SALARY ISSUE

The arbitrator is obligated under the provisions of the statute to consider eight factors, as spelled out in Section 111.70(4)(cm)7. a. through h. There would seem to be no need to discuss either factors a. ("the lawful authority of the municipal employer") or b. ("stipulations of the parties"). Neither party has raised a question about a. and the parties are in agreement concerning the fact that they have settled all issues other than salaries and preparation time in this dispute.

As to Subsection c. ("the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement"), the District does not argue that it is unable to meet the costs of either proposed settlement. The District has raised a question, however, concerning whether it is in the interest of the public or would serve the public welfare to adopt the proposal of the Union, given the economic circumstances of the community as described in the District's testimony and in its briefs. An arbitrator is not unaware of the public discussion of what is widely perceived as an increasing burden of local taxes, a large part of which consists of increased costs of public schooling. In this connection the City of Stoughton has the lowest per capita income of any of the cities or villages in the athletic conference, according to the most recent report of the Bureau of the Census. And according to a 1986 bulletin from the Demographic Services Center of the Wisconsin Department of Administration, Stoughton ranks below the middle of the seven communities in the athletic conference in terms of median household income, median family income, and non-institutional per capita income, while it ranks above the middle in terms of percentages of families below the poverty level and persons below the poverty level. These figures along with the other arguments of the District described above must be considered with reference to the factor that includes the financial ability of the community to meet the costs of a settlement.

To offset that argument we must also consider the quality of the education that the pupils in the District receive. The Union argues that the

quality of education is directly related to the level of salaries of the teachers. There is little question that a desirable level of salary is required to attract and retain good teachers. It is relevant, therefore, to assert that higher salaries are in the interest of and contribute to the welfare of the public.

It is said that most arbitrations pursuant to the provisions of the Municipal Employment Relations Act are decided on the basis of the first part of Subsection d. ("comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services . . ."). On the issue of salary increases the Union's case rests almost completely on this factor. And despite what the District says about the use of benchmarks in the comparisons, this arbitrator believes that benchmarks are the most useful device for making comparisons with other teacher settlements. In this case the parties seem not to disagree about comparing salaries within the athletic conference, although the District questions the use of Oregon and Middleton benchmarks because their settlements have changed the schedules so as to change the value of the benchmarks. In recognition of this criticism I have recalculated Table I of the Union's brief. Since the District was critical of the calculations made by the Union based on averages for 1984-85 that included Stoughton, I have eliminated Stoughton salaries. I have also eliminated Oregon completely from the calculations. I have not eliminated Middleton except at the BA MINIMUM for the reason that the rest of the schedule remains the same. Using these changed calculations I find that the average percentage increase at the benchmarks in the athletic conference for 1985-86 is 7.1 percent instead of 7.6 percent, as calculated by the Union. This is still higher than either the 6.8 percent proposed by the Union or the 5.3 percent proposed by the District. If we accept the benchmark device for comparing the salary proposals of the two parties in this proceeding, and I do accept it, then the Union's proposal is preferable under the factor in the first part of the paragraph in Subsection d.

The second part of that paragraph ("and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities"), however, cannot be ignored. In all these comparisons, other settlements in the community in both the public and private sector have been below either of the proposals in this proceeding and are closer to but below the proposal of the District.

The same result is reached when we consider factor e. ("the average consumer prices for goods and services, commonly known as the cost-of-living"). Both parties have made proposals exceeding increases in the cost of living, but the District is persuasive in arguing that the factor would have no significance if the legislature had not intended that the arbitrator consider which proposal is closer to the percentage increase in the cost of living, as measured by the commonly accepted published indexes. The District's offer is closer.

I am not ignoring the testimony of the Union's expert witness concerning the demonstration that Stoughton teachers' salaries have declined since 1973 in terms of constant dollars. I have three problems with that testimony. First: Earnings generally in the United States have not kept up with increases in the cost of living since 1973. Second: By choosing a different

base year, presumably 1980-81, the District's testimony, whose source was the American Management Association, purported to show that teachers' salary increases in the most recent five years before 1986 had exceeded increases in the cost of living. Each party has reached its own conclusions by its choice of a base year. Third: The Union's comparisons of Stoughton teachers' salaries with personal and per capita income are not very useful. Those data are not the same as salary figures and are influenced by a variety of variables that may have no intimate relation to individual earnings. More useful comparisons might have been made against production worker earnings or white collar earnings in the private sector.

I have considered the factors set forth in Subsections f., g., and h. but do not consider that they have any significant bearing upon my award in this case as it relates to the salary schedules.

In my opinion the Union's salary proposal is reasonable and not out of line with increases that have been negotiated or awarded during the period in question at other districts in the athletic conference. The resulting salaries are also not unreasonable in comparison with the level of salaries in those districts. The Union proposals are modest in comparison with the average settlements of 347 other districts within the state. On the other hand there is a marked contrast between the proposals from both parties in this proceeding and the settlements that have been arrived at in the community in both the public and private sectors. I am not impressed by the District's argument that the Union should have accepted the offer of the District at the time of the near-agreement in October, 1985 and that the arbitrator should be influenced by the fact that the District had been willing to settle at a level that approached the present demand of the Union. In my view the only consideration open to me now is to decide between the two final offers of the parties.

If salaries were the only issue, the decision would be a toss-up. Now it is necessary to consider the issue of preparation time in arriving at an award.

POSITIONS OF THE PARTIES ON PREPARATION TIME

The problem of preparation time moved to the forefront because of changes in the length of the student day. In 1983-84 the student day at Stoughton had been 330 minutes for elementary students, from 8:30 a.m. to 2:45 p.m. with 45 minutes for lunch. In the 1984-85 school year the student day had increased by 15 minutes by moving starting time up to 8:15 a.m. Then in 1985-86 the student dismissal time had been extended to 3:00 p.m. The final result was an increase in the student day to 360 minutes. In 1983-84 the teacher day in the elementary schools had been from 8:00 a.m. to 4:00 p.m. with 45 minutes for lunch. As a result of collective bargaining for the 1984-1986 labor agreement the elementary teacher work week had been extended to conform to the middle and high school work week by moving the starting time to 7:45 a.m. The parties also negotiated a 3:30 p.m. teacher departure time on Fridays. This had the effect of reducing the work week at the middle and high school level by one-half hour and increasing the elementary teacher work week by three-quarters of an hour.

As a result of these changes (the prospects of the changes were known to the parties during the bargaining in early 1984) the Union raised the issue

of elementary teacher preparation time in the negotiations for the 1984-1986 agreement. The Union made the argument that the 30 minutes per day increase in the pupil day would necessarily decrease by the same amount the time teachers had for preparation during the pupil day. According to the Union, the issue was withdrawn during negotiations when the WERC mediator assured the Union negotiators that it could be raised in a proposed reopener that was part of the settlement and that the Board understood that the Union would make preparation time for elementary school teachers the one economic issue that would be allowed in the reopener in the 1984-1986 agreement.

In April, 1985, when the parties exchanged proposals under the provisions of the reopener, the Union proposed 60 minutes per day for preparation time.

Section 201.3 was proposed to be added to the agreement:

> Section 201.3 GUARANTEED PREPARATION TIME
>
> Elementary teachers to whom the district does not provide at least 60 minutes of preparation time per day during the student day, will receive compensation, in addition to scheduled salary, in the amount of 1/4 the teacher's regularly hourly pay for each such quarter less than 60 minutes per day provided by the district. The daily thirty minute duty free lunch period is excluded from preparation time.

Then on June 20, 1985, the Superintendent of Schools issued a letter to all staff members announcing that in response to teachers' concerns about preparation time the District was increasing the amount of time pupils spent in art, music, physical education, and the library (away from the regular teachers and their classrooms) so as to provide 225 minutes per week of preparation time during the student day. This was an increase of 65 minutes for kindergarten teachers, 50 minutes at grades 1-3, and 15 minutes at grades 4-5.

Subsequently the Union adjusted its preparatory time proposal from the above so that it read as follows:

> Section 201.3
>
> All elementary teachers will receive no fewer than 225 minutes per week of preparation time during the student day.

It was this sentence that the Union included in its final offer to the WERC investigator/mediator on November 6, 1985. Thereafter, as recounted above, the District objected and filed a request for a declaratory judgment from WERC on grounds that the Union was proposing a nonmandatory issue. The Union promptly changed the wording of the proposal so as to provide for economic impact. The modified proposal was the same as the proposal contained in the July 15, 1986 final proposal by the Union, as attached to this report as Addendum B.

POSITION OF THE UNION ON PREPARATION TIME

As indicated above, the principal Union argument to support a section in the labor agreement on preparation time is the loss of 30 minutes during the student day as a result of the increased length of the day. A number of elementary school teachers testified at the hearing on this issue. The main burden of this testimony was that, along with the increase of 30 minutes in the student day, there have been increased demands on their non-teaching time in the form of clerical and record keeping duties, contacting parents, staff meetings, providing assistance to students outside regular classes, putting away materials, preparing grades, organizing field trips and other special projects and duties, in addition to such duties as preparing lesson plans, preparing classroom materials, supervising students, creating bulletin boards, etc.

The elementary teachers are especially conscious of their dependence on the scheduling of special subjects for the time they can use for preparation. Although they appreciate the extended time for music, art, physical education, and library, the teachers recognize that what has been given to them by the Board can also be taken away unless a guarantee of preparation time is written into the labor agreement. It is pointed out that the present Board policy of 225 minutes per week for special classes is a Board policy that can be changed as new members of the Board are elected. Turnover in the Board has been extensive in recent years. The Union and the elementary teachers want a policy that is enforceable. They also want the preparation time guarantee to cover special teachers, who are not covered in the present Board's policy. Although the teachers who testified did not assert any intention to file grievances if the time is reduced below 225 minutes, that opportunity would be a possibility if the guarantee were in the labor agreement.

The Union views the preparation time guarantee for elementary school teachers as the counterpart of a provision in the labor agreement (Section 201) that describes the normal load for middle and senior high school teachers. That section includes the following statement:

> Teaching Load: The normal load for teachers during the duty day at the middle and senior high school levels shall be the equivalent of five traditional class hours and a supervisory assignment hour. The supervisory hour shall be defined as the existing class period length.

Another paragraph in Section 201 includes the following statement:

> Full-time high school teachers who teach an additional class over the normal five will be paid 15% of their base salary additional for that extra period. Such an assignment's acceptance will be voluntary on the part of the teacher.

In this regard the Union is arguing that having agreed to the provision covering the work load of middle and senior high school teachers in the

1981-82 agreement and to the 15 percent overload provision in the 1984-86 agreement, it is only fair that the Board should agree to a provision guaranteeing 225 minutes per week preparation time for elementary school teachers. In its brief the Union asserts that "it does not make an iota of sense for the District to provide guarantees of preparation time to one level and not to another." In the opinion of the Union adoption of its proposal would merely codify what the District has already adopted as its current policy and practice.

Since the District has already provided additional preparation time by extending art, physical education, music and library time, there would be no additional cost connected with adoption of the Union's preparation time proposal. The Union believes that its proposal is clearly and simply constructed and is designed to avoid any problems and misunderstandings between the parties. If for some reason teachers do not receive the amount of preparation time that is specified in the new section, there is a simple formula for calculating the hourly payment that is to be made. Regular hourly pay is defined as annual salary divided by the product of contract days (189) times student contact hours per day (6). Such hours would be submitted biweekly by the teacher and paid as a separate item in that teacher's monthly salary.

An additional argument to support the proposed provision was introduced by testimony purporting to show that the District expects each teacher to make good use of preparation time by including a sentence on its Teacher Evaluation Form stating: "Demonstrates productive use of district provided preparation time." This is one of the items on which supervisors make a judgment of the performance of individual teachers. In the absence of a contract provision guaranteeing a certain amount of preparation time, the Board could reduce the total time while retaining the same standards for judging performance that are specified in the evaluation form.

The District has asserted that the Union's real purpose is to preempt the Board's policy making role, as evidenced by the one sentence proposal it had made in the Union's first final offer. The Union responds that it had wanted a simple guarantee that the Board would maintain the 225 minutes it had specified in the Superintendent's June 20, 1985 letter to staff members. Any implication that the one sentence proposal was an effort by the Union to make policy and thus was a nonmandatory subject of bargaining became irrelevant when the District petitioned WERC for a declaratory ruling and the Union amended the proposal to the form in which it now exists. The Union points out that the WERC has ruled that the Union's proposal relates to wages, hours and conditions of employment and is a mandatory subject of bargaining.

Although the Union asserts that its proposal is "not out of sync with prep time in neighboring districts," it does not provide any substantial comparative data from the athletic conference districts to support its proposal. Its testimony indicates that in 1984-85 the other schools in the conference had the following total minutes of preparation time per week for elementary school teachers:

SCHOOL DISTRICT	PRIMARY K-3)	INTERMEDIATE (5-6)
Fort Atkinson	240	240
Oregon	165	195
Middleton	200	240
Monona Grove	210	240
Monroe	180	180
Sauk-Prairie	210	240

THE DISTRICT'S POSITION ON PREPARATION TIME

As was the case in connection with the salary issue, the district devotes a substantial part of its brief to recounting the history of negotiations with the apparent intention of showing that the Union's position in this dispute is unreasonable and is only viable as part of an interest arbitration proceeding. As part of this bargaining history the District states that the Union was responsible for rejecting a tentative agreement in October, 1985 (for the reason that it would not accept the salary schedule) that included a proposed side agreement that would have guaranteed 225 minutes of preparation time for classroom teachers. Despite the conflicting opinion of the WERC in its declaratory ruling, the Board argues in its brief that preparation time is a nonmandatory subject of bargaining. This belief seems to be based on the fact that the Union was willing in its first final offer (November 6, 1985) to confine its preparatory time proposal to a single sentence that did not contain any economic impact. Thus, the District seems to be arguing that the Union's original and continuing intent is to invade the Board's policy making function. The parties did not reach any tentative agreement that might influence my award in this proceeding. I have already indicated in the discussion of the salary issue that the positions taken by the parties in the negotiations leading up to the final offers are irrelevant to my decision. I shall not discuss this major portion of the District's brief further. Nor do I give any weight to the District's argument that since the Union's chief negotiator referred to preparation time as a "language issue" in his testimony, the matter is not properly before the arbitrator. The Union has explained that its members have always referred to it as a "language issue". In my opinion that does not signify that it is not an economic issue and properly a subject for negotiation under the reopener clause.

Aside from the above, the Board's principal argument on this issue is that the Union already has been granted the amount of preparatory time that it is proposing in its final offer and that to write the Union's provision into the labor agreement would only cause mischief. This is because testimony by the Union witnesses indicated that there are times when, for a variety of reasons, teachers under the present policy do not have 225 minutes per week of preparation time. Reasons include such things as field trips that are made during special class time, holidays and vacations that occur so as to deprive teachers of preparatory time, special school programs such as are held at Christmas time, and half-day in-service programs that are held when teachers would otherwise have preparation time. Interventions of this kind that deprive teachers of preparation time are inevitable and are occurring now. The testimony of one witness indicated that there was likely

to be confusion and disagreement as to whether meeting with the principal would be considered as preparation time or time taken away from preparation time. If the preparation time provision proposed by the Union is added to the labor agreement, teachers would be able to claim a substantial amount of payment under the provision or would be free to file grievances. At the same time, if the District is to believe the testimony of several of the teachers that they have not filed grievances when their guaranteed lunchtime has occasionally been taken up by meetings and that they would not propose to file grievances over loss of preparation time, then it is the belief of the District that the effect of adoption of the clause would merely be evidence of a desire by the Union to establish policy, a function that should reside solely in the province of the Board.

The Board is arguing that it does the best it can and will continue to attempt to provide 225 minutes per week preparation time for these teachers but that adopting the Union's proposal would produce unknown and unforeseeable problems in administering the labor agreement. For this reason the Board believes that both parties would be better served by retaining the present policy as it is.

The District also argues that fifteen minutes of time that the Union claims was lost by extension of the student day came between 2:45 and 3:00 p.m., which was after the student day. According to this reasoning, that 15 minute period should not enter into the dispute, since the Union is proposing a guarantee of preparation time within the student day.

The District faults the Union for not submitting an estimated cost of the preparation time proposal. The District estimated that the cost of adding the extra time for art and music in the 1985-86 school year had been 0.9 of one FTE teacher, which at the average salary plus fringes of $30,000 per year equalled $27,000.

The District argues that the comparable labor agreements within the athletic conference do not contain any clauses similar to the one proposed by the Union. Fort Atkinson's clause states:

> . . . it shall be the policy of the district to provide at least five (5) preparation periods to approximate an average of forty-five (45) continuous minutes each for the teacher during the school week, unless the building schedule necessitates 4 or 5 periods of longer duration. . . .

The District considers that clause nonmandatory, since it merely refers to Board policy. Also, it is not limited to the student day. No economic remedy is provided in case of breach of the clause.

Middleton's Master Contract states that:

> . . . each teacher shall be assigned a minimum of sixty (60) minutes per day for lesson preparation.
>
> It is understood that scheduled activities may occasionally result in less than sixty (60) minute preparatory time.

> When classes are actually being taught by a specialist, the teacher shall consider that time as lesson preparation time. . . .
>
> Although the Board recognizes and stresses the primary function of teachers as that of fulfilling assigned instructional responsibilities, the Board reserves the right to authorize the administrative staff to assign teachers administrative and non-teaching responsibilities as deemed necessary to the effective operation of the school system.

The District considers the Middleton wording to be nonmandatory and points out that it is not limited to the student day but is within the teacher work day. This means that the Middleton guarantee of 60 minutes per day is effectively less than Stoughton provides if the entire work day is included.

A District exhibit shows the Sauk-Prairie labor agreement as stating that:

> Elementary teachers may use for preparation all time during which their classes are receiving instruction from various teaching specialists, and will be relieved of all responsibility of the children during the time the children are assigned to the teaching specialist.

Another District exhibit indicates that special classes in grades 1-3 at Sauk-Prairie total 165* minutes per week. In intermediate grades (4 and 5) special classes total 240 minutes per week. The District argues that the length of special classes is determined by Sauk-Prairie Board policy, not the labor agreement.

Monroe, Monona Grove, and Oregon have no provisions in their labor agreements for preparation time.

Thus, the District argues that there are no comparable provisions in any of the labor agreements in the districts within the athletic conference.

DISCUSSION OF THE PREPARATION TIME ISSUE

With regard to the eight factors in Section 111.70(4)(cm)7. of the statute as they apply to the preparation time issue, there would seem to be no reason to spend time on consideration of Subparagraphs a. or b. Subparagraph c., "the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement," is pertinent, but the financial impact is unclear. On the one hand the District avers that the current policy providing for 225 minutes per week is being breached and presumably would continue to be breached if the Union's proposal were adopted. On the other hand, the Union seems to be saying that the teachers it represents are not planning to file grievances in

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*This figure conflicts with the figure of 210 minutes in a Union exhibit.

order "to pursue periodic fluctuations in prep time occasioned by the scheduling vicissitudes common to public schools." Rather, the Union states in its brief, it will act to enforce the provision only "if there are constant and severe violations of prep time." I believe that teachers would act in a reasonable manner about minor breaches of the policy and would not be likely to file grievances in such circumstances. Thus, in my opinion the interests and welfare of the public would be well-served by allowing the elementary teachers an enforceable provision for preparation time.

There is little reason for any extended discussion of Subparagraph d. Since there are no other clauses within the comparable districts in the athletic conference that have any similarity to the proposed preparation time clause, the Union's final offer on this issue must be found wanting. Since this kind of an employment condition is unique to teachers, the second clause in d. is not relevant in the consideration of this issue.

Subparagraph e. is not pertinent.

I have considered the application of Subparagraph f. ("overall compensation presently received . . ."). Although preparation time is a benefit within the meaning of the subparagraph, there was no case made by the Union to show that preparation time should be awarded in order to maintain or establish some overall level of compensation and benefits for the elementary school teachers.

I know of no changes during the pendency of these proceedings that would require a consideration of Subparagraph g. as applicable to this issue.

As to Subparagraph h. ("such other factors . . . normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."), the District would have me believe that consideration should be given to what it considers the flawed positions taken by the Union in the collective bargaining process. I do not think, however, that it is appropriate for me as a mediator/arbitrator to base my considerations of the final offers of the parties on what happened in the preliminary bargaining when no tentative agreement was reached.

On the other hand, I want to make a similar comment about the Union's claim that adoption of its proposed section on preparation time for elementary school teachers would merely add a clause that would be the counterpart of the section that provides for five traditional class hours and a supervisory assignment hour as the teaching load and 15 percent as the overload premium for middle and high school teachers. This is a tenuous argument. There is no mention of preparation time in either of the clauses.

I do think, however, that Subparagraph h. requires consideration of the fact that mediator/arbitrators under the Municipal Employment Relations Act (including this arbitrator) have demonstrated a disinclination to award provisions of the labor agreement that do not have any substantial precedence in the labor agreements which are used for comparisons. In this case the Union depends greatly on its argument that preparation time is a mandatory subject of bargaining when presented in terms that include an economic impact, that there is overwhelming support of the elementary teachers for its inclusion in the labor agreement, and its belief that the teachers cannot depend upon a Board with a high turnover of its membership to continue to provide the amount of preparation time that is in its current policy

statement, as represented by the letter sent to the teachers on June 20, 1985. I hope that the Board will be sensitive to this feeling by the teachers and determine that it should not change the policy in the future. These arguments by the Union, however, cannot overwhelm my unwillingness to award a condition of employment that has virtually no support in terms of the comparables that I must consider under Subparagraph d.

SUMMARY OPINION

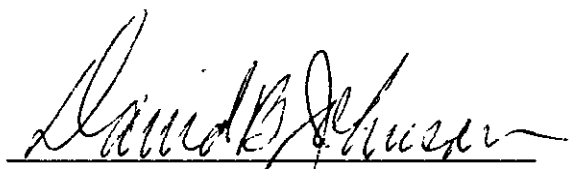
As I suggested above, I think that the choice of offers as to the salary schedule is a toss-up. The Union position on salaries is strongly supported by the comparables in the athletic conference while the District position is closer to the comparables involving other employees of the District, and other employees in both the public and private sector in the community of Stoughton. In this circumstance, since I cannot support the Union's preparation time proposal for the reasons described above, I make the award in favor of the District.

AWARD

The offer of the District, as set forth in Addendum A, is selected as the award in this proceeding. It shall be made a part of the 1984-86 labor agreement as a consequence of the reopener provision.

Dated: March 11, 1987

at Madison, Wisconsin

Signed: 

David B. Johnson
Mediator/Arbitrator appointed
by the Wisconsin Employment
Relations Commission

ADDENDUM A

Final Offer of Stoughton School District
Case 27 No. 35233 Med/Arb 3357
Dated July 16, 1986

1. Change section 111.0 to read:

   Teacher Retirement: The Board of Education will pay five percent (5%) of total wages for each professional employee to the Wisconsin retirement system for the 1984-85 school year in lieu of the standard employee contribution. For the 1985-86 school year, the Board of Education will pay five percent (5%) through December 31, 1985, and effective January 1, 1986 will pay six percent (6%) in lieu of the standard employee contribution. Part-time employees who are members of the retirement system shall receive this benefit on a pro-rated basis for the 1984-85 and 1985-86 school years.

2. Salary schedule attached.

3. Additive salaries on the Additive Schedule will be increased by 10%.

Dated July 16, 1986

Stoughton Area School District

by _____
Jack D. Walker, its attorney

Step	BA	BA + 12	BA + 24	BA + 30	MA	MA + 12	MA + 24
0	15080	15683	16286	16588	16890	17493	18096
1	15683	16286	16890	17191	17493	18096	18699
2	16286	16890	17493	17794	18096	18699	19302
3	16890	17493	18096	18398	18699	19302	19906
4	17493	18096	18699	19001	19302	19906	20509
5	18096	18699	19302	19604	19906	20509	21112
6	18699	19302	19906	20207	20509	21112	21866
7	19302	19906	20509	20810	21112	21866	22620
8	19906	20509	21112	21414	21866	22620	23374
9	20509	21112	21715	22017	22620	23374	24128
10	21112	21715	22318	22620	23374	24128	24882
11		22318	22922	23223	24128	24882	25636
12		22922	23525	23826	24882	25636	26390
13		23525	24128	24430	25636	26390	27144
14			24731	25184	26390	27144	27898
15			25334	25938	27144	27898	28652

ADDENDUM B

STOUGHTON AREA SCHOOL DISTRICT

CASE 27 No. 35233 MED/ARB-3357

FINAL OFFER OF STOUGHTON EDUCATION ASSOCIATION

Pursuant to 111.70 (4)(cm), Wis. Stats., the attached represent the proposals for contract language and economic provisions submitted to the Investigating Officer of the Wisconsin Employment Relations Commission as the final offer of the Stoughton Education Association. The stipulations of the parties, the proposals of the final offer and the unchanged portion of the 1984-86 Collective Bargaining Agreement will constitute the 1985-86 Collective Bargaining Agreement between the Stoughton Education Association and the Board of Education, Stoughton Area School District. Dates in the 1984-86 Collective Bargaining Agreement are to be changed wherever appropriate to reflect the new term of agreement. In addition, all terms and conditions covered by the successor Agreement shall be fully retroactive.

Representing the Stoughton Education Association

July 15, 1986
Date

SEA FINAL OFFER DATE: 7/15/86

111.0

Teacher Retirement: The Board of Education will pay five percent (5%) of total wages for each professional employee to the Wisconsin Retirement System for the 1984-85 school year in lieu of the standard employee contribution. For the 1985-86 school year, the Board of Education will pay five percent (5%) through December 31, 1985 and effective January 1, 1986, will pay six percent (6%). Part-time employees who are members of the retirement system shall receive this benefit on a pro-rated basis for the 1984-85 and 1985-86 school years.

SEA FINAL OFFER DATE: 7/15/86

Section 201.3. Elementary School Preparation Time:

a. Full-time elementary school teachers (grades K-5) to whom the District does not provide three and three-quarters (3 3/4) hours of preparation time per week during the student school day shall receive compensation, in addition to their scheduled salaries, in the amount of one-fourth (1/4) of the teacher's regular hourly pay for each such quarter hour (or major fraction thereof) less than three and three-quarters (3 3/4) hours per week provided by the District.

b. As used herein, preparation time means that time during the student school day when the teacher is not assigned to instruct, tutor or supervise one or more students, or attend administrative conferences or faculty meetings, and which the teacher has available to prepare lesson plans, correct papers, prepare classroom materials and presentations, do research, consult with other teachers, and engage in those activities which are essential to good instruction. Preparation time does not include the teacher's duty-free lunch period.

c. As used herein, a teacher's regular hourly pay shall be determined by dividing the teacher's yearly scheduled salary by the product of 189 (contract days per year) x 6.

d. For teachers with less than full-time contracts with the District, the amount of preparation time provided for in this section (on the basis of which the additional compensation provided for in this section is calculated) shall be prorated according to the percentage of a full-time contract held by such teachers.

e. Any additional compensation earned by a teacher under this section shall be separately itemized and paid monthly by the District on the basis of a voucher submitted biweekly by the teacher.

SEA FINAL OFFER DATE: 7/15/86

STOUGHTON AREA SCHOOL DISTRICT

SALARY SCHEDULE & INDEX: 1985-86

Step	B.A.	B+12	B+24	B+30	M.A.	M+12	M+24
0	15295	15907	16519	16824	17130	17742	18354
1	15907	16519	17130	17436	17742	18354	18966
2	16519	17130	17742	18048	18354	18966	19578
3	17130	17742	18354	18660	18966	19578	20189
4	17742	18354	18966	19272	19578	20189	20801
5	18354	18966	19578	19884	20189	20801	21413
6	18966	19578	20189	20495	20801	21413	22178
7	19578	20189	20801	21107	21413	22178	22942
8	20189	20801	21413	21719	22178	22942	23707
9	20801	21413	22025	22331	22942	23707	24472
10	21413	22025	22637	22942	23707	24472	25237
11	0	22637	23248	23554	24472	25237	26002
12	0	23248	23860	24166	25237	26002	26766
13	0	23860	24472	24778	26002	26766	27531
14	0	0	25084	25543	26766	27531	28296
15	0	0	25696	26307	27531	28296	29060

NOTE: The schedule given above is based on the same salary schedule structure as in the 1984-85 salary schedule with the same number of steps, the same education lanes and the same index.

SEA FINAL OFFER DATE: 7/15/86

APPENDIX - Additive Schedule

Additive salaries on the Additive Schedule will be increased by 10%.

STOUGHTON AREA SCHOOL DISTRICT
1986 - 1987

M	T	W	T	F
AUGUST				
	T	T	27	28	29

M	T	W	T	F
SEPTEMBER				
H	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30			

M	T	W	T	F
OCTOBER				
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	V	V
27	28	29	V	V

M	T	W	T	F
NOVEMBER				
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	H	V

M	T	W	T	F
DECEMBER				
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	V	V	V
V	V	V		

M	T	W	T	F
JANUARY				
			V	V
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

Snow/Emergency Days
1st & 2nd - no make-up
3rd - make-up June 5th
4th - make-up June 8th
etc.

180 Instructional Days
- 2 Pre-school In-service days
- 2 K-12 Inservice days
- 1 Convention day (SWE10)
- 1 Workday
- 3 Holidays

189 Contract Days

Aug. 25 & 26 Pre-school
Aug. 27 Classes Begin
Sept. 1 Labor Day (H)
Oct 23-24 Vacation Days (V)
Nov. 27 Thanksgiving Day (H)
Nov 28 Vacation day (V)
Dec. 24 - Jan 2 Christmas Vacation (V)
Jan. 20 K-12 Inservice (Optional Workday)
Feb. 27 SWE10 Convention (C)
April 13-17 Easter Break (V)
May 25 Memorial Day (H)
June 5 Teacher Workday (W)
Undesignated Dates - 3 days P/T Conferences (1/2 day each se
1 Inservice Day

M	T	W	T	F
FEBRUARY				
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23	24	25	26	C

M	T	W	T	F
MARCH				
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23	24	25	26	27
30	31			

M	T	W	T	F
APRIL				
		1	2	3
6	7	8	9	10
V	V	V	V	V
20	21	22	23	24
27	28	29	30	

M	T	W	T	F
MAY				
				1
4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
H	26	27	28	29

M	T	W	T	F
JUNE				
1	2	3	4	W