BEFORE THE INTEREST ARBITRATOR

In the Matter of the Interest Arbitration Between	
CEDAR GROVE-BELGIUM AREA SCHOOL DISTRICT	Case 13 No. 41283 INT/ARB-5061 Decision No. 26226-A
and	
CEDAR GROVE-BELGIUM EDUCATION ASSOCIATION	

APPEARANCES: Davis & Kuelthau, S.C., Attorneys at Law, by Mark F. Vetter, appearing on behalf of the District.

Deborah Schwock-Swoboda, UniServ Director, Cedar Lake United Educators Council, appearing on behalf of the Association.

ARBITRATION AWARD

Cedar Grove-Belgium Area School District, hereinafter referred to as the District or Employer, and Cedar Grove-Belgium Education Association, hereinafter referred to as the Association or Union, were parties to a collective bargaining agreement covering contracted, certified, professional faculty, which expired on June 30, 1988. The parties were unsuccessful in their efforts to negotiate a successor agreement covering the 1988-1989 and 1989-1990 school years and, on November 15, 1988, the District filed a petition with the Wisconsin Employment Relations Commission (WERC), wherein it sought to initiate interest arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act (MERA). Thereafter, two different members of the WERC's staff

investigated the petition and, on November 8, 1989, the WERC certified that the conditions precedent to the initiation of interest arbitration pursuant to said provision of the statutes had been met and ordered that the matter be submitted to arbitration. The parties selected the undersigned, from a panel of arbitrators provided by the WERC, and, on November 29, 1989, the WERC issued an order appointing the undersigned arbitrator, to issue a final and binding award pursuant to Section 111.70(4)(cm)6. and 7. of the MERA. A hearing was held at Cedar Grove, Wisconsin on February 20, 1990, at which time the parties presented their evidence. The parties directly exchanged their briefs in chief and submitted copies to the undersigned which were received by April 4, 1990. Thereafter, they submitted reply briefs, which were exchanged by the undersigned on May 1, 1990.

After the agreed to briefs had been filed and exchanged a dispute arose concerning the Association's contention that the District's reply brief contained certain factual assertions unsupported by evidence of record and contained new argument. The District objected to the procedure followed by the Union in raising these contentions and requested that it be given an opportunity to respond to the contentions, if they were to be considered. After reviewing the record, the briefs, and the Union's contentions, the undersigned concluded that the Union's contentions concerning factual matters were either without merit or reflected the parties' differing interpretations of the evidence. The Association's contention that the District had raised a new argument in its reply

brief was sustained and it was given an opportunity to reply. Upon receipt of that reply, on July 19, 1990, the record was closed.

ISSUES IN DISPUTE

There are numerous issues in dispute. The various issues relate to seven specific areas. The first two issues would not be matters of dispute, were it not for the fact that the District conditioned its offer on those two issues upon acceptance of its entire final offer.

1. Seniority Upon Return From Non-Paid Leave

The expired agreement contained a provision at Article X, Section B which provided that, for purposes of layoff and recall, "teachers presently in the system who have left the system on a non-paid leave and consequently [sic] return to teach in the system, will be granted one-half credit for each year of service prior to the non-paid leave." In its initial proposal, the Association proposed to eliminate the words "be granted one-half credit for each year of service prior to the non-paid leave" and provide that such teachers will "continue to accrue seniority during the period of leave."

In its preliminary final offer, the Association modified its proposal to provide that such employees "shall retain all seniority earned prior to the leave, but shall not accrue seniority while on leave." During the course of the investigation conducted by the WERC, the District included, as part of its final offer, a proposal to modify the wording of Article X, Section B in the same fashion. While the District agreed to a number of stipulations during the

course of the investigation, it took the position that certain proposals included in its final offer, including this proposal, was conditioned upon the Association's acceptance of the District's proposal on health insurance premium contributions. It was for that reason, that its final offer, which included its latest proposal on health insurance premium contributions, included this proposal, which is identical to the Association's proposal, in its preliminary final offer.

Because both certified final offers propose to modify the wording of Article X, Section B, in the same fashion, selection of either final offer will have the same effect. Under the new agreement, teachers returning from a non-paid leave will receive full credit (rather than one-half credit) for each year of service prior to taking the leave.

2. Timing of Horizontal Movements on the Salary Schedule

For a number of years, the parties have disagreed as to whether the District is contractually or legally obligated to provide horizontal and vertical salary schedule movements for returning teachers when the salary schedule has not yet been agreed upon. In an effort to put that dispute aside, the parties entered into an "agreement to disagree" on March 29, 1984, which included automatic vertical movement under certain conditions. That agreement was included in the 1983-1984 agreement and has been included in each successor agreement, including the expired 1986-1988 agreement. In that agreement, it read as follows:

> "C. The CGEA and the District disagree as to whether the District is contractually and/or legally obligated to

automatically provide horizontal and/or vertical salary schedule movement for an ensuing school year if no ensuing salary schedule has been agreed upon. Notwithstanding the above whenever increment movement takes place the following standard shall govern:

"Employees will be moved vertically on the salary schedule by one (1) step, should the employees have completed 90 workdays during the prior school year, effective on the first (1st) work day of the ensuing school year. Employees who have completed less than 90 work days shall receive no increment on the ensuing salary schedule."

As part of its initial proposals in bargaining, the Association proposed to modify Section C by adding a new paragraph providing that "teachers shall be moved horizontally on the salary schedule effective on the first (1st) work day of the ensuing school year." (It also proposed half step vertical movements for employees who have not completed 90 work days.) During the investigation conducted by the WERC, the District modified its final offer to include the quoted language concerning horizontal movements in paragraph C. However, in doing so, it made clear its intent to make its proposal contingent upon the Association's acceptance of its total final offer, which included its proposal on health insurance premium contributions. When the Association declined to accept that total final offer (or an alternative final offer which did not include contingent proposals or the proposed change in health insurance premium contributions), the District's final offer was certified as indicated above. As a consequence, both final offers include proposals to modify Section C in the same fashion, i.e., by providing for automatic horizontal movement on the salary schedule effective on the first work day of the year.

3. Class Assignment Language

The expired agreement contained provisions defining the length of the school day, but did not include any language concerning the length or number of class assignments to be included within the school day, which begins at 7:45 a.m. and ends at 3:45 p.m., except on Friday afternoon and days before holidays, when it is deemed permissible for teachers to leave immediately after the students have been dismissed. The District changed from a seven period day to an eight period day at the beginning of the 1989-1990 school year. Under the eight period schedule, teachers at grades 7 through 12 are responsible for teaching classes which are 47 minutes in length, with 3 minutes of passing time between classes. The schedule at the grade school level (K through 6) has not changed since negotiations began.

District's Proposal

The District proposes to include new language in the agreement reflecting its current assignment and overload pay practices in the case of teachers at grades 7 through 12, to read as follows:

> "A full-time teacher's (grades 7-12) daily responsibility during the school day shall consist of six (6) classes and one (1) supervisory period (or a combination of classes and supervisory periods equal to seven (7) assignments) and one (1) preparation period.
>
> "Any teacher assigned to teach more than five (5) different courses (more than five (5) preparations) shall either be compensated for the additional courses (preparations) at their hourly per diem rate or shall be assigned one (1) additional preparation period, at the District's discretion.
>
> "Any teacher assigned to teach seven (7) classes shall be compensated for the 7th class at their hourly per diem rate.

"A teacher's hourly per diem rate shall be calculated in accordance with the following formula:

1. The teacher's base salary is initially determined pursuant to the salary schedule set forth in Appendix A of this Agreement.

2. The teacher's base salary is divided by the total number of contracted days shown on the teacher's individual teaching contract.

3. The teacher's hourly per diem rate is determined by dividing the figure established in paragraph two above by seven hours and twenty-four minutes (7 hrs. 24 min.)."

Association's Proposal

The Association proposes to include assignment language in the agreement which is similar to the first three, unnumbered paragraphs of the District's proposal for grades 7 through 12, except that it would specify that classes and preparation periods are to be 47 minutes in length, with 3 minutes of passing time between each period.

As part of its proposal, the Association would also include assignment language covering teachers in grades K through 6, reflecting the number of minutes of assigned pupil contact time and the number of minutes in the work week, under current practice.

Finally, the Association would include the same formula for calculating a teacher's hourly per diem rate, as that contained in the District's proposal, but would do so as a separate section in the assignment article. The new language proposed by the Association would read as follows:

"B. A full-time teacher's (grades 7-12) daily responsibility during the school day shall consist of six (6) classes and one (1) supervisory period (or a

combination of classes and supervisory periods equal to seven (7) assignments at (47 minutes each) and one (1) preparation period (at 47 minutes) with three (3) minutes passing time between each period.

1. Any teacher assigned to teach more than five (5) different courses (more than five (5) preparations) shall either be compensated for the additional courses (preparations) at their hourly per diem rate or shall be assigned one (1) additional preparation period, at the District's discretion.

2. Any teacher assigned to teach seven (7) classes shall be compensated for the 7th class at their hourly per diem rate.

. . .

"D. A full-time teacher's (grades K-6) daily responsibility shall reflect the status quo practice as of the 1988-89 school year and be less than or equal to a maximum of 2025 minutes of assigned pupil contact time based on 2220 minute work week.

"E. A teacher's hourly per diem rate shall be calculated in accordance with the following formula:

1. The teacher's base salary is initially determined pursuant to the salary schedule set forth in Appendix A of this Agreement.

2. The teacher's base salary is divided by the total number of contracted days shown on the teacher's individual teaching contract.

3. The teacher's hourly per diem rate is determined by dividing the figure established in paragraph two above by seven hours and twenty-four minutes (7 hrs. 24 minutes)."

4. Health Insurance Premium Contribution

For a number of years, the District has paid the full premium cost of the District provided health insurance plan. The language of the expired agreement read as follows:

"A. Health Insurance. A single or family plan of Board of Education approved hospitalization-medical insurance including major medical, diagnostic and a $2.00

deductible prescription drug plan will be provided at District expense. This plan will be equal to or better than the policy now in effect. The plan will contain a pre-admission review/second opinion provision. The coverage will remain in effect until the end of August for those teachers who have terminated their employment through resignation or layoff."

District's Proposal

As part of its final offer, the District proposes to modify this agreement, to reflect coverage of major organ transplants, effective July 1, 1989, and a modification of its agreement to pick up the entire premium cost. Under the District's proposal, effective January 1, 1990, it will only be required to pay 97.5% of the cost of the premium for single and family coverage. Its proposal on health insurance reads as follows:

"A. Health Insurance. A single or family plan Board of Education approved hospitalization-medical insurance policy including major medical, diagnostic and a $2.00 deductible prescription drug plan will be made available to all employees. This plan will be equal to or better than the policy now in effect. The plan will contain a pre-admission review/second opinion provision. Effective July 1, 1989, coverage will include major organ transplant surgery.

"The Board will pay the entire cost of the premium for single and family coverage during the first year of this agreement and through December 31, 1989. Effective January 1, 1990, the Board will pay 97.5% of the cost of the premium for single and family coverage. Participating employees shall pay the difference between the Board's contribution and the actual premium rate by payroll deduction. For those teachers who have terminated their employment through resignation or layoff at the end of a school year, the Board will continue to provide the health insurance benefits identified in this article until the end of August of that year."

Association's Proposal

As part of its final offer, the Association also proposes to include a new sentence at the end of old Section A which states

"effective July 1, 1989, coverage will include major organ transplant surgery." Other proposed changes in the language contained in the insurance and retirement article which are included in the Association's final offer, parallel changes included in the District's proposal for part-time teachers, discussed below. The Association does not propose to change the requirement that the District pay the entire cost of health insurance premiums.

5. Part-Time Teachers

For a number of years, the District has employed a few part-time teachers. By practice, regular K through 6 classroom teachers have either been employed full-time or half-time, as needed. Specialists teaching art, music, and physical education at the K through 6 level and teachers at the 7 through 12 level have been employed on a part-time basis, as needed, under individual contracts calling for compensation reflecting a percentage of the full-time rate for their appropriate position on the salary schedule. In recent years, the District has employed approximately four employees on a part-time basis, all in the latter category.

In October 1988, the Union filed a grievance alleging violation of the terms of the collective bargaining agreement [then expired] and sexual discrimination by the District, because the percentage compensation included in the part-time contract of a male physical education teacher was allegedly unjustifiably lower than was "fair and equal" and that being paid to a female part-time teacher. At the time of the hearing herein, that grievance was

still pending before a grievance arbitrator.

In the meantime, the District took certain actions and additional litigation was initiated by the Union before the WERC and the Equal Rights Division (ERD) of the Wisconsin Department of Industry, Labor and Human Relations. The status of that litigation, as of the date of the hearing herein, and the status of other disputes, concerning the percentages contained in part time contracts issued for the 1989-1990 school year, will be discussed below, to the extent deemed relevant. As of the hearing herein, the District was, in fact, applying a "formula" it claims to have used in the past, for purposes of compensating part-time teachers during the 1989-1990 school year. The District intends to retroactively adjust the salary of the teachers in question, consistent with the terms of the final offer selected in this proceeding, but there exists a dispute as to whether or not the Association as "agreed" to that procedure. For purposes of this proceeding, it does not matter whether, in fact, such an "agreement" exists.

District's Proposal

As part of its final offer, the District proposes to include a new article in the agreement, dealing with part-time employees. It would specify a formula for computing the percentage of employment for all part-time teachers except regular classroom teachers in grades K through 6. Although the new formula proposed by the District is somewhat complex, it is similar to that proposed by the Association in many respects. One difference, of arguable

consequence, consists of the use of the phrase "class period" instead of "contact period" when referring to passing time. Other differences noted by the District are as follows:

1. Unlike the Association's proposal, the District's proposal does not specify the number of minutes of contact time or prep time for regular classroom teachers at the K through 6 level.

2. The formula for determining prorated preparation time would include specialists teaching at the K through 6 level (based upon 235 minutes of preparation time for a full-time teacher) under the District's proposal, but would not specify the prorated rate for regular K through 6 teachers, as is the case under the Association's proposal.

3. While the District's proposal permits the District to offer a part-time teaching candidate a 25% "supplemental payment" in order to induce the candidate to accept the position, it does not require the District to continue that payment in future years, as does the Association's proposal.

4. The District's proposal does not require that supplemental payments be made to all part-time employees or that the supplemental payments become the "status quo" for all part-time teachers, if more than 25% of the part-time teachers are hired under contracts calling for such supplemental payments. The Association's proposal has such a provision.

5. The District's proposal contains no limitation on the number of hours of unassigned time that may exist between assigned classes for part-time teachers. The Association's proposal

contains a two-hour limitation.

As noted above, the District proposes to include a new provision dealing with health and dental insurance premium payments for part-time employees in the new article covering part-time teachers, rather than in the article dealing with insurance and retirement benefits. The District's proposal for part-time teachers reads as follows:

> "A. Part-time Contracts. The contracts for part-time teachers shall be determined by applying the following formula:
>
> Total minutes of individual part-time classroom employment per week divided by the total amount of full-time classroom employment (1,985 minutes) per week. The 1,985 full-time figure represents four days at 7.5 hours and one day at 7.0 hours minus 235 minutes of preparation time that a full-time teacher grades 7-12 or K-6 specialist (art, music and physical education) would be assigned.
>
> Total minutes of individual part-time classroom employment shall include 15 minutes immediately before and after the work day (30 minutes total per day), plus passing time immediately before each assigned class period.
>
> With the exception of K-6 specialists (art, music and physical education), teachers assigned to the elementary level (grades K-6) will be issued either full-time or half-time (50%) teaching contracts.
>
> "B. Preparation Time.
>
> All part-time employees assigned to the middle/high school level (grades 7-12), and/or assigned to teach art, music or physical education at the elementary level (grades K-6), shall be given pro-rated preparation time equal to their individual percentage of employment by the amount of preparation time (235 Minutes) a full-time teacher for grades 7-12 or K-6 specialists (art, music and physical education) would have.

"C. Contract Adjustment.

In situations where it is difficult to hire part-time teachers, the District may offer a candidate for a position a supplemental payment as part of the teacher's contract. The amount of supplemental payment shall not exceed 25% of a full-time contract. The Board shall not be obligated to offer the supplemental compensation in any successive years of employment.

"D. Health and Dental Insurance.

Effective July 1, 1989, the Board shall pay 50% of the health insurance premium amounts set forth in Article XIX for those part-time teachers who teach less than 50% of a full-time teaching contract. For those part-time teachers who have been issued 50% or more of a full-time teaching contract, the Board will pay the health insurance premium amounts set forth in Article XIX pro-rated based upon the percentage of a full-time contract the teacher is issued. The Board shall pay the full cost of the monthly dental insurance premium amounts for said teachers so long as they are issued 50% or more of a full-time teaching contract.

The Board shall pay the health insurance premium amounts identified in Article XIX for those teachers employed on a part-time basis during the 1988-89 school year, and who continue to be employed by the District as part-time teachers thereafter. The Board shall additionally pay the full cost of the monthly dental insurance premiums for said teachers so long as they are issued 50% or more of a full-time teaching contract."

Association's Proposal

The Association also proposes to create a new article dealing with the employment conditions for part-time employees. It differs from the District's proposal in those ways described above. It would read as follows:

"A. Part time Contracts. The contracts for part-time

teachers grades 7-12 shall be calculated by applying the following formula:

> Total minutes of individual part-time employment per week divided by the total amount of full time employment (1985 minutes) per week. (The 1985 full time figure represents four days at 7.5 hours and one day at 7.0 hours minus 235 minutes of preparation time per week.)
>
> Total minutes of individual part-time employment shall include 15 minutes immediately before and after the work day (30 minutes total per day), plus passing time immediately before and after any assigned contact period.

"B. The parties to this agreement, agree that elementary employment shall be full time (100%) or fifty percent (50%). In the event that the District employes a 50% employe, the position shall have no more than 1,013 contact minutes per week and no less than 98 minutes of preparation time per week. Total minutes of individual part time elementary employment shall include 15 minutes immediately before and after the work day (30 minutes total per day), plus passing time immediately before and after any assigned contact period.

"C. The contracts for part time traveling teachers (grades K-6 and 7-12) shall be calculated by applying both formulas in paragraphs A (which represents part time employment in grades 7-12 and the following (which represents part time employment in grades K-6).

> Total minutes of individual part-time employment per week divided by the total amount of full-time employment (2025 minutes) per week. (The 2025 figure represents four days at 7.5 hours and one day at 7.0 hours minus 195 minutes of preparation time per week.)
>
> Total minutes of part-time employment shall include 15 minutes immediately before and after the work day (30 minutes total per day) plus all time between consecutively scheduled classes/assignments.

"D. Preparation Time. All part-time employes assigned to the middle/high school level (grades 7-12), and/or assigned to teach art, music or physical education at the

elementary level (grades K-6), shall be given pro-rated preparation time equal to their individual percentage of employment multiplied by the amount of preparation time (235 minutes) a full time teacher for grades 7-12 or K-=6 specialists (art, music and physical education) would have.

Part-time employes assigned exclusively to the elementary level (grades K-6) shall be given pro-rated preparation time by multiplying 195 minutes (amount of full time elementary prep time, during specials, per week) by their individual percentage of employment. Example: A 50% part time employe would receive 95 minutes preparation time per week. 190 x .5=95.

"E. Contract Adjustment. In situations where it is difficult to hire part-time teachers, the District may offer a candidate for a position supplemental compensation as part of the teacher's contract. The amount of supplemental payment shall not exceed 25% over that which the formulas in paragraphs A-C above, provide. The supplemental percentage shall continue to be made for each successive year of employment in which the teacher's percentage of contract is equal to or less than the initial percentage of employment (including the supplemental percentage). The Board is not obligated to offer the supplemental compensation in successive years of employment if the successor contract exceeds the initial percentage of employment.

Example:

> Employe A is offered a 25% contract plus 6.24% supplemental pay in year one. In year two the District must continue to pay the employe at 31.25% if the offered percentage of employment is 31.25% or less. If the offered percentage of employment is greater than 31.25%, the employe shall be compensated at the percentage above 31.25% as provided when applying the formula in paragraphs A-C, above.

If in any single contract year, 25% or more part-time employes are hired under this supplemental compensation provision, the supplemental payment shall become the status quo for all part-time employes retroactive to the beginning of the school year.

"E. Scheduling of Part-time Employes. Part-time employe daily schedules shall include no more than two (2) hours of unassigned time between any two consecutive classes."

6. Salary Schedules

The 1987-1988 salary schedule, which was in effect at the time the old agreement expired, was based upon an agreed to index. That salary schedule and the index are attached hereto and marked Appendix A.

District's Proposal

As part of its final offer, the District proposes to increase the base salary of the old salary schedule during the first year of the agreement so as to generate an increase of $1,838 per returning teacher for the 1988-1989 school year. It proposes to increase the base salary in the second year of the agreement so as to generate a $1,888 increase per returning teacher for the 1989-1990 school year. As noted below, the District intends $50.00 of this second year increase to serve as part of the quid pro quo for its insurance proposal.

Association's Proposal

The Association also proposes to increase the base salary so as to generate a $1,838 increase for the 1988-1989 school year. However, in the second year, it only proposes to increase the base sufficiently to generate a $1,838 increase per returning teacher for the 1989-1990 school year. As a consequence, its final offer would generate $50 less per returning teacher, on average, than would the District's final offer.

7. Hourly Rate for Summer Band and Parades

Under the expired agreement, driver's education teachers were paid at the rate of $10.00 per hour. In their final offers, both

parties propose to expand the wording of this provision to reflect that it covers summer school teaching and summer curriculum writing as well and to increase the rate to $12.00 per hour. The difference between their final offers relates to the hourly rate for "summer band and parades."

For a number of years, the teacher assigned to the summer bands and parades activity, Tom Paulson, received an hourly rate equal to 7/8ths of his per diem rate. In the summer of 1985, this formula generated a payment of approximately $4,200. In January of 1986, the high school principal prepared a memo wherein he recommended that the Board of Education establish an hourly rate of $9.29 for this activity. Instead of accepting the principal's recommendation, the Board of Education apparently agreed to pay Paulson a sum which was $800 less than he had received in the prior year. In May of 1987, the Board proposed to pay Paulson $20.00 per hour for a total of 175 hours for the performance of this activity during the summer of 1987. By letter dated May 28, 1987, the Union indicated its agreement with this proposal, provided that the Board thereafter recognized that the work was bargaining unit work and that the agreed to rate would be incorporated into the collective bargaining agreement.

Paulson received the same hourly rate during the summer of 1988 and, when the parties failed to reach agreement prior to the summer of 1989, he was paid at the same rate, pending the outcome of negotiations.

District's Proposal

As part of its final offer, the District proposes to pay $20.00 per hour for this activity "during the first year of this agreement" and $12.00 per hour "during the second year of this agreement." Under this proposal, Paulson would be permitted to keep all of the pay he received during the summer of 1989, but would be required to reimburse the District for the difference between $12.00 per hour and $20.00 per hour for the summer of 1990, as an offset to the back pay he will receive pursuant to the award in this proceeding.

Union's Proposal

As part of its final offer, the Union proposes to continue the rate of $20.00 per hour for both years of the agreement. If the Union's final offer is selected, Paulson will not be required to reimburse the District for any portion of the payment he received for the summer of 1990, by offset or otherwise.

DISCUSSION

Due to the relatively large number of issues and arguments relating to those issues, no effort will be made herein to summarize the parties' arguments on an overall basis. Instead, the parties' principal arguments in relation to each area of disagreement will be discussed separately. However, certain general arguments and arguments concerning which area school districts should be considered the most persuasive for comparison purposes, should be set forth at the outset.

General Arguments and Comparables

It is the District's position that the major issue in dispute

in this proceeding relates to its proposal to require employees to contribute 2.5% toward the cost of the health insurance premiums, effective January 1, 1990. According to the District, it has offered concessions in four areas in its final offer to serve as a quid pro quo for this proposed change in the status quo. It has accepted the Association's proposals on seniority, horizontal movement, and major organ transplant coverage and offered $50.00 more per returning teacher during the second year of the agreement, which will offset the cost of the premium contributions required. In response, according to the District, the Association has formulated a final offer which employs a "grab bag" approach to contract language, without providing the required proof that such requests are justified.

According to the District, the Central Lakeshore Athletic Conference (Cedar Grove, Elkhart Lake, Fredonia-Northern Ozaukee, Howards Grove, Kohler, Oostburg, and Random Lake) should be used as the basis for comparison to other school districts. In support of this position, it cites the decisions of numerous arbitrators and data relating to considerations normally taken into account in determining comparables. It takes issue with the comparables proposed by the Association on the basis that they are not necessarily the same school districts referred to by Arbitrator Maslanka in the prior arbitration award relied upon by the Association;[1] such reliance is contradicted by the fact that both

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[1] Cedar Grove School District, Decision No. 16689-A, dated May 3, 1979.

comparables relied upon by the Association are inappropriate. According to the District, Cedar Grove is a small rural district, similar to other districts in the athletic conference, but quite different from some of the districts in the Association's proposed comparables which are much larger or nearby large urban areas.

In its reply to Association arguments on comparables, the District reiterates the above arguments and contends that they have not been refuted by the Association. While the District concedes that maintaining established comparables is important for purposes of stabilizing a bargaining relationship any providing the parties with predictability in their negotiations, the District argues that Arbitrator Maslanka never established the comparables cited by the Union; his decision is outdated; there is no evidence that the parties have mutually accepted the comparables relied upon by Arbitrator Maslanka, but there is evidence that the parties have relied upon the athletic conference; and it is reasonable to utilize the athletic conference where there is no mutual acceptance of some other grouping.

According to the Association, every aspect of its final offer

was drafted in response to a "need" which exists either because the present agreement fails to address the matter or because a present practice of the District adversely affects employees. An additional "need," to preserve an existing benefit which is strongly supported by comparability data, has been created by the District's proposal to cap its contribution toward the cost of health insurance at 97.5%. It disputes the District's contention that it has offered a sufficient quid pro quo for this proposed change and strongly disagrees with the District's contention that it has employed a "grab bag" approach in formulating its final offer. According to the Association, its final offer addresses demonstrated needs for various groups of employees, while the District's final offer would treat all members of the bargaining unit inequitably in comparison to their counterparts in comparable districts.

The Association contends that the school districts which should be utilized for comparison purposes are those 18 school districts which are located within a 25-mile radius of the District. According to the Association, those districts, which are identified in its exhibits[2], are the same districts referred to by Arbitrator Maslanka in his 1979 award, wherein he stated "if this were the only basis on which the salary issue were to be decided I would be inclined to use the Association's comparability evidence"

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[2]Campbellsport, Cedarburg, Elkhart Lake, Grafton, Howards Grove, Kewaskum, Kiel, Kohler, Manitowoc, Mequon-Thiensville, Northern Ozaukee, Ooostburg, Plymouth, Port Washington, Random Lake, Sheboygan, Sheboygan Falls, and West Bend.

and found "the comparability evidence presented by the Association to be more acceptable than the District's." These districts have not only been established as comparable by the award of Arbitrator Maslanka, but are geographically proximate, sufficiently numerous to be useful and provide sufficient settlement data for 1989-1990 to provide guidance. Anticipating that the District will argue that some of the districts included in the Association's comparables lack comparability because of the size of their enrollments and FTE staff, the Association notes that similar arguments were presented to Arbitrator Maslanka and points to data in its exhibits which suggests that the size of the districts do not have a significant effect on the range of settlements. To use the District's comparables, would not be helpful because of the relative lack of settlements for 1989-1990 and contrary to well established arbitral precedent supporting adherence to established groups of comparables, the Association notes.

In reply to District arguments on comparables, the Association contends that it has identified these same comparables as those identified by Arbitrator Maslanka; reiterates its argument concerning the need for stability in bargaining; challenges the District's claim that the Association relied upon the athletic conference in formulating its final offer, as being without support in the evidence; disputes the District's characterization of Cedar Grove-Belgium as also being unsupported in the evidence; accuses the District of inconsistency in its arguments, when it relies upon the Milwaukee CPI, when it is to its advantage to do so; and argues

that some influence other than comparisons within the athletic conference has helped achieve wage settlements which were not substandard in the past.

The parties' general arguments will be discussed below, in connection with the various issues in dispute and in the overall evaluation of their offers. The question of which set of comparables ought to be utilized for purposes of evaluating their offers should be decided at this juncture.

As the District argues, it is not clearly established that the 18 districts set forth in the Union's exhibits are the same districts which were presented to Arbitrator Maslanka in the 1979 arbitration proceeding. Further, a reading of his award establishes that the District did not rely upon athletic conference districts in that proceeding. Instead, it advanced a list of 21 districts and alternate districts and combinations of districts which were located in small communities, that were predominantly rural and had certain student enrollment, FTE and census characteristics. It was in that context, that Arbitrator Maslanka said that he was "most impressed" by the Association's presentation on this question and "would be inclined to use the Association's comparability evidence" which he found to be "more acceptable than the District's." This was hardly an unqualified endorsement.

The Association is correct in its contention that the District failed to produce any hard evidence that the parties have agreed to utilize the athletic conference during the intervening years. On the other hand, there is also no hard evidence that they have

utilized the districts relied upon by Arbitrator Maslanka. The fact that both parties' final offers for the first year are based on the exact dollar amount by which the average teacher's salary in the athletic conference increased for 1988-1989 (which dollar amount is essentially repeated in the second year of the agreement under both offers), does strongly suggest that both parties considered the athletic conference to be relevant in formulating their final offers.

Due to the relatively large number of issues and other factors present in this proceeding, and the relative importance of language issues which are somewhat unique to the situation, the undersigned does not believe that it is necessary or appropriate to attempt to impose his own view as of the precise comparables the parties should be using in their recurring negotiations. However, to paraphrase Arbitrator Maslanka "if this were the only basis on which" issues requiring comparisons for resolution were to be decided, "I would be inclined to use the [District's] comparability evidence." I find that evidence "to be more acceptable than the [Union's]." This is due to the greater divergence in size, demographics and proximity to urban areas associated with the Union's proposed comparables.

1. Seniority Upon Returning From Non-Paid Leave

The District's sole argument concerning the appropriateness of its proposal on this issue consists of its contention that it serves as part of the quid pro quo offered for its proposal on health insurance premium contributions. It is the Association's

position that this issue (and other issues on which the parties' final offers are the same) is not "in dispute." It states that it was for this reason, that it offered no evidence in support of its position on this issue. According to the Association, the District is seeking to obtain a strategic advantage by making this argument, even though it is obvious that the Association did not consider the District's final offer to include a sufficient quid pro quo and its position on this issue (and the others where the offers are identical) would not have been viewed as reasonable if it were not in agreement with the Association's position.

Contrary to the assertions of the Association, the record evidence clearly establishes that the District made its position on this issue (and two others) contingent upon the Association's acceptance of its offer on health insurance premium contributions. Further, the undersigned does not view such a bargaining tactic as "game playing" or "denigration of the integrity of the bargaining process." On the contrary, it is a perfectly legitimate and commonly utilized tactic in bargaining.

The only serious question, in the view of the undersigned, is the weight which should attach to the District's willingness to make this change--sought by the Association--as part of the District's total final offer. There is no evidence in the record concerning how many, if any, employees will be affected by the proposal. While the additional seniority gained by any such employees will have an impact on other employees, and the impact on the District's flexibility in layoffs and recalls would not appear

to be significantly impacted by the proposal. On the other hand, it would appear to be fair to all employees, especially in view of the fact that seniority will not accrue while an employee is on a leave of absence.

Based upon the available evidence, it would appear that the District's proposal has some value as a part of the proffered quid pro quo, but that its value in that regard is somewhat limited, for the reasons stated.

2. *Timing of Horizontal Movements on the Salary Schedule*

The District's position on this issue is essentially the same as its position on the first issue. Similarly, the Association's position on this issue is essentially the same as its position on the first issue.

This issue is different from the first issue in several respects. First of all, the District's proposal to adopt the Union's position on this issue serves to resolve a major portion of a longstanding dispute in favor of the Association. Secondly, if the District were to prevail in the case of a legal test under the old language, it would be in a position to maintain a strategic advantage in bargaining. With the addition of the District's proposal to the existing language, the only remaining strategic advantage exists in the case of new teachers or teachers who have taught for less than one-half a year. Finally, by the District's foregoing of any further right to claim that portion of the strategic advantage in bargaining, the Association has gained a correlative advantage. If the parties hereafter fail to negotiate

a timely agreement (which now appears to be all but certain for the next agreement), the District will be required to advance nearly all employees both vertically and horizontally, based upon the expired schedule, during negotiations. For these reasons, the undersigned concludes that the District's proposal on this issue constitutes a significant concession, intended to serve as a quid pro quo for the District's position on contributions towards the health insurance premiums.

3. Class Assignment Language

There are essentially two differences between the parties' final offers on class assignment language. Unlike the District, the Association would specify the number of minutes per period and the number of minutes of passing time between periods for teachers in grades 7 through 12 and it would specify the number of minutes of contact time and the number of minutes in the work week for teachers in grades K through 6. Neither party contends that the Association's placement of the formula for purposes of calculating a teacher's hourly per diem rate in a separate section will have any impact on its interpretation and application.

Other than the general arguments set out above, neither party makes any arguments of consequence concerning these differences, except as they may relate to the proposals dealing with part-time teachers, discussed below. For that reason, discussion of the relative merits of the parties' proposals on class assignment language is included in the discussion of their proposals on part-time teachers.

4. Health Insurance Premium Contribution

In support of its proposal to require employees to pay 2.5% of the monthly health insurance premiums, beginning January 1, 1990, the District points to rapidly escalating insurance premium costs and evidence that some employers have resorted to cost sharing, among other tactics, to reduce their cost and make employees more sensitive to the consequences of their use of health insurance benefits. The District notes that its family plan premiums have increased 86.5% from 1984 to 1989 and jumped by 25.1% last year alone. According to the District, its proposal requires a "minimal" employee contribution, the cost of which will be offset by the value of its wage proposal, which includes $50.00 more per returning teacher in the second year. Finally, the District argues that the two language concessions discussed above and its agreement to include major organ transplant coverage, along with the $50.00 difference, as a sufficient quid pro quo to justify its proposed change in the status quo on this benefit.

In reply to Union arguments, the District contends that it is not required to provide a "buy out" for future years. Citing arbitral precedent to that effect, the District argues that the selection between the two final offers here must be made upon the basis of the dispute at hand and the sufficiency of the quid pro quo offered at this time. If the impact of a proposal on future years is to be given weight, then the settlement at Fredonia-Northern Ozaukee must be given significant weight, according to the District. There, as part of the settlement of their last contract,

the parties agreed that, effective July 1, 1990, teachers would be required to contribute 3% toward the cost of health and dental insurance premiums. The arbitration awards cited by the Union are inapposite, according to the District, because they involve differences such as dollar caps and offers of a quid pro quo that was insufficient to hold employees financially harmless during the period of the bargain and otherwise improve wages, hours, and working conditions. Here, the Union has chosen to ignore the quid pro quo offered, according to the District. Contrary to the Association's position, the District has offered trade offs of continuing value, it argues. The Union has also ignored the package nature of the District's final offer and aspects of the premium costs other than dollar amount, i.e., percentage increases and a demonstrated trend in the direction of becoming one of the highest cost districts for this benefit.

According to the Association, the District's final offer fails to include a sufficient "buy out" of the existing benefit. As noted, the Association believes that the District's three language proposals should be disregarded and treated essentially as stipulations. The question then becomes whether the $50.00 difference in the second year constitutes a sufficient buy out, according to the Association. Based upon the Association's comparables it does not, since the Association's final offer is $88.00 below average and the District's offer is $38.00 below average. On the other hand, the Association notes, the District's proposal, if adopted, would have a negative impact on future

comparisons with regard to this benefit.

According to the Association's benchmark analysis, which is also based on its proposed comparables, the Association's own offer will cause it to lose rank among those comparables and the District's offer would not provide any offsetting improvement which might serve as the needed buy out. On the other hand, the Association argues, the cost of employee contributions will adjust upward in future years, compounding its negative impact. It cites several arbitration awards discussing that phenomenon, in support of this position.

The Association notes that there is no claim of an inability to pay and points to evidence it presented at the hearing indicating that the District has, in the past, failed to take timely advantage of opportunities to reduce premiums and obtain organ transplant coverage at no cost. It was for the latter reason, and because the agreement requires that coverage be maintained at an equal or better level, that the Association refused to agree to add organ transplant coverage at employee cost. According to the Association, it was surprised to learn at the hearing that such coverage had already been implemented, retroactively, to July 1, 1988. The Association also faults the District for failing to provide historical data on premium increases in other districts and points to its own data to support its claim that District premiums have been and remain below average. It contends that only one of the parties' comparables (Oostburg) requires employees to pay a contribution and the

District's premium remains lower than the premium paid by that district after the contribution (.5%) is taken into account. There is nothing in the record to indicate how or when the employee contribution at Oostburg was introduced into their agreement. It would be arbitrary to rely upon that single exception in both sets of comparables, to justify the District's proposal, the Union argues.

In reply to District arguments, the Association argues that the District is hypocritical in asking employees to be more sensitive to health insurance costs, when it has failed to take advantage of opportunities to reduce costs; challenges District assertions on the costs it has borne and the need to sensitize employees, as being unsupported by evidence of record; and challenges the District's claim that it is offering a quid pro quo in the form of language concessions, for the reasons discussed above.

Before addressing the merits of this issue, it is first necessary to discuss the proposal, common to both final offers, to include major organ transplant surgery coverage, effective July 1, 1989. It is the District's position that its proposal in this respect, should be considered as part of the quid pro quo it offers. The undersigned cannot agree with that position.

The record reflects considerable confusion as to when and under what circumstances such coverage took effect. No useful purpose would be served by describing that confusion in detail. It is sufficient to note that, contrary to earlier assertions and

proposals in bargaining, and the thrust of its presentation in its case in chief, the District's rebuttal evidence included new information provided by the District's business manager to the effect that major organ transplant surgery coverage had already been implemented retroactively to July 1, 1988, at the time of the hearing herein. According to the information provided, other aspects of the "advantage plan" went into effect on July 1, 1988 and it was "later determined" that major organ transplant surgery coverage would be included, retroactively to July 1, 1988.

Under these circumstances, it is clear that this aspect of the District's final offer ought not be considered as a quid pro quo. Thus, even though the District's bargaining representative apparently believed, in good faith, that such coverage was still subject to negotiation when the District's final offer was certified, that was not in fact the case, or, at least, ceased to be the case by the time of the hearing herein. In fact, the implementation of such coverage retroactively, is consistent with the position taken by the Association during the negotiations, i.e., that it ought not have to negotiate concerning such coverage.

The District's proposal to require that teachers contribute 2.5% toward the cost of single and family premiums for health insurance coverage involves a relatively small amount of money, especially since it would not be effective until January 1, 1990. Even so, it is a significant proposal in that it would modify an important benefit in a fundamental way. Further, even though the District may be correct in its contention about the trend of

voluntary bargaining, the proposed change is not yet supported by its own comparables, much less those relied upon by the Association. Given the parties rather unfortunate history of bargaining in recent years, there is every reason to suppose that the parties may fail to reach timely settlements in the future on insurance and other issues. This gives added importance to the question of what constitutes the status quo, for strategic bargaining purposes.

While the undersigned has accepted the District's proposed comparables as being more persuasive than those proposed by the Association, for present purposes, the comparability data merely supports a finding that the District's salary offer, like the Association's offer, is well supported by the comparables, but is arguably higher, by as much as $50.00, in the second year, depending upon the ultimate pattern of settlements that develop for 1989-1990. On average, this difference, in the second year, may well pay for the actual out-of-pocket cost of the District's proposal during the term of the agreement. However, it makes no structural change in the salary schedule or elsewhere, which might serve to insure that such monetary benefit will not be short lived.

The undersigned has already noted that the value of the change in seniority language is not viewed as being of great relative significance, in relation to this issue. The District's proposal on horizontal advancement on the salary schedule, on the other hand, is deemed to be of considerable relative significance. Further, it has a similar impact upon the parties' respective

strategic bargaining positions. For this reason, the undersigned views the choice between the two final offers on this issue to be a relatively close call. Tilting in favor of the Association's position, is the fact that the Association has declined to reach voluntary agreement on the basis of the Employer's final offer. Thus, unless the resolution and overall weight given to the other issues in this dispute require that result, the Association's position on this issue ought to be accepted as slightly more reasonable than that of the District.

5. Part-time Teachers

According to the District, its proposal for part-time teaching contracts is based upon a "formula" the District has used since August 1984, to calculate part-time teaching contracts. It has been used to determine the "initial percentage" of part-time employment for teachers employed to teach specialist subjects at the elementary level (grades K through 6) and other subjects at the middle and high school level (grades 7 through 12). It has never been used to determine the percentage part-time contracts to be issued regular classroom teachers at the elementary level, who are either issued full-time or half-time contracts.

According to the District, its proposal is an improvement on the status quo, because it credits part-time teachers with more time (15 minutes before and after the school day and passing time) than before. Thus, it provides all part-time teachers with a "financial benefit," according to the District.

In the District's view, the Association has attempted to

magnify the significance of this issue during negotiations and in this proceeding. The District notes that the issue only affects four of the District's 40 teachers, none of whom have been assigned part-time teaching contracts as regular elementary teachers for the last two years. This latter point is significant, in the District's view, since the Association's proposal includes an "elaborate mechanism" for determining the percentage of employment for such teachers. Contrary to the Association's contention, its proposal does not address a compelling need, but reflects dissatisfaction with the outcome of the prohibited practice complaint involving the District's adjustment of the part-time teaching assignments of the three female part-time teachers during the 1988-1989 school year, after the above described grievance was filed.

According to the District, its agreement to add minutes to the formula was an effort to resolve this dispute voluntarily and it is the Association which proposes further changes in the status quo. Therefore, it is incumbent upon the Association to justify the further changes in the status quo, which it proposes. According to the District, those changes are unreasonable and unsupported by the record. Further, the Association has failed to identify any quid pro quo which it offers for these contract language changes and economic concessions.

In reply to Association arguments, the District makes the following points:

1. The Association's discussion of the history of litigation

between the parties is irrelevant and, in any event, fails to demonstrate a compelling reason to disrupt the status quo. All of the decisions which have been rendered have been in the District's favor and it would appear that the Association is attempting to win in this proceeding, that which it failed to win in the prohibited practice proceeding. Even if the evidence in that proceeding is deemed relevant for present purposes, the Association has mischaracterized that evidence.

2. The Association's proposal does not even remotely reflect the status quo with respect to part-time teaching contracts and assignments. It proposes to guarantee preparation time for regular elementary teachers and makes no attempt to distinguish between elementary teachers and other teachers for purposes of crediting passing time. In the past, the District has never applied the formula to regular elementary teachers and has never guaranteed elementary teachers (part-time or full-time) any set amount of preparation time. In fact, the failure to distinguish between the two types of teachers in the Association's proposal constitutes a "fatal defect" by guaranteeing them credit for "passing time," which creates inequities in relation to full-time teachers and is "akin to featherbedding."

3. There is no justification for the Association's proposals regarding contract adjustments and limitations. By proposing to require the District to continue supplemental payments, the Association erroneously assumes that part-time teaching assignments will remain the same from one school year to the next. Further,

it's proposals are based upon the unjustified assertion that the District "has a history of abusing its discretion." In the case of the two hour restriction included in its proposal, the Association had to admit that no teacher had been so assigned during the 1989-1990 school year.

4. While the Association's proposal may constitute an attempt to remedy inequities that it feels exist within the District, its won/loss record in litigation suggests that those inequities do not exist and the record discloses that it has failed to justify the drastic language changes and changes in the status quo which it proposes.

The Association contends that its proposals on assignment language and part-time contracts constitute "responsible resolutions" of problems created by past District actions. According to the Association, practices, policies, and even contract language dealing with assignments differ from district to district, reflecting "variables unique to their operations." In this District, assignment practices have led to grievances and litigation beginning with a grievance filed in 1986 and

continuing to date.[3]

The Association notes that, after it filed a grievance in October 1988, protesting the percentage contract issued the same teacher who had filed the initial grievance in 1986, the District took action to increase the work assignments of the other three part-time teachers. While the hearing examiner concluded that the District had not discriminated against or retaliated against the other part-time teachers, she did not rule on the question of whether the "formula" the District claims it has used for determining part-time teaching contracts, had been applied appropriately. According to the Association, she did find that the formula was undocumented and that any actual application involved subjective determinations made by the District administrator. According to the Association, the alleged formula, if it existed, had never been applied without an exception being made, as

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[3]As summarized in the WERC hearing examiner's finding of fact number 3, the Association filed a grievance in 1986 protesting the reduction of a part-time teacher's individual contract, which grievance was denied by Arbitrator Kerkman in August 1986; the Association thereafter filed a discrimination charge with ERD in December 1986; in August 1987, the Association filed a grievance on behalf of this same teacher, protesting the District's failure to offer him a football position, which grievance was dropped after the District offered him a position; in December the Association filed a discrimination charge with ERD regarding the same football assignment; the District thereafter non-renewed a probationary teacher who was the local grievance representative for the first teacher and the Association filed a grievance on the non-renewal, which grievance was denied; and, thereafter, the Association filed an ERD charge concerning the non-renewal. Cedar Grove-Belgium Area School District, Decision No. 25849-A, dated December 21, 1989. At the hearing, the Union's representative testified that probable cause findings, but no final decisions had been rendered in both of the ERD proceedings.

demonstrated by the testimony of the District administrator at the hearing before the examiner. The Association acknowledges that this past litigation has been costly for both parties, in ways not limited to money, and argues that its final offer presents the best solution to the problems that exist. In its view, the District's formula would allow its administrators to continue to make "arbitrary determinations," leading to further litigation and its consequences.

It is for this reason, according to the Association, that it proposes language that will cover employees at every level, including those who are assigned to multiple levels. Comprehensive definitions of the work day, in terms of contact and preparation time, are needed, according to the Association.

Specifically, the Association seeks to justify each aspect of its proposal as follows:

1. By specifying the number of minutes in a period and the number of minutes passing time between periods, possible future disputes will be avoided. The District is in no position to argue that this aspect of the Association's proposal is a permissive subject of bargaining, since it failed to object to the Association's proposal on that claim, as permitted by law.

2. The inclusion of the number of minutes of pupil contract time and the number of minutes in the work week for regular elementary teachers, is justified for the same reason. The District has failed to address this subject at all, other than to provide that such teachers will be issued a full-time contract or

a half-time contract. It is not logical or fair to exclude a whole group of employees from comprehensive language regarding assignments and the District ought not be allowed to rely upon the status quo to justify its failure to address a significant aspect of working conditions for teachers.

3. While both parties' proposals include 15 minutes before and after the work day and passing time before each class or contact period, the wording of the District's proposal fails to include passing time after the last class or contact period of the day. Part-time teachers will undoubtedly be held responsible for that time and it would be a source of potential liability and discipline if they ignored a situation calling for their intervention.

4. The Association's proposal to include language specifying the number of contact minutes and preparation time to be made available in the case of half-time elementary teachers reflects the status quo and is more logical and equitable than the District's proposal to leave the contract silent on these matters. Half-time teachers at the elementary level are no less entitled to a prorated percentage of prep time than other elementary teachers.

5. Unlike the Association's proposal, the District's proposal not only ignores regular elementary teachers, but fails to address the fact that there are different categories of teachers, based upon their building assignments. The Association's proposal takes into account those part-time employees who travel between the two buildings and provides a formula which is consistent with its other

formulas proposed for employees at both levels. Under this proposal, the percentage at each level would be determined and added together. The failure of the District to propose to continue any supplemental payments made is illogical, since it is reasonable to assume that the District will have the same need to make a supplemental payment in subsequent years, if it had the need to do so upon initial hire. If an employee would not accept a part-time contract in the first year without the supplement, there is no reason to suppose that the same employee would do so in the second year. In fact, it would be insulting to expect the employee to do so. On the other hand, the Association's proposal constitutes a good faith response to a need identified by the District, which insures that employees will be treated fairly and that the District will not indiscriminately utilize this provision.

7. The two hour limitation on "dead time" included in the Association's proposal is intended to deal with a real problem encountered by one of the three teachers who received additional assignments in the fall of 1988 and is reasonable. An employee who is faced with a longer period of "dead time," really has little alternative but to remain at the work place and continue to work without being paid. In its proposal, the District has not offered to propose any limitation or obligation on its part, with regard to this problem. It is obviously possible to schedule employees to avoid this problem, as evidenced by the schedule of the four part-time employees for 1989-1990.

In reply to District arguments, the Association denies that it

has attempted to "magnify" the significance of these issues and alleges that "the facts speak for themselves." If there was a formula for calculating part-time employment, it has not been applied uniformly to all employees, according to the Association. Further, the Board is inconsistent when it argues that an issue affecting four employees is unimportant, but makes a major point of the fact that there are between three and five teachers at certain steps on the salary schedule. According to the Association, it has been "up front" about the purposes of its proposals, while the Board has given no reasons as to why it should be permitted to retain discretion which will allow it the latitude to treat employees inequitably in the future. According to the Association, its proposals will resolve issues that have arisen in the past and avoid future litigation.

Finally, in its July 19, 1990 reply to the District's contention that the Association's final offer contains a "fatal defect," the Association denies that it should be so interpreted or that it is "akin to featherbedding." According to the Association, its final offer reflects the status quo practice of affording full-time K through 6 teachers 195 minutes of preparation time, while students are receiving instruction from specialists. Half time K through 6 teachers would be entitled to prorated preparation time of 97.5 minutes. In figuring the compensated time for half-time K through 6 teachers, they would only be entitled to receive credit for passing time if students pass from a regular classroom to a different classroom for the special class, if the part-time

teachers is to be held responsible for supervising students during the passing time.

At the outset, the undersigned would agree with the Association in its contention that the issues relating to assignment language and part-time employment contracts are sufficiently unique to the circumstances that prevail in this District to render unimportant, the lack of any substantial comparability data. Local factors, including the size of the District and its teaching staff, the number of schools in the District, past practices with regard to part-time employment contracts, and the recent history of disputes are all more important than the question of how other districts have dealt with similar considerations.[4]

As the undersigned indicated at the hearing, it would be inappropriate to utilize this proceeding for the purpose of reviewing the merits of the litigation which has already been decided or is still pending before arbitrators, ERD, and the WERC. Even so, he has carefully reviewed the transcript and exhibits and the examiner's opinion in the case before the WERC in an effort to understand the history, nature, and dimensions of the dispute herein over assignment language and part-time employment contracts. That review leads the undersigned to conclude that, while both final offers have certain flaws, either final offer will serve the purpose of helping to diminish, if not eliminate, future problems

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[4]This would not necessarily be the case if there were a dispute about the level of compensation or benefits which should be made available to part-time teachers.

of the type which led to the October 1988 grievance and prohibited practice charges. Of course, neither final offer, or any other language, could eliminate all possibility that there may be future claims of discrimination, retaliation or other improper motivation, whether valid or not.

It does not really matter whether the District has or has not utilized a "formula" as a starting point or otherwise, for purposes of setting part-time employment percentages in the past. The fact is that there have been such significant variances in percentages in the past that it has created a predictable perception of unequal treatment and possible improper motivation for such unequal treatment, that a written, negotiated agreement establishing a new formula is clearly required. As noted, both final offers do just that. The only question is whether the District's proposals do not go far enough or whether the Association's proposals go further than is justified under the circumstances.

A review of the District's proposals convinces the undersigned that they adequately address the actual problems which have arisen, with one possible exception. It would be better, in the view of the undersigned, if the District's proposal did not include a provision allowing it to offer supplemental payments "in situations where it is difficult to hire part-time teachers." This proposal, combined with its proposal that it not be obligated to offer such supplemental compensation in successive years, permits the District to exercise the kind of discretion that has led to litigation in the past. A better approach would be for the District to find a

way to increase the work assignment of such teachers.

In its final offer, the Association proposes to attach certain requirements to such payments which, if they did not serve to discourage the use of the provision entirely, would lead to unreasonable consequences. This approach is likewise fraught with the potential for future litigation.

Putting aside this one serious flaw in the District's final offer, the undersigned believes that it adequately addresses the real problems which have arisen in the past, which are subject to resolution through the negotiation of such provisions. It defines what constitutes a full-time assignment in grades 7 through 12, based upon the current factual circumstances. It goes beyond the evidence of record concerning problems which may have existed in the past at that level, by defining what constitutes a work load and providing a formula for the computation of overload pay. (The latter proposals, which apparently reflect the status quo, are not really disputed and are included in both final offers.) In addition, the District's final offer further defines what constitutes a full-time teaching load at the 7 through 12 level (or for K through 6 specialists), and provides a formula for computing part-time compensation and preparation time for part-time employees at the 7 through 12 and K through 6 specialist levels. On its face, the formula utilized is more generous than the "formula" that allegedly existed before and, more importantly, it is reasonable, in writing and clearly stated.

While it does not specify the number of minutes in a period or

the number of minutes passing time, the Association's stated concern about that omission would appear to be unfounded. Any changes, if they were made, would necessarily affect all teachers teaching classes at the 7 through 12 level and would give use to a bargaining obligation, at least as to impact.

While these positive observations concerning the District's proposal are also true in the case of the Association's proposal, the Association's proposal goes far beyond the problems which gave rise to the grievance and prohibited practice charges. At the current time, there are no part-time elementary classroom teachers. Further, there is no indication in the record that the administration of the longstanding policy of employing such teachers either full-time or half-time, has ever led to any problems or disputes. While the undersigned cannot agree with the District in its contention that the Association's final offer (as clarified in the Association's reply) contains a "fatal flaw" by providing for compensation for imaginary passing time, the Association's proposal does needlessly complicate the language and formulas by insisting on covering situations which have not proven to be a problem in the past. The two hour limitation on "dead time" is not subject to this criticism. As the Association points out in its arguments, one of the three female teachers who received additional assignments in the fall of 1988 did arguably experience a problem of that type. However, the circumstances were somewhat unique in that case. In any event, this difference between the two final offers is not deemed to be of sufficient consequence to

require that the Association's final offer on these issues be preferred.

As the District points out in its arguments, certain aspects of the Association's proposals not only go beyond that which may be appropriate or required to deal with past sources of dispute, they also represent an improvement in the status quo. For the first time, the agreement would not only limit the number of contact minutes, but guarantee the number of preparation minutes for part-time teachers at the elementary level, even though the District does not even employ any such teachers at this time.

For all of these reasons, the undersigned concludes that the proposals contained in the District's offer which deal with assignment language and part-time contracts should be favored over the Association's proposals on those same subjects.

6. Salary Schedules

While both parties presented substantial evidence and arguments, based upon their respective comparables, cost of living and other factors, the undersigned does not believe that it is necessary to set forth those arguments or review them in any detail. Many of those arguments have already been resolved in favor of the District as a result of the conclusion that the athletic conference provides a more persuasive basis for comparison in this proceeding than the comparables relied upon by the Association. Further, there is no real difference between the parties' final offers on salary schedules, except that which relates to the health insurance premium issue, discussed above.

Both final offers provide increases which compare favorably within the athletic conference and involve percentage increases which are reasonable in comparison to the cost of living. In fact, the two significant issues in dispute in this proceeding are those which relate to the District's proposal on health insurance premiums and the Association's proposals on assignment language and part-time contracts, to the extent they differ from those of the District.

7. Hourly Rate for Summer Band and Parades

The District's position in support of its proposal on this issue is twofold. First, it notes that no other extra curricular summer position receives $20.00 per hour. In fact, all three of the other summer activities will be paid at the rate of $12.00 per hour under both final offers. Secondly, none of the other districts in the athletic conference pay an hourly rate for similar positions which is equal to $20.00 per hour. Most are significantly lower. In reply to Association arguments, the District contends that it has provided justification for its proposal to reduce the rate of pay for this work. For example, the District notes, it pays over $3,000.00 per summer for this work, while the highest paid comparable (Fredonia) pays $590.00. According to the District, the Association has incorrectly portrayed itself as the "white knight" on this issue, while the District has merely proposed to pay the same hourly rate ($12.00) it has proposed to pay other employees performing similar summer activities.

The Association notes that its position on this issue would

preserve the status quo payment for the work in question. The evidence shows that the duties of the position have not changed over the years and that the compensation has remained $20.00 for a number of years. While the District has attempted to unilaterally reduce the rate on two occasions in recent years, the Association intervened and has insisted on maintaining the rate at $20.00 per hour. According to the Association, its proposal to keep the rate the same, even though other rates are increasing, is reasonable, while the District's proposal to reduce the rate is inequitable and without justification in the record. In reply to District arguments, the Association contends that the District shows a lack of respect for its employees by proposing to reduce compensation for this position without a change of duties, merely because other employers pay less, with the message that the incumbent can quit if he is unhappy with the lower compensation.

The evidence establishes that the relatively high rate of hourly compensation being paid for this position had it origin in the application of a formula which is no longer being applied. Given the nature of the work performed and the District's apparent satisfaction with the performance of that work by the incumbent, it would appear to be unfair to propose to reduce the hourly rate, without employing some "grandfather" or other mechanism to soften the impact. Thus, if it were within the authority of the undersigned to propose his own resolution of the issue or to choose between the two proposals of the parties on this issue, he would rewrite the District's proposal so as to grandfather the incumbent

or select the Association's proposal. Because the undersigned lacks the authority to do either of those things, the fact that the Association's proposal on this issue is more reasonable will simply be given appropriate weight in balancing both final offers under the statutory criteria.

CONCLUSION

While the District has conditioned its offer on seniority upon acceptance of its proposal on health insurance premiums, its proposal on seniority does not impose a significant restriction on its rights in layoffs and recalls and is not deemed to constitute a substantial quid pro quo. The District's proposal on the timing of horizontal movements on the salary schedule is a significant concession and quid pro quo, but that concession combined with the additional compensation included in the second year of its salary schedules proposal is not deemed sufficient quid pro quo for its proposed change in the agreement on health insurance premium contributions. The District's proposal on assignment language and part-time teacher contracts is deemed, overall, more reasonable than the Association's proposals, which are in excess of those required to deal with demonstrated problems and to that extent unjustified in the absence of some quid pro quo or tradeoff. The salary schedules issue is essentially inseparable from the health insurance premium contribution issue and the issue relating to the hourly rate for summer band and parades should be resolved in favor of the Association's position, for the reason stated.

If the undersigned had the authority to reformulate the

parties' final offers, it would be possible to come up with a number of combinations deemed more reasonable than a selection of either final offer in total. However, because the undersigned does not enjoy that authority, it is necessary to strike a balance, by "weighing" the issues. As noted above, the undersigned's preference for the Association's position on the health insurance premium contribution issue was a "close call." Even though the District, in effect, gambled by offering to include language sought by the Association on the first two issues, the weight of those issues has to be included in the Association's final offer too, since it also seeks those concessions, but without changing the health insurance contribution. When the weight of proposals on assignment language and part-time contracts is added to those concessions, the balance is tipped in favor of the District and that balance is not overcome by the undersigned's preference for the Association's position on the hourly rate for summer band and parades.

For all of these reasons, the undersigned renders the following

AWARD

The District's final offer shall be included in the parties' 1988-1990 collective bargaining agreement, along with the changes agreed to by the parties in their stipulation and otherwise and the provisions from the prior agreement which are to remain unchanged.

Dated at Madison, Wisconsin, this 20th day of July, 1990.

George R. Fleischli
Arbitrator