

MAR 22 1988

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In The Matter Of The Petition Of:

LAKESHORE EDUCATION ASSOCIATION,
KETTLE MORAINÉ UNISERV COUNCIL,
WEAC, NEA

To Initiate Arbitration Between
Said Petitioner

Decision No. 24832-A

-and-

LAKESHORE VOCATIONAL TECHNICAL
AND ADULT EDUCATION DISTRICT

Appearances: Richard Terry, Executive Director, for the Association
Dennis W. Rader, Attorney at Law, for the Employer

Lakeshore Education Association, Kettle Moraine UniServ Council, WEAC, NEA, hereinafter referred to as the Association, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that an impasse existed between it and the Lakeshore Vocational Technical and Adult Education District, hereinafter referred to as the Employer, in their collective bargaining. It requested the Commission to initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act.

At all times material herein the Association has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all full-time and regular part-time professional employees. The Association and the Employer have been parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees that expired on June 30, 1987.

On May 27, 1987 the parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement. Thereafter the parties met on two occasions in efforts to reach an accord on a new agreement. On June 19, 1987 the Association filed a petition requesting that the Commission initiate arbitration. A member of the Commission staff conducted an investigation that reflected that the parties were deadlocked in their negotiations. By September 16, 1987 the parties submitted their final offers to the investigator and the investigation was closed.

The Commission concluded that an impasse within the meaning of the Municipal Employment Relations Act existed between the parties with respect to negotiations leading toward a new collective bargaining agreement. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse. Upon being advised that the parties had selected Zel S. Rice II as the arbitrator, the Commission appointed him as arbitrator to

issue a final and binding award to resolve the impasse by selecting either the total final offer of the Association or the total final offer of the Employer.

The final offer of the Association, attached hereto and marked Exhibit A, proposed that for the 1987-88 school year, each cell of the salary schedule should be increased by 4%. For the 1988-89 school year, each cell should be increased by the same percentage as the annual increase in the Consumer Price Index. The Association proposed that all terms and conditions of its proposed agreement remain in full force and effect during the pendency of any future negotiations until a successor agreement is reached. The proposal of the Union provided that longevity payments of \$336.00 be made to all members of the bargaining unit who are at the last step of the salary schedule. The Employer's final offer, attached hereto and marked Exhibit B, provided a 3.5% increase per cell for the 1987-88 school year and a 3.5% per cell increase for the 1988-89 school year. The Employer proposed the longevity payment be frozen at \$323.00 per year for all members of the bargaining unit who are at the last step of the salary schedule. The Employer's proposal would delete the name of the WEA Insurance Trust as the carrier for health insurance, dental insurance and long term disability insurance. Health and dental benefits would be maintained at the 1985-86 levels. In the 1988-89 school year the Employer proposes to maintain the same level of health and dental insurance benefits that it proposed for the 1987-88 school year and it would meet and confer with the Association regarding the carrier or the form of providing those benefits for the 1988-89 school year.

On June 30, 1986 the Employer and the Association agreed upon a memorandum of understanding. It stated that the Employer and the Association, in converting from the 1985-86 insurance carrier to the WEA Insurance Trust, agreed that in the future, should either the Employer or the Association wish to change carriers and/or benefits or benefit plans, the level of benefits provided bargaining unit members in effect during the 1985-86 school year, would be the level of benefits used to determine the status quo and the percentage of insurance premiums paid by the Employer would be considered the status quo and the respective payment for the benefits. The memorandum of understanding provided that additional benefits received as a result of converting to the WEA Insurance Trust insurance plan would not be considered status quo benefits unless they were also available under the 1985-86 collective bargaining agreement or unless the parties modified the memorandum of understanding during subsequent negotiations.

The Association takes the position that Black Hawk, Eau Claire, Fox Valley, Gateway, Indian Head, Madison, Midstate, Milwaukee, Moraine Park, North Central, Southwest, Waukesha and Western, hereinafter referred to as Comparable Group A, make up the comparable group against which the Employer should be measured. In 1981 the parties stipulated that all of those districts plus Northeast VTAE, hereinafter referred to as Comparable Group B, was the comparable group against which the Employer should be compared. Comparable Group A includes all of the VTAE districts in Wisconsin except Nicolet and Northeast in Comparable Group B

includes them all except Nicolet. In an award issued on July 30, 1982 involving these same parties, Arbitrator Michael Rothstein relied upon Comparable Group B because the parties had stipulated that Comparable Group B would be the one to which they were being compared. The arbitrator stated that in the absence of the stipulation, he would have taken into account the recognized standards such as size and enrollment in determining the comparable group that he would use for a basis of comparison.

The number of steps on the MA lane in Comparable Group B ranges from a low of 12 at Northeast to a high of 17 at Moraine Park. The Employer has the second highest number of steps in the MA lane with 15. In the BA lane the number of steps ranges from a low of ten at Gateway to a high of 15 at Madison and the Employer ranks second with 14 steps. In the 1986-87 school year the BA minimum salaries in Comparable Group B ranged from a low of \$17,760.00 at Northeast to a high of \$21,864.00 at Milwaukee and the average was \$19,307.00. The Employer ranked second in the state with a BA minimum salary of \$20,767.00. The BA seventh step salaries in Comparable Group B in the 1986-87 school year ranged from a low of \$21,748.00 at Southwest to a high of \$28,014.00 in Milwaukee and the average was \$24,283.00. The Employer ranked fourth with a BA seventh step salary of \$25,062.00. The BA maximum salaries in Comparable Group B in the 1986-87 school year ranged from a low of \$27,362.00 at Gateway to a high of \$36,214.00 at Milwaukee and the average was \$29,486.00. The Employer ranked fourth with a BA maximum salary of \$30,069.00. The MA minimum salaries in Comparable Group B in the 1986-87 school year ranged from a low of \$19,522.00 at Southwest to \$23,914.00 at Milwaukee and the average was \$21,514.00. The Employer ranked second with a MA minimum salary of \$23,026.00. The MA tenth step salaries in Comparable Group B in the 1986-87 school year ranged from a low of \$26,262.00 at Southwest to a high of \$33,139.00 at Milwaukee and the average was \$29,494.00. The Employer ranked eighth with a MA tenth step salary of \$29,467.00. The MA maximum salaries in Comparable Group B in the 1986-87 school year ranged from a low of \$29,962.00 at Southwest to a high of \$38,264.00 at Milwaukee and the average was \$33,423.00. The Employer ranked eighth in the state with a MA maximum of salary of \$33,043.00. The schedule maximum salaries in Comparable Group B in the 1986-87 school year ranged from a low of \$31,312.00 at Southwest to a high of \$41,164.00 at Milwaukee and the average was \$35,578.00. The Employer's schedule maximum was \$35,301.00 and ranked eighth.

The five year dollar increases in Comparable Group B from the 1982-83 school year to the 1986-87 school year for the BA minimum ranged from a low of \$3,163.00 at Black Hawk to the Employer's high of \$6,173.00 and the average was \$4,159.00. The five year dollar increases for the BA maximum ranged from a low of \$4,845.00 at Black Hawk to a high of \$7,810.00 at Northeast and the average was \$5,952.00. The Employer had the second highest dollar increase over that five year period of \$7,063.00. The five year dollar increases for the BA seventh step ranged from a low of \$4,004.00 at Black Hawk to the Employer's high of \$7,103.00 and the average was \$5,098.00. The five year dollar increases for the MA minimum in the 1986-87 school year ranged from a low of \$3,516.00 at Black Hawk to the Employer's high of \$6,663.00 and the average was \$4,601.00.

The five year dollar increases for the MA tenth step ranged from a low of \$4,920.00 at Black Hawk to the Employer's high of \$8,056.00 and the average was \$6,108.00. The five year dollar increases for the MA maximum ranged from a low of \$5,542.00 at Black Hawk to a high of \$8,110.00 at Moraine Park and the average was \$6,693.00. The Employer ranked second with a dollar increase of \$7,707.00. The five year dollar increases for the Schedule Maximum in Comparable Group B ranged from a low of \$5,755.00 at Southwest to a high of \$8,550.00 at Moraine Park and the average was \$7,060.00. The Employer ranked second with a five year dollar increase of \$8,195.00.

In the 1986-87 school year the Employer's BA minimum salary of \$20,767.00 was \$1,460.00 above the average for Comparable Group B. Its BA seventh step salary of \$25,062.00 was \$779.00 above the average. The Employer's BA maximum salary of \$30,069.00 was \$583.00 above the average. Its 1986-87 MA minimum salary of \$23,026.00 was \$1,512.00 above the average in Comparable Group B. Its MA tenth step salaries for the 1986-87 school year was \$27.00 under the average. The Employer's MA maximum salary in the 1986-87 school year of \$33,043.00 was \$380.00 below the average. The Employer's 1986-87 schedule maximum salary of \$35,301.00 was \$277.00 below the average in Comparable Group B.

The Employer has projected a total budget for the 1987-88 school year of \$15,581,208.00. The revenues to finance that budget are projected to be \$7,600,000.00 from local taxes, \$2,850,045.00 from state aids, \$1,329,000.00 from the federal government, \$1,165,000.00 from program fees, \$484,059.00 from other fees, \$1,315,000.00 from institutions, and \$1,432,104.00 from its fund balance.

The Association relies on another comparable group, hereinafter referred to as Comparable Group C, consisting of the K-12 school districts of Sheboygan, Elkhart Lake, Howards Grove, Green Bay, Two Rivers and Kohler. They are not VTAE districts but they are located in the immediate geographic area of the Employer and they employ teachers. They have all reached agreement on wages for the 1987-88 and 1988-89 school years. The average dollar increases per full-time equivalent teacher in Comparable Group C for the 1987-88 school year ranged from a low of \$1,619.00 at Two Rivers to a high of \$2,082.00 at Green Bay. The average dollar increase per teacher is \$1,788.00. These figures should be compared with the Employer's proposal of an average dollar increase per teacher of \$1,590.00 and the Association's proposal of \$1,740.00. The increase in wages for the 1987-88 school year in Comparable Group C ranges from a low of 6% in Kohler to a high of 7.07% in Howards Grove and the average is 6.53%. This should be compared with the 4.07% increase resulting from the Employer's proposal and the 4.46% increase resulting from the Association's proposal. The 1987-88 increase per cell in Comparable Group C ranges from the low of 4.75% at Sheboygan to a high of 7.07% at Howards Grove and the average was 5.83%. This should be compared with the Employer's proposal of a 3.51% increase per cell and the Association's proposal of a 4% increase per cell. The average dollar increase for a full-time equivalent teacher for the 1988-89 school year in Comparable Group C ranges from a low of \$1,609.00 at Two Rivers to a high of

\$2,532.00 at Green Bay and the average was \$1,938.00. This should be compared with the Employer's proposal of an average dollar increase of \$1,642.00 and the Association's proposal of \$1,969.00. The 1988-89 percentage increase in wages in Comparable Group C range from a low of 5.33% at Two Rivers to a high of 7.9% at Green Bay and the average was 6.55%. This should be compared with the Employer's proposal of a 5.2% increase in wages for the 1988-89 school year and the Association's proposal of a 4.68% increase in wages. The 1988-89 percentage increase per cell in Comparable Group C ranged from a low of 4.75% at Sheboygan to a high of 6.56% at Howards Grove and the average was 5.37%. This should be compared with the Employer's proposal of a 3.5% increase per cell and the Association's proposal of a 4.5% increase per cell.

The 1987-88 settlements for teachers in Wisconsin provided an average BA minimum salary of \$17,700.00. No VTAE districts were included in those settlements. They involve secondary and elementary teachers. The average increase was \$983.00 or 5.9%. The BA seventh step salaries averaged \$21,870.00. The BA seventh step teachers received an average increase of \$1,183.00 or 5.7%. The 1987-88 settlements provided a BA maximum average salary of \$25,442.00. This was an average increase of \$1,336.00 or 5.5%. The MA minimum average salary resulting from those settlements was \$19,690.00. It was an average increase of \$1,184.00 over the preceding year or 6.4%. The MA tenth step average salary was \$26,839.00. The average increase over the preceding year was \$1,497.00 or 5.9%. The average MA maximum salary resulting from the 1987-88 settlements was \$30,229.00. Those teachers received an average increase of \$1,648.00 or 5.8%. The schedule maximum was \$32,154.00. Those teachers received an average increase of \$1,811.00 or 6%. Those settlements included 176 of the 394 schools districts in Wisconsin. 111 school districts reached agreements with their teachers that provided an average dollar increase in the 1987-88 school year of \$1,779.00. None of those school districts was a VTAE. As of November 4, 1987 51 school districts, none of which was a VTAE, had reached agreement on a 1988-89 settlement. The average BA minimum was \$18,818.00. It was an increase of \$973.00 or 5.5% over the preceding year. The BA seventh step average salary among those 51 school districts was \$23,484.00. That was an increase of \$1,181.00 or 5.3% over the preceding year. The BA maximum salary averaged \$27,212.00. That was an increase of \$1,311.00 or 5.1% over the preceding year. The 1988-89 MA minimum salaries among those 51 school districts that had reached agreement on November 4th averaged \$20,918.00. That was an increase of \$1,065.00 or 5.4% over the preceding year. The MA tenth step salaries averaged \$29,104.00. That was an increase of \$1,436.00 or 5.2% over the preceding year. The MA maximum salaries among those school districts averaged \$32,841.00. That was an increase of \$1,573.00 or 5% over the preceding year. The schedule maximum salaries among the 51 school districts that had reached agreement for the 1988-89 school year averaged \$35,184.00. That was an increase of \$1,695.00 or 5.1%. The average dollar increase per returning teacher in 41 of those school districts was \$1,834.00.

In the 1985-86 school year the Employer's premiums for a family health insurance plan was \$201.78. The insurance carrier was Blue Cross/Blue Shield.

While bargaining the 1986-87 agreement, the Employer and the Union agreed to switch to the WEA Insurance Trust and substantial savings were made for the Employer. Blue Cross/Blue Shield had proposed that the new premium be \$236.19. The Employer had asked the employees to participate in a cost containment program and the Association refused. Eventually agreement was reached on a 1986-87 collective bargaining agreement and the Employer agreed to provide the WEA Insurance Trust Plan No. 690-731 for health insurance and the dental program was the WEA Insurance Trust Plan No. 703 H-731.

In the negotiations for the 1986-87 agreement, the WEA Insurance Trust made a proposal to the Employer and the Association for the teacher bargaining unit. The Employer faced a substantial increase in its health and dental insurance premiums for the 1986-87 school year and was interested in the proposal of the WEA Insurance Trust. The trust agreed to offer its plan to all of the Employer's employees and eventually the Employer accepted the proposal of the trust. The employees agreed to a cost containment program including a second opinion surgery program and that was included in the agreement between the Employer and the Union. The plan also included a pre-admission hospital review that required employees to let the trust know when they were going to enter a hospital on a non-emergency basis. There was a front end deductible concept of \$100.00 with a family maximum but it only applied to physician office visits, equipment and supplies. The plan offered by the WEA Insurance Trust is a pool rated plan whereby all participating school districts under the plan are lumped together for claims experience and all losses are shared by all participating school districts. A ratio is developed and rates are assessed based on the relative degree of risk that an individual school district represents to the total pool. The plan provided by the trust included the Employer as part of the pool for medical, dental and long term disability.

In July of 1985 the Blue Cross/Blue Shield rate for the family health insurance program provided to the Employer's employees was \$201.78 per month. In July of 1986 the Employer received a quote of \$236.19. The WEA Insurance Trust quoted a rate of \$170.06 based on the risk that the bargaining unit represented to the total pool. When the 1987-88 rates were established on the experience of the total pool, the WEA Insurance Trust family rate was \$221.08 per month which was a substantial increase over the \$170.86 of the preceding year. The Blue Cross/Blue Shield family rate was \$199.85.

In November of 1987, 179 K-12 school districts in Wisconsin had reached agreement for the 1987-88 school year. The average BA minimum salary in those school districts was \$18,408.00. That represented an increase of \$937.00 or 5.4% over the preceding year. The average BA seventh step salary was \$23,233.00. That represented an increase of \$1,163.00 or 5.3% over the preceding year. The average BA maximum salary was \$28,192.00. That represented an increase of \$1,400.00 or 5.2% over the preceding year. The 1987-88 MA minimum salary among those 179 school districts that had reached agreement was \$20,150.00. That represented an increase of \$1,045.00 or 5.5%. The average MA tenth step salary was \$28,385.00. That represented an increase of \$1,523.00 or

5.7%. The average MA maximum salary was \$32,575.00. That represented an increase of \$1,753.00 or 5.7%. The average schedule maximum salary for the 1987-88 school year for those school districts that have reached agreement was \$35,399.00. That was an increase of \$1,939.00 or 5.8%. The average dollar increase per returning teacher for 113 school districts was \$1,872.00.

The percentage increase in the tax levy of the Wisconsin VTAE districts that is subject to the 1.5 limitation ranged from a negative increase of 9.7% in Southwest, Wisconsin to a high of 8% in District 4. The average percentage increase subject to the 1.5 limitation was 2.2%. The percentage increase in the total levy including debt service ranged from a negative increase of 7.5% at North Central VTAE to a high of 8% in District 4. The average was 3%.

In 1986 the Wisconsin Education Association Insurance Trust collected \$47,000,000.00 in premiums and paid out \$50,000,000.00 in benefits for a loss ratio of 105%. In 1987 the Wisconsin Education Association Insurance Trust had a premium increase averaging from 25% to 26%.

In the 1982-83 school year the Employer collected 45.8% of its total revenues from the local property tax levy. The State of Wisconsin contributed 25% and the federal government contributed 5.6%. 19.3% of the Employer's revenue comes from institutional revenue which is tuition and fees and interest income on investments. 4.3% of the total revenue represents proprietary fund balances or other related fund balances of the institution. By statute the Employer cannot levy a tax of more than 1.5 mills for operation. The fees and tuition that make up 19.3% of the total revenue are mandated by the Wisconsin Board of VTAE. In the 1983-84 school year the institutional revenues were 19.8% and the property tax levy went down to 42%. The state aids were down to 22.8%. A pattern has developed of an increasing demand upon the local property tax as a major source of funding for the Employer. In the 1984-85 school year local taxes provided 47.62% of the total revenue and state aids decreased to 20.67%. In the 1985-86 school year the percentage remained close to what they had been in the 1984-85 school year. In the 1986-87 school year the local taxes had increased to 48.55% of the total revenues and the state aids remained stable. In the 1987-88 school year 49.52% of the total revenues comes from local taxes and the Employer is levying a tax for operations at 1.5 mills which is the maximum allowed by statutes.

In the 1984-85 school year the Employer's full-time equivalent student cost was \$4,377.00 and the Employer had the fifth lowest full-time equivalent student cost of all the 16 VTAE districts. By the 1986-87 school year the Employer's full-time equivalent student cost was \$5,797.00 and it was fourth from the highest. It is projected that in the 1987-88 school year the Employer's full-time equivalent student costs will be \$6,076.00 which would be the sixth highest full-time equivalent student cost of all the VTAE districts. The Employer's enrollment in the 1983-84 school year was 2,388 full-time equivalent students and it declined until the 1986-87 school year when the enrollment was 1,964 full-time equivalent students. It is projected that in the 1987-88

school year the full-time equivalent enrollment will be 2,000. In the 1986-87 school year when the Employer's cost per full-time equivalent student was \$5,797.00 the average cost per full-time equivalent student among all of the VTAE's in the state was \$5,362.00. The Employer was well above the state average in the 1986-87 school year. In the 1984-85 school year the Employer's state aids were \$2,823,770.00. In the 1985-86 school year that figure increased to \$2,926,164.00 but most of that increase was a special legislative incentive grant for the hazardous material program. In the 1986-87 school year state aids declined to \$2,649,997.00. The Employer is budgeting \$2,850,045.00 in state aids for the 1987-88 school year and it is projected that there will be \$3,035,000.00 in state aids for the 1988-89 school year.

Beginning in the 1985-86 school year the property values of the Employer started to decline. It decreased .27% that year and in the 1986-87 school year it decreased 2.92%. As a result of the decline in the equalized valuation, the operational mill rate decreased until it reached the statutory maximum of 1.5 in the 1987-88 school year and is projected to be the same in the 1988-89 school year. In the 1983-84 school year the operational tax levy was \$4,617,848.00. It increased on a regular basis as the operational mill rate climbed. When the operational mill rate reached the statutory maximum of 1.5 in the 1987-88 school year the operational tax levy was \$6,266,113.00. It is projected that the statutory maximum operational mill rate of 1.5 will produce an operational tax levy of \$6,328,774.00 for the 1988-89 school year. That is an increase of \$62,661.00.

The City of Sheboygan has proposed a new tax incremental district in the amount of \$42,000,000.00. The City of Sheboygan had a 5% increase in property valuation but if the tax incremental district is implemented it will freeze the property value at \$42,000,000.00 for approximately 20 years. Part of Manitowoc County is included in the Employer's tax base and it has had a decline in property valuation as have farm values in Calumet County and Ozaukee County.

In recent years the Employer has taken a number of steps to reduce its budget. In the 1985-86 school year it discontinued one program that eliminated one position and reduced the staff for three other programs that eliminated five positions. In the 1986-87 school year the Employer reduced staff and eliminated six positions and reduced the number of contract weeks for five management positions. In the 1987-88 school year the Employer discontinued one program that eliminated one instructor and reduced the staff in two others that eliminated two management positions. In the 1988-89 school year the Employer is projecting a \$650,000.00 deficit on June 30, 1988. The Employer proposes to address this deficit by discontinuing two programs, making some staff reductions and putting a budget freeze on operational accounts. It should result in a total savings of \$133,000.00. The deficit is caused by the fact that the Employer is at the 1.5 mill rate which is the maximum that it can levy. Its property values have been declining and the state aid percentages in the operational system have been declining.

In preparing its 1987-88 budget the Employer projected an insurance budget increase of approximately 16%. When the rate was eventually established by the WEA Insurance Trust it had increased 26% to 30%. The cost exceeded the Employer's budget by \$50,000.00. When the Employer could not reach agreement with the Association on a new insurance program, it changed the insurance coverage for its management and support staff effective September 1, 1987. They were insured under the Blue Cross/Blue Shield plan which was the same carrier that handled all of the Employer's insurance prior to the agreement reached on August 1, 1986 making the WEA Insurance Trust the carrier. The level of benefits provided by the Blue Cross/Blue Shield plan are the same as the level provided in the 1985-86 school year by Blue Cross/Blue Shield. The shifting of the management and support staff employees to the Blue Cross/Blue Shield program resulted in a savings of approximately \$25,000.00 to the Employer in its 1987-88 budget. In the 1985-86 school year the Employer paid 95% of the family premium and 100% of the single premium. In the 1986-87 school year the Employer paid 100% of both the family premium and the single premium. The Employer proposes to pay 100% of the family premium and 100% of the single premium for 1987-88 and 1988-89 school years. The Employer's proposal would continue the WEA Insurance Trust as the carrier for the bargaining unit during the 1987-88 school year. In the 1988-89 school year the Employer would maintain the same level of benefits as it proposes for the 1987-88 school year and would meet and confer with the Association regarding the carrier or other method of providing the insurance benefits.

The Association's salary proposal would cost \$13,750.00 more during the 1987-88 school year than the Employers.

Black Hawk VTAE, Chippewa Valley VTAE, Midstate VTAE, Southwest VTAE and the Employer are the only VTAE districts in Wisconsin that are at the maximum operational mill rate of 1.5. Indianhead, North Central, Northeast and Western are very close to the maximum but they are not at it yet. The percentage increase in tax levy subject to the 1.5 mill limitation among the 16 VTAE districts in Wisconsin ranges from a negative increase of 9.7% at Southwest to a maximum of 8% at District 4. The Employer's percentage increase in tax levy subject to the 1.5 limitation was 4.7%. The percentage increases in total levy in the 16 VTAE districts range from a negative increase of 7.5% at North Central to a maximum increase of 8% at District 4. The Employer's increase in total levy was 1.8%. The state average was 3%. The average increase in tax levy subject to 1.5 mill limitation was 2.2%.

The State of Wisconsin will provide \$80,000,000.00 in state aid for the 1987-88 school year. Under the existing formula, the Employer's share of that \$80,000,000.00 will be \$2,919,460.00. The Employer's 1988-89 budget projects a deficit of \$516,935.00.

The Employer estimates that it will need \$3,620,000.00 in state aid for the 1988-89 school year in order to continue operations without operating at a deficit. Since the 1982-83 school year the fund balance designated for the

Employer's operation has declined steadily. It was 12.3% in the 1982-83 school year and as of June 30, 1987 the fund balance designated for operations had declined to 6.4%. That is the fourth lowest fund balance of any VTAE district in the State of Wisconsin.

In the 1986-87 school year the Employer's average base salary was \$20,767.00. Its base salaries totaled \$2,638,673.00 and the total extended contract amount was \$55,981.00. The Employer paid longevity that year of \$6,460.00 and its total salary and longevity costs were \$2,701,114.00. It paid \$193,130.00 toward social security, \$159,366.00 toward the Employer's retirement contribution, and \$162,067.00 toward the employees share of the retirement contribution. The Employer's health insurance cost was \$196,933.00 and life insurance cost \$10,560.00. The long term disability cost was \$14,316.00 making a total package cost for the 1986-87 school year of \$3,437,486.00. The Employer's proposal would provide 1987-88 base salary of \$21,496.00 making the total base salary cost \$2,778,670.00. The total extended salaries would be \$59,097.00 and total longevity would be \$7,752.00. The total salary costs for the Employer's proposal in the 1987-88 school year would be \$2,845,519.00. Its social security contribution would be \$208,577.00. Its contribution toward the retirement system would be \$167,886.00. The Employer's contribution toward the employees share of retirement would be \$170,731.00. The health insurance would cost \$224,453.00, life insurance would cost \$11,405.00 and long term disability insurance would cost \$15,081.00. The Employer's total package for the 1987-88 school year would have a cost of \$3,643,652.00. The average dollar increase in wages per teacher would increase \$1,606.00 or 5.34% over the preceding year. The Employer's total package cost increase would be \$2,343.00 per teacher or 6%. The Employer's proposal for the 1988-89 school year would have a base salary of \$22,248.00. The total base salary would be \$2,921,859.00 and the total extended salary amount would be \$62,170.00. Longevity would total \$9,044.00 and the total salary costs of the Employer would be \$2,993,073.00. The contribution toward social security would be \$224,780.00. The Employer's share of the contribution toward retirement would be \$173,598.00 and its contribution of the employees' share would cost \$179,584.00. The Employer estimates that its health insurance costs for the 1988-89 school year would be \$258,128.00. Its life insurance would cost \$11,972.00 and long term disability insurance would cost \$15,863.00. The total package cost of the Employer's proposal for the 1988-89 school year would be \$3,856,991.00. It would provide an average increase in wages per teacher of \$1,642.00 or 5.2%. The total package would have an increase in cost per teacher of \$2,424.00 or 5.9% over the 1987-88 school year.

The Association's proposal for the 1987-88 school year would have a base salary of \$21,598.00 and a total base salary of \$2,791,828.00. The total extended salaries would be \$59,377.00 and longevity costs would be \$8,064.00 making a total salary cost for the 1987-88 school year of \$2,859,269.00. The Social Security cost would be \$209,584.00 and the Employer's share of the retirement contribution would be \$168,697.00. The Employer's payment of the employees' share of the retirement contribution would be \$171,566.00. Health insurance would have a 1987-88 cost of \$245,825.00 and life insurance would cost

\$11,406.00. Long term disability insurance would cost \$15,154.00. The total package cost of the Association's proposal for the 1987-88 school year would be \$3,681,501.00. That would provide an average increase in wages per teacher of \$1,759.00 or 5.85%. The total package increase would be \$2,773.00 per teacher or 7.1%. Assuming the cost of living increase is 4.6% per cell during the period from July of 1987 to July of 1988, which seems somewhat high, the Association's proposal would have a 1988-89 base salary cost of \$2,966,916.00. The total extended salaries would be \$63,130.00 and longevity would be \$9,828.00. The total 1988-89 salary cost of the Association's proposal would be \$3,039,874.00. Social security would have a cost of \$228,295.00 and the Employer's share of the retirement system would cost \$176,313.00. The Employer's payment of the employees' contribution to the retirement system would be \$182,392.00. Health insurance would have an estimated cost of \$282,699.00 and life insurance would cost \$12,159.00. Long term disability insurance premiums would be \$16,111.00. The total package increase resulting from the Association's 1988-89 offer, assuming the 4.6% increase in the cost of living, would be \$3,937,843.00. That would result in an average increase in wages per teacher for the 1988-89 school year of \$2,010.00 or 6.32%. The total package cost increase would be \$2,913.00 per teacher or 7%.

The Association's 1987-88 proposal would cost \$37,849.00 more than the proposal of the Employer. It would have a wage cost of \$13,750.00 more than that of the Employer. The remaining difference would be primarily for health insurance. It is estimated that the Association's insurance proposal would have a 1987-88 cost of approximately \$21,000.00 more than that of the Employer. The 1988-89 insurance cost of the Association's proposal would be about \$24,500.00 more than the Employer's proposal.

The Employer relies primarily on a comparable group consisting of the 11 VTAE districts of Black Hawk, Chippewa Valley, Fox Valley, Indian Head, Midstate, Moraine Park, Nicolet, North Central, Northeast, Southwest and Western, hereinafter referred to as Comparable Group D. During the 1986-87 school year the BA minimum in Comparable Group D ranged from a low of \$17,760.00 at Northeast to a high of \$19,988.00 at Fox Valley. The Employer had a BA minimum of \$20,767.00. The BA seventh year salaries in Comparable Group D during the 1986-87 school year ranged from a low of \$22,972.00 at North Central to a high of \$24,330.00 at Northeast. The Employer's BA seventh step salary was \$25,062.00. The BA maximum salaries in Comparable Group D in the 1986-87 school year ranged from a low of \$27,562.00 at Moraine Park to a high of \$29,137.00 at Fox Valley. The Employer's BA maximum salary was \$30,069.00. The BA maximum salaries with extra credits in Comparable Group D during the 1986-87 school year ranged from a low of \$27,974.00 at Indian Head to a high of \$33,050.00 at Moraine Park. The Employer's BA maximum salary with extra credits was \$31,952.00. The MA minimum salaries in Comparable Group D during the 1986-87 school year ranged from a low of \$19,595.00 at Northeast to a high of \$22,236.00 at Fox Valley. The Employer's MA minimum salary was \$23,026.00. The MA tenth step salaries in Comparable Group D during the 1986-87 school year ranged from a low of \$28,213.00 at Moraine Park to a high of \$29,961.00 at Chippewa Valley.

The Employer's MA tenth step salary was \$29,467.00. The MA maximum salaries with no extra credits in Comparable Group D during the 1986-87 school year ranged from a low of \$30,686.00 at Southwest to a high of \$33,245.00 at Northeast. The Employer's MA maximum with no extra credits was \$33,043.00. The MA maximum salaries with extra credits in Comparable Group D during the 1986-87 school year ranged from a low of \$31,767.00 at Indian Head to a high of \$35,984.00 at North Central. The Employer's MA maximum with extra credits was \$35,301.00. The schedule maximum salaries in Comparable Group D for the 1986-87 school year range from a low of \$32,036.00 at Southwest to a high of \$35,984.00 at North Central. The Employer's schedule maximum salary was \$35,301.00.

In the 1986-87 school year four of the VTAE districts in Comparable Group D had longevity plans. They ranged from the Employer's low of \$323.00 to a high of \$500.00 at North Central and Northeast. In the 1986-87 school year the average increase per teacher in Comparable Group D ranged from a low of \$1,247.00 at Black Hawk to a high of \$2,040.00 at Northeast. The Employer's average increase per teacher of \$1,973.00 was the third highest in Comparable Group D in the 1986-87 school year. The percentage increases in wages ranged from a low of 4.36% at Black Hawk to the Employer's high of 7%. The average increase in the total compensation per teacher in the 1986-87 school year in Comparable Group D ranged from a low of \$1,628.00 at Southwest to a high of \$2,892.00 at Northeast. The Employer's average increase in total compensation per teacher was \$2,127.00 and ranked sixth in Comparable Group D. The percentage increase in total compensation in the 1986-87 school year ranged from a low of 5.29% at Southwest to a high of 8.03% at Northeast. The Employer's increase in total compensation was 5.889 and was seventh highest in Comparable Group D.

Only two VTAE districts in Comparable Group D have agreements for the 1987-88 school year. Nicolet has a three year agreement. It contains ten steps with salary maximums ranging from \$20,000.00 per year at Step 1 to \$38,000.00 per year at Step 10. Each bargaining unit employee advances one step for each contract year. A bargaining unit employees with a Ph.D. receives an additional \$2,000.00 beyond the appropriate step. Chippewa Valley has reached agreement for the 1987-88 school year on the salary increase of 5.26%. It provides an average increase per teacher of \$1,611.00. The increase in the total package is 5.4% and the average salary/benefit increase for the 1987-88 school year at Chippewa Valley VTAE is \$2,106.76.

In the 1986-87 school year four of the VTAE districts in Comparable Group D self-funded their health insurance plans. Three of those districts that self-funded their health insurance had their plans administered by insurance companies. The single premiums range from a low of \$54.54 at Eau Claire to a high of \$90.50 at Black Hawk. The family premiums range from a low of \$154.89 a month at Eau Claire to \$232.40 at Black Hawk. The amount of the family premium paid by the Employer ranged from the Employer's low of \$170.26 per month to a high of \$219.16 at Black Hawk. Three of the VTAE districts in Comparable Group D named the insurance carrier in the collective bargaining agreement and only one of them named the WEA Insurance Trust.

Only two of the dental insurance plans provided by the VTAE districts in Comparable Group D were self-funded in the 1986-87 school year and one of those was administered by Blue Cross/Blue Shield. The single premiums ranged from a low of \$10.71 a month at Southwest to a high of \$18.36 at Moraine Park. The family premiums ranged from a low of \$30.43 per month at Western to a high of \$52.40 per month at Moraine Park. The amounts paid by the Employer toward the family dental insurance premium ranged from a low of \$28.91 at Western to a high of \$52.40 at Moraine Park. All but three of the VTAE districts in Comparable Group D paid 100% of the long term disability insurance program during the 1986-87 school year. The amount paid to a disabled teacher ranged from a low of 2/3 of the regular salary to a high of 90% of the regular salary. The maximum long term disability benefits in Comparable Group D during the 1986-87 school year ranged from a low of \$1,600.00 a month at Indian Head, Southwest and Western to a high of \$4,500.00 a month paid by Midstate and the Employer. All of the VTAE districts in Comparable Group D provide life insurance to their employees and the amount ranges from the employees salary rounded to the next highest thousand dollars up to a maximum of \$50,000.00. All of the VTAE districts in Comparable Group D contributed 6% of the employees salary as the employees contribution towards the Wisconsin Teachers Retirement System. The amount of the health insurance premiums in the VTAE districts in Comparable Group D during the 1987-88 school year ranges from a low of \$170.26 per month at Indian Head to a high of \$279.84 at Midstate. The amount of the single health insurance premium in Comparable Group D for the 1987-88 school year ranges from a low of \$63.76 a month at Indian Head to a high of \$127.19 per month at Mid State. The 1987-88 family dental insurance premiums in Comparable Group D ranged from a low of \$30.75 a month at Western to a high of \$48.48 per month at Black Hawk. The cost of the single premium ranged from a low of \$10.71 per month at Southwest to a high of \$40.55 at Chippewa Valley. The Employer's health insurance premium for the Blue Cross/Blue Shield plan during the 1987-88 school year for the management and support staff is \$211.02 per month. If the policy covered the entire staff including the teachers the premium would be \$199.35 per month. The WEA Insurance Trust would have a premium of \$221.08 per month. The combined health and dental program offered by the WEA Insurance Trust and proposed by the Association would have a cost of \$262.22 while the Employer's proposal has a cost of \$232.19 per month.

In November of 1979 the Wisconsin Employment Relations Commission issued a declaratory ruling holding that the identity of an insurance carrier is a permissive subject of bargaining. On November 21, 1984 the Commission issued a declaratory ruling stating that the selection of a specific carrier is a mandatory subject of bargaining. On May 28, 1985 the Circuit Court of Dane County reversed the Commission's decision and ruled that the selection of a specific carrier was not a mandatory subject of bargaining. On September 25, 1986 the Court of Appeals District 4 reversed the decision of the Dane County Circuit Court and ruled that the naming of a specific carrier is a mandatory subject of bargaining. On January 13, 1987 the Supreme Court of Wisconsin denied the petition for review of the decision of the Court of Appeals District 4. Accordingly, the naming of a specific carrier is a mandatory subject of bargaining.

The Employer and the Association negotiated a collective bargaining agreement for the 1986-87 school year. The Employer had been notified that there would be an increase in the insurance which they had at the time and which was provided by Blue Cross/Blue Shield. The Association proposed that the Employer switched to the WEA Insurance Trust which would provide even better coverage at a lower cost than Blue Cross/Blue Shield. Because of the substantial savings the Employer eventually agreed to a provision in the collective bargaining agreement that the WEA Insurance Trust would be the insurance carrier and the Employer agreed to pay 100% of the single and family premiums. Because the benefits available under the WEA Insurance Trust were broader and more inclusive than were available under the Blue Cross/Blue Shield benefit package for the 1985-86 school year, the Employer and the Association entered into a memorandum of agreement that the level of benefits provided the bargaining unit members in effect during the 1985-86 school year would be the level of benefits used to determine the status quo and the percentage of insurance premiums paid by the Employer would be considered the status quo and the respective payments for those benefits. That memorandum agreement insured that if the Employer and the Association shopped for alternate insurance after the 1986-87 school year the status quo would be the level of benefits that were found in the 1985-86 benefit package and the 95% payment of the family premium by the Employer would be the status quo. The memorandum of agreement also provided that additional benefits received as a result of converting to the WEA Insurance Trust plan were not status quo benefits unless they were available under the 1985-86 Blue Cross/Blue Shield plan.

When the Employer and the Association began bargaining in the summer of 1987 the Association wished to maintain the WEA Insurance Trust as the insurance carrier and the Employer wanted to go back to Blue Cross/Blue Shield as the carrier because of the increase in the WEA Insurance Trust premium rate.

ASSOCIATION'S POSITION

The Association argues that the Employer has not raised the issue of ability to pay. It contends the Employer's own exhibits and the testimony of its witnesses establish that it has the ability to pay. The Association asserts that the average increase in the total levy of VTAE districts in Wisconsin was 3 percent while the Employer only increased its levy by 1.8 percent. It points out that the Employer has a fund balance of 6.4 percent. The Association takes the position that the instructional cost of the Employer is \$4,144.00 per student while the state average is \$4,618.00. It argues that the Employer spends less per student on instruction than the state average and its ability to pay is equal to or greater than the comparables. The Association contends that the total difference between the parties' wage offers amounts to \$13,750.00 in the 1987-88 school year and \$25,750.00 in the 1988-89 school year for a total difference of \$39,500.00 for the two years. It points out that the Employer's actual wage proposal must be reduced by \$21.73 per month for those bargaining unit members who have family insurance. The Association takes the position that Comparable Group B was the stipulated comparable group in the 1981 arbitration

between the parties and consistency requires that the arbitrator use it this time. It argues that Comparable Group C should also be used as a basis of comparison because the K-12 school districts are in the same geographical area and have recent settlements. The Association takes the position that the statewide settlement pattern is appropriate for comparison because those settlements cover the same period of time involved in this dispute. It points out that its first year proposal was patterned after the geographic proximate and chronologically pertinent settlements because there is not sufficient data to determine a VTAE pattern. The Association asserts that its second year proposal would provide a per cell increase equal to the Consumer Price Index and is less than its historical increase and does little more than maintain the status quo of spendable income. It takes the position that the bargaining history demonstrates that both parties understood that the salary compensation plan that was incorporated into the old agreement was a system of salaries dependent upon experience and education providing for automatic or built in increases based on an employee's increases in education and experience. The Association contends that as of July 1, 1987 the old collective bargaining agreement changed the status quo on wages from a static set of salaries to a dynamic system with automatic increases. It argues that the Employer attempts to change through arbitration the carrier of the health and dental insurance and to require only a meet and confer relationship regarding the insurance carrier or self-funding issues. The Association contends that the Employer's proposal would change the voluntary agreement reached in the last negotiations by having an arbitrator impose the new language on the parties. It takes the position that voluntary agreements by the parties should not be changed by an arbitrator unless there is a very strong showing that it is unworkable or inequitable. The Association argues that the Employer has failed to establish a need for changing the current insurance language. It contends that the naming of the insurance carrier is a mandatory subject of bargaining and the Employer seeks to avoid that requirement by eliminating the dual selection of an insurance carrier. The Association argues that the Employer forfeited the right to have unilateral control of the selection of the carrier by voluntarily agreeing to the naming of the carrier in the last collective bargaining agreement. It asserts that the memorandum of understanding established the status quo for the level of benefits but not the procedure for determining the carrier. The Association takes the position that the Employer agreed that effective July 1, 1987 increments would be paid to the teachers but the Employer has refused to do so. Conceding that the status quo really constitutes an increase in the level of benefits under the terms of the memorandum of understanding, the Association argues that the actual terms of the collective bargaining agreement were not being modified nor were the employees receiving benefits that they did not receive under the 1986-87 agreement. It takes the position that there will be no increases in tax as a result of the Association's final offer. The Association argues that its proposal does no more than maintain parity with the average economic status of other teachers in the comparable districts.

EMPLOYER'S POSITION

The Employer argues that Comparable Group D is the most appropriate pool of

comparable employers. It points out that other arbitrators have found that it is not realistic to compare Milwaukee, Madison and Waukesha VTAE districts with the other districts in the state. It asserts their special characteristics of size and enrollment put them in categories of their own. The Employer contends that the average number of full-time equivalent students for Comparable Group B is 3,741 while the average number of full-time equivalent students in Comparable Group D is 2,557.8. It asserts that the Employer's full-time equivalent enrollment of 1,964.5 is closer to Comparable Group D than Comparable Group B. The average operational cost of Comparable Group B is 20.2 million dollars while the average operational cost of Comparable Group D is 13.8 million dollars. The Employer takes the position that its operational cost of 11.4 million dollars is more similar to the Comparable Group D average than it is to the average of Comparable Group B. It contends that its teachers have significantly improved their overall position compared to the appropriate comparables. The Employer argues that the relationship of its teachers' salaries to the average salary paid by the appropriate comparable districts has improved markedly since the 1981-82 school year. It points out that by the 1986-87 school year the Employer's salaries at each and every bench mark are substantially above the average paid by the relevant comparables. The Employer takes the position that the 1981-82 salaries of its teachers were as much as \$1,221.00 or 5.7% below average at the MA +0, tenth year of service, and by the 1986-87 school year all bench mark positions are above the average by as much as \$1,948.00 or 10.35%. The Employer argues that its teachers have reached a level of salary that is substantially above that of teachers in comparable districts. It points out that its teachers' salaries and total compensation have exceeded the relevant rates of inflation since the 1981-82 school year and the Employer's offer for the 1987-88 year will exceed the anticipated increase in the consumer price index. The Employer points out that Chippewa Valley is the only VTAE district that has reached agreement for the 1987-88 school year and that agreement is similar to the Employer's proposal. The Employer's proposal would provide an average increase per teacher of \$1,606.00 or 5.34% while Chippewa Valley reached agreement providing an average increase per teacher of \$1,611.00 or 5.26%. It points out that the Association's proposal would provide an average increase of \$1,759.00 per teacher or 5.85%. The Employer's proposal has a total package increase per teacher of \$2,343.00 or 6%. It should be compared to the \$2,107.00 increase in cost per teacher or 5.4% increase of the Chippewa Valley settlement. The Association's proposal would have an average increase in cost per teacher of \$2,773.00 or 7.1%. The Employer contends that its proposal is nearly identical to the Chippewa Valley settlement with respect to wage increases and it exceeds it by .6% or \$236.00 per teacher in total cost. It asserts that the Association's proposal exceeds the Chippewa Valley settlement by \$148.00 per teacher in wages or .59% and \$666.00 per teacher in total cost or 1.7%. The Employer asserts that its offer is closer to the only confirmed settlement among the VTAE districts than the Association's proposal. The Employer argues that it is inequitable for the Association to apply the entire increase in the consumer price index to the salary increase per cell as opposed to the overall compensation. It takes the position that the increase in the consumer price index should be measured against the total compensation to provide an equitable

adjustment. The Employer contends that a change in the consumer price index occurred on January 1, 1988 and makes it an unreliable indicator for the parties use in determining the second year salary provision. It argues that its economic position and revenue base is so fragile that a firm economic offer is necessary for it to make a sound and responsible budget for the 1988-89 school year and the July index relied upon in the Association's proposal to compute the increase will not be available until at least the 20th of August in 1988. The Employer points out that property tax has provided a greater portion of the cost of operating the school and state aid has declined substantially. It takes the position that since it has reached the maximum property tax allowed by statute for VTAE operational purposes and it cannot reasonably project substantial increases in state aid, it must take steps to halt the escalation in its cost per pupil. The Employer points out that it had the 11th highest cost per pupil among VTAE districts in the State of Wisconsin in the 1984-85 school year and by the 1987-88 school year it had the fifth highest. It asserts that it has taken cost reduction action by the reduction of extended contracts and staff at all levels including management and creative financing for long term operational costs. The Employer argues that the Association's proposal places no upward limit on the level of salary increase for the 1988-89 school year and ignores increases in steps and longevity and results in uncertainty as to budgeting and may well lead to deficit spending. It takes the position that there is no other contract among the VTAE districts in the state that contains a cost of living provision except the flat dollar payment in the North Central contract. The Employer asserts that the June 30, 1986 memorandum of understanding provided that the level of benefits would be retained at the Blue Cross/Blue Shield level and not at the level contained in the WEA Insurance Trust even though the WEA Insurance Trust was listed as the carrier. It asserts that when the agreement was made the Employer was operating in reliance on case law holding that the naming of the carrier was a permissive subject of bargaining and the agreement contained no conflict between the right of the Employer to change the carrier and the listing of the carrier in the agreement. The Employer contends that it must move from a pool rated plan to a carrier providing individual claims experience in order to obtain competitive bids for coverage. It asserts that it retained the right to return to the Blue Cross/Blue Shield level of benefits in the memorandum of understanding executed in June of 1986 because the WEA Insurance Trust benefits are not normally included in the standard level of benefits offered by most insurance carriers. It takes the position that it should not be linked to the WEA Insurance Trust as its insurance carrier because of the higher premiums resulting from the additional benefits and the unavailability of claims experience. The Employer argues that it has already incurred additional insurance costs of nearly \$6,900.00 for its management support group because its teachers were not included in the change to the Blue Cross/Blue Shield carrier on September 1, 1987. The Employer speculates that the Wisconsin Education Association Insurance Trust may have future premium increases or engage in cancellation of policies that will adversely affect the Employer. It argues that it must place the insurance with another carrier in order to stay in the main stream of the competitive health insurance environment. The Employer asserts that the memorandum of agreement executed in June of 1986 was clearly

intended to allow the Employer to change carriers in order to achieve economies in its health insurance coverage. It contends that the memorandum specified the Blue Cross/Blue Shield level of benefits because the WEA Insurance Trust benefits are not commonly available in the market place. The Employer argues that the majority of VTAE districts in Comparable Group D do not name the insurance carrier in the contract. It takes the position that its insurance proposal is consistent with the bargaining history and intent of the parties in signing the 1986 memorandum of understanding and in keeping with the need to participate in the competitive health care environment. The Employer asserts that its position is consistent with the carrier change made with its administrative and support staff and the contract language and contribution levels among VTAE districts in Comparable Group D. It contends that there is no evidence to support a change in the language of the agreement that would require the Employer to keep terms and conditions of the agreement in full force and effect during negotiations until a successor agreement is reached.

DISCUSSION

The initial issue to face the arbitrator is the proper comparable group against which the Employer should be measured. The Association takes the position that Comparable Group A, which includes all of the VTAE districts in Wisconsin except Nicolet and Northeast, is the most appropriate. It points out that in a 1981 arbitration these parties stipulated that the appropriate comparable group included all the VTAE districts in Wisconsin except Nicolet. The Association takes the position that the primary comparable should be Comparable Group B because that was the group to which the parties stipulated in the 1981 arbitration. Because only one VTAE district in Comparable Group B has reached agreement for the 1987-88 school year, the Association argues that Comparable Group C consisting of the K-12 school districts of Sheboygan, Chilton, Elkhart Lake, Howards Grove, Green Bay, Two Rivers and Kohler should be given secondary emphasis because of their geographical location and the fact that they are feeder schools to the Employer. It is the position of the Employer that a VTAE district should not be compared to K-12 districts. It points out that VTAE districts have a levy maximum beyond which they cannot tax for operational purposes, have different levels of state funding, do not have the same mission as K-12 districts, do not have compulsory school attendance and must charge tuition. The Employer argues that it should be compared to Comparable Group D which consists of all of the VTAE districts in Wisconsin other than Milwaukee, Madison, Waukesha and Gateway. There is logic in excluding Milwaukee, Madison, Waukesha and Gateway from the comparable group to which the Employer should be compared. Those school districts are not in the same category with respect to wages, hour and conditions of employment as the other VTAE districts in the state. They have special characteristics of size and enrollment which put them in a category separate from the other VTAE districts in the state. They were included in the comparable group to which the parties stipulated in the 1981 arbitration proceedings but the parties have not agreed upon such a stipulation in these proceedings. The arbitrator is not bound by a 1981 stipulation that is not appropriate. Comparable Group D as proposed by the Employer would appear to

be the most appropriate comparable group. However, only one ratified contract settlement exists among the VTAE districts in Wisconsin for the 1987-88 school year and that district is located on the opposite side of the state from the Employer. One VTAE district settlement in the state does not create a pattern that other VTAE districts should be required to follow. The K-12 districts that comprise Comparable Group C have all reached agreement with their teachers for the 1987-88 and 1988-89 school years and they are all located in the immediate area of the Employer. While there are substantial differences between VTAE districts and K-12 districts, the employees involved are all teachers with similar training and performing similar work. There are differences in the financing and missions of the schools and there are differences in the students, but the employees of both types of districts are all teachers with similar qualifications and aspirations. The arbitrator will give consideration to Comparable Group D because those school districts are most similar to the Employer. Because of the fact that only one school district in Comparable Group D has reached agreement for the 1987-88 school year, the arbitrator will also consider the K-12 school districts that make up Comparable Group C as an appropriate comparable because it establishes a wage pattern for teachers in the immediate area of the Employer.

Section 111.70(4)(cm)(7) of the Wisconsin Statutes sets forth the criteria to be utilized by the arbitrator in rendering an award. He is required to give full weight to the lawful authority of the municipal employer, the stipulations of the parties, interest and welfare of the public and the financial ability of government to meet the cost of any proposed settlement, a comparison of wages, hours and conditions of employment of the municipal employees involved with other employees performing similar services, the average consumer prices for goods and services, the overall compensation presently received by the employees and changes occurring during the pendency of the arbitration proceedings.

None of the issues before the arbitrator are affected by the lawful authority of the Employer or the stipulations of the parties. Neither of those factors would preclude the arbitrator from selecting the proposal of either party. The Employer has not raised the issue of ability to pay during the arbitration and it was the testimony of its assistant district director that it does have the ability to pay the Association's proposal. The Employer does argue that it is trying to balance competing interests and demands on a shrinking revenue base and prudent financial management is required. The fact is that there is no issue of ability to pay before the arbitrator and his award will have to turn on other factors. There have been no changes during the pendency of the arbitration proceeding that would impact upon the arbitrator's award.

The Employer's proposal on wages would increase the BA base by 3.51 percent per cell during the 1987-88 school year and 3.5 percent during the 1988-89 school year. The Association proposal would increase each cell of the salary schedule by 4 percent during the 1987-88 school year and by the amount of the annual increase in the consumer price index for the 1988-89 school year. The

total difference in wages between the two proposals for the 1987-88 school year is \$13,750.00. The Employer's proposal would provide an average increase per teacher of \$1,606.00 or 5.34 percent and a total package increase of \$2,343.00 or 6 percent. This proposal is fairly close to the Chippewa Valley VTAE settlement which provides an average increase per teacher of \$1,611.00 or 5.26 percent and a total package increase of \$2,107.00 per teacher or 5.4 percent. The Association's proposal would provide an average increase per teacher of \$1,759.00 or 5.85 percent and would have a total package increase of \$2,773.00 per teacher or 7.1 percent. Obviously the Employer's proposal is much closer to the Chippewa Valley settlement. However, one settlement among all of the VTAE districts in the state does not establish a pattern. The average increase per teacher for the 1987-88 school year for the K-12 school districts comprising Comparable Group C was \$1,788.00 or 6.53 percent. Those school districts are located in the same general area as the Employer and certainly establish a pattern of increases for teachers in the area. The average increase per cell in those K-12 districts was 5.83 percent which is higher than the Employer's proposed increase of 3.5 percent per cell or the Association's 4 percent increase per cell. The pattern of teacher salary increases in the immediate area of the Employer is much closer to the proposal of the Association than the proposal of the Employer. The average increase per teacher in Comparable Group C for those K-12 school districts that have reached agreement for the 1988-89 school year was \$1,938.00 or 6.55 percent. The average increase per cell was 5.37 percent. The Employer's proposal would provide an average increase per teacher in the 1988-89 school year of \$1,642.00 or 5.2 percent while the Association's proposal would provide an average increase per teacher of \$2,010.00 or 6.32 percent. The Employer's proposal provides an increase of 3.5 percent per cell while the Association's proposal would provide a 4.5 percent increase per cell if the cost of living increases at the expected rate. Again the Association's proposal for the 1988-89 school year is much closer to the pattern established by those K-12 school districts in Comparable Group C that have reached agreement for that year.

VTAE teachers are normally paid a salary substantially higher than is paid to a K-12 teacher and normally expect to receive an increase at least similar to the increases being given to K-12 teachers in the immediate area. The Arbitrator is reluctant to recommend increases for the Employer's teachers that are lower than the pattern of increases being given to K-12 teachers in the immediate area. The Employer points out that its teachers have received the highest or next to the highest dollar increases per teacher in Comparable Group D at all of the benchmarks over the last five years. Its teachers ranked number one in salaries at four of the benchmarks during the 1986-87 school year and were ranked in the top four at the other benchmarks. Obviously the Employer's teachers have received substantial increases over the past four years and were among the best paid in Comparable Group D during the 1986-87 school year. That status was achieved by agreement between the Employer and the Association. In reaching those agreements, the Employer and the Association had to give consideration to the salaries paid to K-12 teachers in the area as well as to the other VTAE districts with which it could be compared. The Employer agreed that

its teachers should receive increases placing them at or near the top of the salary levels for teachers in the appropriate VTAE districts to which they should be compared and well above the salary levels of the K-12 teachers in the area. Under those circumstances it is unrealistic to expect an arbitrator to impose a salary schedule that would deteriorate the relationship between the salary levels of the Employer's teachers and those of other VTAE districts and K-12 districts in the area.

The Employer points out that its financial condition is fragile and there is some evidence to support that contention. However, it is undisputed that the Employer does have the financial ability to pay the increase proposed by the Association. The difference between the Employer's wage proposal and the Association's wage proposal for each of the two school years involved in these proceedings is not so great that selection of either one would be unfair to the Employer or the Association. Certainly the Employer's teachers have a right to expect wage increase comparable to those received by K-12 teachers in the area. There is no evidence that a pattern among VTAE districts has developed indicating that the Employer's teachers should receive less than the K-12 teachers in the area receive. The Employer does have a financial concern that demands careful management. It is quite possible that the legislature of the state will address those concerns in its current budget deliberations. The arbitrator finds that the Association's proposal would be reasonable and appropriate. The equities favoring the Association's proposal are strong. The dollar difference between the two proposals is small enough so that the selection of the Association's proposal will not sink the Employer's ship. Under those circumstances, the arbitrator finds the Association's proposal to be most appropriate.

The Employer's proposal would modify the language on insurance for the 1987-88 school year to provide that it should pay the full premium for the health and dental and long term disability insurance programs. It would maintain the health and dental benefits at the 1985-86 level as set forth in the Memorandum of Understanding in the 1986-87 collective bargaining agreement. The Employer's proposal would maintain that same level of benefits for the 1987-88 and 1988-89 school years and it would meet and confer with the Association regarding the carrier or other form of providing those benefits for the 1988-89 school year. The Association's proposal would retain the language of the collective bargaining agreement which provides that the Employer pay the full premium for the health, dental and long term disability insurance programs. The language of the 1986-87 agreement provides that the Employer will provide the WEA Insurance Trust plans for health, dental and long term disability.

The Wisconsin courts have upheld the decision of the Wisconsin Employment Relations Commission that the selection of an insurance carrier is a mandatory subject of bargaining. In the summer of 1987 the WEA Insurance Trust announced that its 1987-88 rates would be increased by approximately 30 percent. The Employer sought to change the carrier back to Blue Cross-Blue Shield but the parties were unable to agree. In the 1986-87 agreement, the Employer and the

Association agreed to name the WEA Insurance Trust as the insurance carrier and that agreement was set forth in the contract language. Adoption of the Employer's position that beginning in the 1988-89 school year it need only meet and confer with the Association regarding the carrier or other form of providing the insurance benefits would be a departure from the status quo. It would eliminate the Association's legal right to bargain over the carrier as well as the level of benefits and the amount of the premium. The memorandum of understanding included as Appendix B in the 1986-87 collective bargaining agreement intended that the status quo on insurance benefits would be the level of benefits provided by the Employer through Blue Cross/Blue Shield during the 1985-86 school year. Even though the Employer had agreed to the naming of the WEA Insurance Trust as the carrier for the 1986-87 school year and agreed to provide the additional benefits offered by the insurance trust that year, it still intended and the Association agreed that the level of benefits used to determine the status quo and the percentage of insurance premiums paid by the Employer during the 1985-86 school year would be considered the status quo. In effect the Employer agreed to name the WEA Insurance Trust as the carrier, but the status quo for future negotiations would be the level of benefits and the percentage of insurance premiums paid during the 1985-86 school year. The memorandum of understanding did contemplate that either the Employer or the Association might wish to change carriers or benefits or benefit plans. There was nothing in the memorandum of understanding that would in any way indicate that the Employer had the right to change the carrier or that the WEA Insurance Trust would not be the status quo for the insurance carrier in the future. The additional benefits available as a result of converting to the WEA Insurance Trust insurance plan that were not provided under the terms of the 1985-86 collective bargaining agreement would not be considered status quo benefits. The total impact of the memorandum of understanding was that the Employer and the Association agreed that the level of benefits and the percentage of insurance premiums paid during the 1985-86 Agreement would be the status quo for negotiations on the level of benefits beginning with the 1987-88 school year. Any change in the carrier would be the subject of bargaining and there was no provision in the memorandum of understanding that eliminated the WEA Insurance Trust as the status quo insurance carrier. The Employer seems to take the position that it could have proceeded with the unilateral change of the carrier based on the bargaining history. The arbitrator disagrees with that position and finds that for purposes of the status quo the WEA Insurance Trust is the insurance carrier. The Employer makes a number of arguments supporting its position that beginning in the 1988-89 school year it need do no more than meet and confer with the Association about the insurance carrier or other form of providing those benefits for the 1988-89 school year. It questions the validity of a pool rated plan with no individual claims experience available to the Employer. Those arguments might be used in bargaining with the Association to convince them to change the carrier. However, it does not change the fact that the WEA Insurance Trust represents the status quo as far as the insurance carrier is concerned and the fact that the selection of a carrier is a mandatory subject of bargaining.

The Employer points out that it can provide the 1985-86 level of benefits through Blue Cross/Blue Shield at a rate of \$199.35 per month for the family coverage and \$86.25 per month for the single coverage. The WEA Insurance Trust premium would be \$221.08 per month for the family coverage for the benefits it provides and \$85.18 for the single coverage. The Association's proposal would raise the level of benefits from the status quo that was agreed upon in the memorandum of understanding that is part of the 1986-87 agreement and increase the percentage of the premium to be paid by the Employer from the status quo. The Association's health insurance proposal would cost \$21.00 per month more than the Employer's for each employee who has family coverage. Five of the VTAE districts in Comparable Group D pay a higher family health insurance premium for the 1987-88 school year than the Association proposes that the Employer pay. Only three of the VTAE districts in Comparable Group D pay a higher dental insurance premium in the 1987-88 school year than the Association proposes that the Employer pay. The Association's insurance proposal would increase the Employer's total cost per teacher by more than \$250.00 per year. The arbitrator is reluctant to make an award that changes the status quo with respect to the insurance carrier and eliminates the legal right of the Association to bargain over the insurance carrier for the 1988-89 school year. To avoid that result it would be necessary to depart from the agreed upon status quo of the level of benefits and percentage of premium to be paid by the Employer and impose upon the Employer an additional insurance premium of more than \$250.00 per year for each teacher that receives family coverage. That would be a substantial departure from the agreement set forth in the memorandum of understanding that is part of the 1986-87 collective bargaining agreement and result in substantial additional expense. Such a change should be the result of bargaining and not imposed upon the parties by an arbitrator. The departure from the status quo that would occur in the 1988-89 agreement with respect to the selection of the insurance carrier is also an issue best determined by bargaining. However, the Association can not have it both ways. It can not expect to retain the status quo with respect to the selection of the carrier and still depart from the status quo and increase the insurance benefits and the Employer's percentage of the health insurance premium and impose an additional cost on the Employer of \$250.00 per year for each teacher that has family coverage. The evidence presented demonstrates that among the eleven comparable districts in Comparable Group D, eight districts do not name the carrier in the contract. Of those that do name the carrier, only one names the WEA Insurance Trust. Those facts by themselves would not justify permitting the Employer to do no more than meet and confer when an insurance carrier is selected, but they do demonstrate that the practice among the comparable VTAE districts is not to name the insurance carrier in the collective bargaining agreement. On an overall basis, the arbitrator finds that the statutory criteria support the Employer's proposal on the health, dental and long term disability insurance for the 1987-88 and 1988-89 school years.

The Association proposes some new language in the collective bargaining agreement that would provide that at the expiration of the agreement covering the 1987-88 and 1988-89 school years would remain in full force and effect

during the pendency of negotiations until a successor agreement is reached. In the collective bargaining agreement for the 1986-87 school year, the Association and the Employer agreed that the salary schedule should be increased by 7 percent per cell but the teachers would not be entitled to vertical movement or increments for that year. Appendix A of the agreement provided that effective July 1, 1987 the schedule would revert to the traditional format and teachers would again be entitled to increments. When the 1987-88 school year began, the Employer did not pay the increment to the bargaining unit employees. The language proposed by the Association would spell out in unequivocal language that the increments and any other provisions included in the collective bargaining agreement covering the 1987-88 and 1988-89 school year would continue during the period of negotiation for a new agreement and the Employer would be required to implement them. Failure to implement provisions of the old collective bargaining agreement during the period of negotiation would give rise to a grievance that could be resolved by arbitration. Since the 1986-87 collective bargaining agreement has expired, the issue over the payment of the increment during the period of negotiations for the new agreement could only be resolved by bringing a prohibited practice before the Wisconsin Employment Relations Commission. The thrust of the Association's proposal would be to require the Employer to implement any provisions of the old agreement during the period of negotiation. If a dispute should arise over the implementation of any provision of the old collective bargaining agreement during the period of negotiation, it could be resolved by arbitration as opposed to a prohibited practice proceeding.

The Wisconsin Employment Relations Commission Case Law establishes that the Employer is obligated to maintain the status quo during the hiatus period between the expiration of the 1986-87 agreement and agreement upon a successor contract. The Commission looks to the language in the expired agreement along with a bargaining history of the parties as it relates to the language and the parties past practice in determining exactly what the status quo is. The collective bargaining agreement between the Employer and the Association for the 1986-87 school year provided for pay in accordance with the salary schedule contained in it. The very existence of the grid with vertical increments and educational movements supports an inference of anticipated movement through the salary schedule. The Employer and the Association agreed upon Appendix A which provided that the salary schedule would be increased by 7% for the 1986-87 school year but employees would not be entitled to vertical movement (increment) for the 1986-87 school year. Appendix A went on to provide that effective July 1, 1987 the schedule would revert to the traditional format with employees again entitled to increments. Obviously that language changed the terms and conditions of the 1986-87 school year collective bargaining agreement that expired on June 30, 1987. The provision in the appendix that employees would not be entitled to experience increments for the 1986-87 school year expired on June 30, 1987. The language of the expired agreement expressly states that the schedule shall revert to the traditional format with employees again entitled to the increment effective July 1, 1987. That language is very explicit and spells out the intentions of the parties with respect to the increments for the 1987-88 school year. Those intentions were again expressed by the final offers of the

parties both of which provided for annual increments for the 1987-88 school year. Even though the collective bargaining agreement that expired on June 30, 1987 provided that effective July 1, 1987 the teachers would again be entitled to increments and both parties submitted final offers proposing that the teachers would receive increments during the 1987-88 school year, the Employer did not implement those increments when the 1987-88 school year began. As the Employer states, the Union did have a remedy against the Employer and could have pursued the prohibited practice route in order to force the Employer to implement the increments. That is a long and expensive procedure to force the Employer to do something that it had already agreed to do in the expired collective bargaining agreement. Ordinarily interest arbitrators are reluctant to depart from the status quo and add new provisions to a collective bargaining agreement. Such changes should ordinarily be made through collective bargaining as opposed to the decision of an arbitrator. The Employer's action in refusing to pay the increments even though it had agreed in the 1986-87 collective bargaining agreement that the salary schedule would revert to the traditional format with employees again entitled to increments effective July 1, 1987 was inequitable, unreasonable and contrary to the prevailing practice. The Employer was legally and honor bound to implement the experience increments as it had agreed to do in Appendix A of the 1986-87 agreement. Under those circumstances the arbitrator is satisfied that the addition of the language sought by the Union will result in the Employer living up to the commitments that it has made. The Union would no longer have to resort to the long and expensive procedure of a prohibited practice in order to force the Employer to implement the increments it had agreed to provide while a new agreement is being negotiated. It can use the less expensive and quicker procedure of arbitration to resolve the problem. The interest and welfare of the public will best be served by establishing a procedure whereby the parties can resolve disputes promptly and economically. Accordingly the arbitrator is satisfied that the Association has provided persuasive and compelling reasons to support its demands on the duration clause. The arbitrator finds the proposal of the Association with respect to the duration clause is justified by the Employer's failure to implement the annual increments effective July 1, 1987 as it agreed to do in the 1986-87 collective bargaining agreement that has expired.

The statutory criteria would support the Association's proposal that it receive wage increases similar to those received by teachers in K-12 districts in its immediate area. The Employer's proposal with respect to the health insurance proposal would depart from the status quo by giving it the unilateral right to determine the name of the carrier or the form of providing health insurance benefits. It does compensate somewhat for that departure from the status quo by proposing to pay 100% of the insurance premiums in contrast to the status quo of \$110.00 per month or 95% of the premium, whichever is the larger. The Association's proposal on the duration of the contract is a departure from the status quo but it is justified by the Employer's unwillingness to pay the annual increments to its teachers effective July 1, 1987 as it had agreed to do in Appendix A of the 1986-87 collective bargaining agreement that expired. Collective bargaining agreements should not be structured so that any disputes

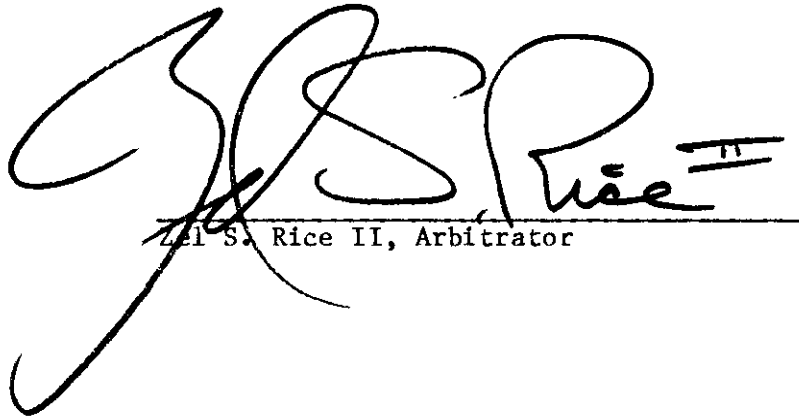
that arise must be resolved by prohibited practice proceedings. It is good public policy to encourage resolution of disputes over the meaning of language in a collective bargaining agreement by arbitration. The imposition of the duration language proposed by the Association will resolve any questions about wages, hours and conditions of employment that may arise during the period when the parties are negotiating a new agreement and encourage the honoring of commitments made in the old agreements while a new agreement is being negotiated. If a dispute arises it can be resolved promptly and economically by utilizing the grievance procedure.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive examination of the exhibits and briefs of the parties the arbitrator finds that the Union's final offer more closely adheres to the statutory criteria than that of the Employer and directs that the Union's proposal contained in Exhibit A be incorporated into an agreement containing the other items to which the parties have agreed.

Dated at Sparta, Wisconsin this 18th day of March, 1988.



Z. S. Rice II, Arbitrator