

STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the matter of the petition of

**MANITOWOC COUNTY HANDICAPPED
CHILDREN'S EDUCATION BOARD
(RIVERVIEW SCHOOL)**

Daniel Nielsen, Arbitrator
Decision No. 26321-A

to initiate Arbitration between said
Petitioner and

Appointment: 3/13/90
Hearing: 5/09/90
Record Closed: 7/16/90
Award: 9/23/90

**MANITOWOC COUNTY EDUCATION
ASSOCIATION, WEAC, NEA**

Appearances:

Nash, Spindler, Dean & Grimstad, 201 East Waldo Boulevard, Manitowoc WI 54220-2992 by Mr. John M. Spindler, Attorney at Law appearing on behalf of the Manitowoc County Handicapped Children's Education Board.

Kettle Moraine UniServ Council, 3841 Kohler Memorial Drive, Sheboygan WI 53081 by Ms. Ellen M. MacFarlane, UniServ Director, appearing on behalf of the Association

Arbitration Award

On March 13, 1990 the undersigned was appointed by the Wisconsin Employment Relations Commission as arbitrator to resolve an impasse in negotiations between the Manitowoc County Handicapped Children's Education Board (hereinafter referred to as either the Board or the District) and the Manitowoc County Education Association (hereinafter referred to as the Association). The impasse items included wages and language concerning leave for jury duty for inclusion in the contract governing professional employees of the Board for the 1989-90 and 1990-91 school years.

A mediation was conducted on May 5, 1990 at the Riverview School in Manitowoc, Wisconsin. The mediation effort was unsuccessful, and a hearing was held immediately thereafter, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as

were relevant to the dispute. The record was held open for the submission of additional and corrected exhibits, including Arbitrator Michelstetter's Award in Mishicot Schools. The parties submitted post-hearing briefs and reply briefs, the latter being exchanged on July 16, 1990, whereupon the record was closed.

Now, having considered the record evidence, the arguments of the parties, the statutory criteria, and the record as a whole, the undersigned makes the following Award.

I. The Final Offers

The District proposes to modify the structure of the salary schedule in 1989-90 by eliminating the hiring step, renumbering the remaining steps, and adding a new step at the top of schedule. Staff would be placed at the same numbered step in 1989-90 as they had occupied in 1988-89. The Board would then add \$322 to each cell in the modified schedule. The Association's offer would make the same structural changes as the Board offer, but would increase the cells by 2.25%.

In addition to its wage offer, the Board would modify the existing language of Section 4.9 of the contract, "Jury Duty", by deleting the phrase "and/or required to appear":

"Whether or not he/she testifies, a teacher called for jury duty or subpoenaed ~~and/or otherwise required to appear~~ before a judicial or administrative tribunal shall be paid the difference between his/her normal teaching salary and the pay received for the performance of such obligation."

The Association proposes to leave the Jury Duty language unchanged.

In the second year, the Board would add \$572 to each cell of the schedule. The Association would increase the cells by 2.5%. Under each proposal, the faculty would advance one experience step on the schedule.

II. Statutory Criteria

This dispute is governed by the terms of Section 111.70(4)(cm)7, the Municipal Employment Relations Act. MERA dictates that arbitration awards be rendered after a consideration of the following criteria:

"7. Factors considered. In making any decision under the arbitration

procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and

hospitalization benefits, the continuity of employment, and all other benefits received.

i. Changes in any of the foregoing during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties in the public service or in private employment.”

III. Arguments of the Parties

A. The Position of the Board

The District takes the position that the salary issue is the significant area of dispute in this case, and that its final salary offer is the more reasonable under the statute. The primary comparables for this dispute are the five feeder schools for the District: Manitowoc, Two Rivers, Valders, Reedsville and Mishicot. All have settlements for the 1989-90 school year. The average salary increase in these districts for the first year is \$1,750 per returning teacher, or 6.23% over the 1988-89 salaries. In 1990-91, four of these district have settlements, with Valders still in negotiations. The 1990-91 average increase is \$1,778 per returning teachers, or 5.89%:

Feeder School Comparisons

	1989-90		1990-91	
	<u>\$ Increase</u>	<u>%</u>	<u>\$ Increase</u>	<u>%</u>
Manitowoc Schools	\$ 1,980	6.5%	\$ 2,028	6.23%
Reedsville Schools	\$ 1,857	7.20%	\$ 1,750	5.98%
Mishicot Schools	\$ 1,682	6.00%	\$ 1,731	5.80%
Valders Schools	\$ 1,601	6.10%	\$ -----	-----
<u>Two Rivers Schools</u>	<u>\$ 1,601</u>	<u>5.35%</u>	<u>\$ 1,602</u>	<u>5.10%</u>
Average of Feeders	\$ 1,750	6.23%	\$ 1,778	5.89%
Board Final Offer	\$ 1,584	6.17%	\$ 1,725	6.33%

Deviation	\$ -166	-0.06%	\$ -53	+0.44%
Association Final Offer	\$ 1,869	7.28%	\$ 1,897	6.89%
Deviation	\$ +119	+1.05%	\$ +119	+1.00%

The Board submits that its offer is preferable when compared with the percentage increases granted area teachers for the contract term.

Supplementary settlement data for the schools in WASB Region 8 (comprised of schools in the area of Calumet, Sheboygan and Manitowoc Counties) provides additional support for the Board, with a 1989-90 average increase per teacher of \$1,738 (6.3%) and a 1990-91 average increase of \$1,784 (5.9%). In contrast to the supplemental data proposed by the Association, this data is drawn from all area schools. The Association's supplemental data cannot be said to reflect an area pattern of settlements, since it excludes some schools near the Riverside School, while including others more distant.

While the Association claims to seek and deserve parity with the Manitowoc teachers, the District notes that, of 59.7 FTE teachers, only 14.6 FTE attend to students from the higher paying Manitowoc District. The remaining 75.5% of the faculty work with students and/or alongside faculty from the lower paying feeder districts. Thus the parity argument ignores the actual working conditions and locations of the great majority of the faculty.

As the data from the feeder districts supports the offer of the Board, and since there is no persuasive reason to skew the data in favor of the higher Manitowoc settlement, the District urges selection of its final offer on wages.

Turning to the requested language change, the District asserts that the current Jury Duty clause is broadly enough written to require payment to a teacher on trial for a criminal offense, or one who is "required to appear" as a party to a civil action. An actual claim was made in the past contract year by a faculty member involved in a divorce. Even though the claim in that instance was avoided by a change in court scheduling, the District argues that personal legal business is more properly the subject of Section 4.4 "Temporary & Personal

Leave of Absence.” The proposed change will clarify the contract language to more accurately reflect the intent of the parties.

For all of the foregoing reasons, the District avers that its final offer is more reasonable under the state and should be selected.

B. The Position of the Association

The Association takes the position that the appropriate primary comparables for this dispute are the five Riverview feeder schools: Manitowoc, Two Rivers, Mishicot, Reedsville and Valders. Given the 1986 statutory changes evincing a legislative intent to expand the comparable pool, the Association also contends that similarly sized, geographically proximate districts such as Brillion, Campbellsport, Denmark, Fond du Lac, Hilbert, Kaukauna, Kimberly, Luxemburg, Sheboygan, West DePere and Wrightstown should be given weight for 1989-90 comparisons. Among those schools, Brillion, Denmark, Fond du Lac, Kaukauna, Kimberly, Luxemburg, Sheboygan, West DePere and Wrightstown also have 1990-91 settlements. In addition to these secondary comparables, the Association urges consideration of the statewide average settlements as tertiary comparables.

Looking to the statutory criteria having relevance to this dispute, the Association argues that the interests and welfare of the public are best served by improving the level of compensation for teachers. This is consistent with the various national studies pointing to better pay as an important element in improving our national educational system. The Association's offer clearly must be preferred under this criterion, particularly in light of the District's failure to submit any information related to the public interest.

The most important measure of "reasonableness" the Association argues, is comparison of the offers with the increases granted to comparable teachers. Whether drawn to teachers in the feeder schools, in the geographic area, to the statewide average for all teachers, or for the statewide average for similarly sized faculties, such comparisons lend strong support to the Association's offer:

Feeder School Comparisons:

	1989-90		1990-91	
	<u>\$ Increase</u>	<u>%</u>	<u>\$ Increase</u>	<u>%</u>
Manitowoc Schools	\$ 1,980	6.5%	\$ 2,028	6.23%
Reedsville Schools	\$ 1,857	7.20%	\$ 1,750	5.98%
Mishicot Schools	\$ 1,682	6.00%	\$ 1,731	5.80%
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<u>Two Rivers Schools</u>	<u>\$ 1,601</u>	<u>5.35%</u>	<u>\$ 1,602</u>	<u>5.10%</u>
Average of Feeders	\$ 1,750	6.23%	\$ 1,778	5.89%
Board Final Offer	\$ 1,584	6.17%	\$ 1,725	6.33%
Deviation	\$ -166	-0.06%	\$ -53	+0.44%
Association Final Offer	\$ 1,869	7.28%	\$ 1,897	6.89%
Deviation	\$ +119	+1.05%	\$ +119	+1.00%

**Comparisons with
geographically proximate schools:**

	1989-90		1990-91	
	<u>\$ Increase</u>	<u>%</u>	<u>\$ Increase</u>	<u>%</u>
Average of Area Schools	\$ 1,824	6.28%	\$ 1,905	6.16%
Board Final Offer	\$ 1,585	6.17%	\$ 1,725	6.33%
Deviation	\$ -239	-0.11%	\$ -180	+0.17%
Association Final Offer	\$ 1,869	7.28%	\$ 1,897	6.89%
Deviation	\$ + 45	+1.00%	\$ -8	+0.73%

**Comparisons with average
increases across the state:**

	1989-90	1990-91
	<u>\$ Increase</u>	<u>\$ Increase</u>
State Average	\$ 1,766	\$ 1,862
Board Final Offer	\$ 1,585	\$ 1,725
Deviation	\$ -181	\$ -137
Association Final Offer	\$ 1,869	\$ 1,897
Deviation	\$ +103	\$ +35

**Comparisons with average increases
across the state (0-99 FTE):**

	1989-90	1990-91
	<u>\$ Increase</u>	<u>\$ Increase</u>
State Average		
similarly sized schools	\$ 1,748	\$ 1,846
Board Final Offer	\$ 1,585	\$ 1,725
Deviation	\$ -163	\$ -121
Association Final Offer	\$ 1,869	\$ 1,897
Deviation	\$ +121	\$ +51

The Association urges that special weight be given for comparative purposes to the Manitowoc pay schedule, because of its historical significance as the bellweather for salary settlements at Riverview School. Prior to organization of the Riverview faculty, the salary schedule was identical to Manitowoc's. Both Arbitrator Fogelberg and Arbitrator R. U. Miller have expressly recognized the importance of the relationship between the two schools. These ties are natural, given that a majority of the Riverview faculty either teach in the Manitowoc Schools or teach children from the Manitowoc District. There is no justification, the Association asserts, for the continuing erosion of salaries relative to Manitowoc that has occurred over the five contracts since the formation of a separate Riverview bargaining unit.

The structure of the salary schedule has been changed by mutual agreement in this bargain. The Association argues however, that the District's preference for a dollar per cell approach to distributing salary monies unfairly erodes the salary index for experienced teachers. This should be counted against the District's position in arriving at an overall result.

Neither comparisons with non-teaching public employees nor private sector settlements should be granted any weight in this proceeding. Arbitral opinion strongly supports teacher to teacher comparisons, and the Association argues that reliable data is unavailable for making private sector comparisons. Reliable data is similarly lacking for cost of living and total compensation comparisons.

The Association acknowledges that two changes of note have been added to the record during the pendency of this proceeding - the Mishicot Arbitration Award and the corrected information showing that 191 students from Two Rivers are enrolled in Riverview, rather than the 91 originally suggested by the Association. The Association takes exception, however, to the District's attempts to expand the record evidence by "correcting" an Association exhibit right before the briefs were filed, and urges that this information be excluded.

Turning to the District's proposal on Jury Duty, the Association argues that the District has completely failed to carry its burden of proof on this issue. The proposed narrowing of this section does not respond to any actual problem and will doubtless add to grievance activity under the contract. An arbitrator needs a positive reason to change existing contract language, and there must also be some evidence of a quid pro quo for the change. Neither a positive reason nor an offsetting quid pro quo is evident in this record, and the proposed change should be rejected.

For all of the foregoing reasons, the Association urges acceptance of its final offer.

C. The Board's Reply Brief

In reply to the Association's arguments, the District urges that the statewide comparisons drawn in the Association's brief be disregarded, since there is no

way of knowing what districts these figures represent. The parties are in agreement on the primary comparables, and statewide data is simply unnecessary.

The District rejects the Association's complaints about its revision of the Association exhibits concerning feeder school participation at Riverview School. The changes made by the District may be argumentative, but they accurately reflect the record evidence. This evidence refutes the Association's claim that the bulk of Riverview faculty are teaching in the Manitowoc Schools or are teaching Manitowoc pupils, and undercuts the bid for parity in pay. Assuming a constant pupil-teacher ration, less than half of the staff are teaching Manitowoc pupils, because less than half of the pupils are from Manitowoc. Physical location of the teachers, the District argues, has little bearing on appropriate pay levels and thus whether the teachers work near Manitowoc teachers is less compelling than whether they teach Manitowoc children.

D. The Association's Reply Brief

In reply to the District's arguments, the Association urges that the Valders settlement be discounted, inasmuch as it reflects the third year of a three year agreement. Contemporaneous settlements are far more valid as a measure of the current bargaining climate and the likely outcome of these negotiations. The arbitration awards in Two Rivers and Mishicot should be similarly discounted in favor of the voluntary settlements in Reedsville and Manitowoc.

The District's citation of WASB Region 8 schools is arbitrary. No data is cited to show any comparability between the Region 8 schools and Riverview, and the Association's secondary comparables, being geographically proximate are far more persuasive.

The District completely ignores the historic ties between the Manitowoc School district and Riverview School. With the addition of Manitowoc employed kindergarten teachers scheduled to begin at Riverview in the 1990-91 school year, over half of the Riverview staff will either teach Manitowoc children or work side by side with Manitowoc teachers. While the Association does not seek to restore parity with Manitowoc, it does seek to halt the erosion of Riverview salaries relative to Manitowoc.

IV. Discussion

The dispute here turns largely on the salary increases for 1989-90 and 1990-91 school years. The minor dispute over the wording of the Jury Duty provision is not determinative of the outcome in this case, although the arguments concerning that provision are discussed and dealt with in the latter portion of the Award. The parties rely primarily upon their differing views of the settlement pattern to support their positions on the salary issue. Much of the difference lies with their view of the appropriate comparables grouping and the weight to be assigned the settlements among the feeder schools.

A. Salary

1. Comparability Group

The initial question is whether there is any need to expand the group of comparables beyond the feeder schools from which Riverview draws its students. Each of the parties has proposed additional area and/or statewide comparables for consideration. While the 1985 amendments to MERA make it clear that settlements outside of the customary comparable grouping are relevant, they do not repeal the normal principle of assigning much greater weight to traditional comparables than is assigned to teacher settlements in districts which the parties have never relied upon for guidance in their negotiations. Here both parties concede that they have always to some extent looked to the feeder schools, all five of the feeder schools are settled for the first year of the contract, and four of the five are settled for the second year. The undersigned is persuaded that the intent of the statute dictates consideration of all of the comparables proposed by the parties, but also mandates that the districts outside of the feeder schools be given very little weight.

2. Weight of the Feeder School Comparables - Multi-Year Agreements

The next question related to comparability is the weight to be assigned to the schools within the feeder school grouping. The Association urges that Valders be discounted as the third year of a three year agreement, negotiated in different times and a different bargaining climate than the more recent agreements in the other feeder schools. Further, the Association asks that the salary schedules in

Mishicot and Two Rivers be given less weight than the Manitowoc and Reedsville salary settlements, since the former are the result of arbitration awards, while the latter are truly voluntary settlements. Finally, the Association urges that the settlement in Manitowoc, when viewed in the context of historical settlement patterns and arbitral dicta, must be considered the most persuasive comparable.

In weighing comparables, arbitrators have generally reduced the weight of salary settlements reached in prior years in favor of those negotiated contemporaneously with the contract in issue. This reflects the economic turbulence of the 1970's and 1980's, during which inflation, recession and interest rates all at various times dramatically altered the bargaining environment from year to year and made older settlement data a very poor indicator of the likely outcome of negotiations. This has been a sound principle, but its logical underpinnings dictate that the weight of such settlements be established in light of the economic conditions surrounding negotiations. The relative stability of the economy over the period from 1987 to 1990 suggests that the Valders settlement might still have some vitality as a benchmark for bargaining in 1989-90. The 1987 drought certainly influenced some settlements, and the third year of the Valders contract appears to be on the low end of the settlement pattern. It is, however, consistent with the 1989-90 salary awarded in Two Rivers, and is not far removed from that awarded in Mishicot. Given that it does not fall outside of the current settlement pattern, and in light of the relatively stable economic times between its effective date and the 1989-90 round of negotiations, the Valders settlement is entitled to weight on a nearly equal basis with the Two Rivers and Mishicot salary awards

3. Weight of the Feeder School Comparables -
Awards vs. Voluntary Settlements

Turning to the question of whether an arbitration award should be accorded less persuasive weight than a voluntary settlement, the undersigned views this as a conflict between abstract principle and reality. The purpose of the statute is to arrive at a result reflecting as nearly as possible the likely outcome of successful voluntary negotiations. This argues in favor of assigning greater weight to voluntary settlements. As a practical matter, however, the arbitration awards in Two Rivers and Mishicot are the products of the statutory bargaining process, and once rendered, the salary settlements imposed by the awards become

established facts. To ignore or substantially discount the salary increases in two of the five feeder districts is, in the undersigned's view, to ignore the reality of the bargaining process under 111.70. Unless the Award itself suggests that the issue of salary increases was overwhelmed by other elements of the final offers, the salary increases achieved through arbitration are reliable evidence of the "wages, hours and conditions of employment of other employes performing similar services."

4. Weight of the Feeder School Comparables -
Historic Standing of Manitowoc

The most important question of comparability arises from the Association's claim of a traditional relationship between Riverview and the Manitowoc Schools, and the argument that this should yield a greater reliance on the voluntary settlement in Manitowoc than on the settlements in other feeder districts. While the parties engaged in some wrangling over whether the faculty's ties to Manitowoc were properly traced to the physical location of Riverview School within Manitowoc, the basing of Riverview faculty at Manitowoc Schools, or the percentage of students at Riverview who were drawn from the Manitowoc Public School District, the fact is that Manitowoc's settlements have in the past been of great significance in the bargaining between this employer and association. This fact has been noted and relied upon by past arbitrators. Arbitrator Monfils noted the relationship in his 1985 Award:

"....Manitowoc has traditionally been the one district comparable to the County Handicapped System."

MED/ARB-2868 (1/23/85) at page 7.

Arbitrator Fogelberg commented in reference to Manitowoc in his 1986 Award:

"This is the very district, according to both sides, which has historically been used as a bellweather for Riverview."

MED/ARB-3376 (4/4/86) st page 13.

In his 1987 Award, Arbitrator Richard John Miller found that the Manitowoc salary schedule had been the basis for compensation at Riverview prior to employee organization, and based his award upon Arbitrator Fogelberg's

previous reliance on the historical importance of Manitowoc to the bargain at Riverview [MED/ARB 3999, (3/23/87) at pages 7-8].

As discussed above, the statutory reliance on comparables reflects the fact that bargaining over economics is often guided by making reference to other employers and workers in the same labor market. While the use of athletic conferences or feeder districts are standard configurations for arbitration, the undersigned has noted in previous awards that evidence of actual historical reliance upon another bargain will entitle that relationship to greater weight.

"[The purpose of the statute] is to promote 'voluntary settlement through the procedures of collective bargaining.' A necessary element of successful bargaining is predictability, which in turn requires stability in the set of schools to which one looks for guidance in negotiations. Resolving the apparent tension between the legislative mandate to broaden the comparability groupings and the practical need for well-defined points of reference requires that arbitrators realistically weigh the likely impact of a settlement on the bargaining decisions of the parties.

"In determining the persuasive weight of a settlement, the most important consideration is whether the parties themselves have expressly relied upon the cited district in the past. Where the parties have historically maintained some relationship between their bargain and that struck in another municipality, an arbitrator must respect that relationship as the most reliable guide to what the outcome of successful bargaining would have been. The use of historical comparables best meets the expectations of the parties to the arbitration."

Marathon City Schools, Dec. No. 25800-A, (6/19/89) at page 14.

The parties concede the existence of some historical relationship between the Riverview and Manitowoc negotiations, and all three of the predecessor arbitrators have acknowledged the relationship. Even in the absence of this strong negotiating history, the fact that Manitowoc's students make up half of the workload for Riverview's faculty and that one quarter of the faculty work in Manitowoc Public School buildings would logically seem to indicate a stronger reliance on Manitowoc than on smaller feeder districts. On the basis of the bargaining history, the undersigned concurs with arbitrators Monfils, Fogelberg

and Miller that the Manitowoc settlement is a more persuasive indicator of the likely voluntary agreement at Riverview School than the settlements in the other four feeder schools, and is entitled to greater weight than any one of those four in this proceeding.

5. Salaries

The salary offers of the parties compare with the feeder school settlements as follow:

	1989-90		1990-91	
	<u>\$ Increase</u>	<u>%</u>	<u>\$ Increase</u>	<u>%</u>
Manitowoc Schools	\$ 1,980	6.5%	\$ 2,028	6.23%
Reedsville Schools	\$ 1,857	7.20%	\$ 1,750	5.98%
Mishicot Schools	\$ 1,682	6.00%	\$ 1,731	5.80%
Valders Schools	\$ 1,601	6.10%	\$ -----	-----
<u>Two Rivers Schools</u>	<u>\$ 1,601</u>	<u>5.35%</u>	<u>\$ 1,602</u>	<u>5.10%</u>
Average of Feeders	\$ 1,750	6.23%	\$ 1,778	5.89%
Board Final Offer	\$ 1,584	6.17%	\$ 1,725	6.33%
Deviation	\$ -166	-0.06%	\$ -53	+0.44%
Association Final Offer	\$ 1,869	7.28%	\$ 1,897	6.89%
Deviation	\$ +119	+1.05%	\$ +119	+1.00%

Two Year Increase:

Feeders:	\$ 3,528	12.12%		
Assoc.	\$ 3,766	14.17%	\$ +238	+2.05%
Board	\$ 3,309	12.40%	\$ -217	+0.28%
Manitowoc	\$ 4,008	12.73%		

The difference between the two offers, measured by their deviation from the average increase is \$21 per teacher over two years. The Board seeks to secure a settlement which, in terms of dollars per returning teacher, is the lowest among the comparables in the first year and the second lowest in the second year. Using the same measure, the Association seeks the second largest increase in both years, exceeded only by Manitowoc. The difference is far more striking when

measured in percentage terms, with the Association exceeding the average by 2.05% and the District by 0.28%.

There is little to choose between the two offers when looking solely at the amount of dollar increase relative to the feeder school average. The essential decision here comes down to whether the amount of increase in percentage terms outweighs the historical tie between the Riverview salaries and those of Manitowoc. While it is a close question, the record, including prior arbitral dicta, is clear that the teachers at Riverview have a reasonable expectation of maintaining at least some level of parity with the teachers in Manitowoc, whose working conditions most closely resemble their own. Both offers result in some erosion of the parity. The Association's would leave Riverview's faculty some \$208 per teacher further behind the Manitowoc faculty at the end of the contract term than at the beginning. The District's proposal increases the existing disparity by \$699 over the contract term. As the Association's salary offer more nearly maintains the relationship with Manitowoc while not falling appreciably further outside the settlement pattern in dollar terms than the District offer, the undersigned concludes that it is preferable in this proceeding.

B. Jury Duty

The District proposes to narrow the jury duty language to eliminate the possibility of faculty members receiving paid leave for cases in which they are parties to the litigation. The dispute arises from a claim by a teacher during the last contract for salary payments on a day when he was to appear in court for his divorce action. While that claim was avoided through a rescheduling, the District asks to alter the language so as to eliminate the possibility of future claims.

The current language reads:

"Whether or not he/she testifies, a teacher called for jury duty or subpoenaed and/or otherwise required to appear before a judicial or administrative tribunal shall be paid the difference between his/her normal teaching salary and the pay received for the performance of such obligation." [underlining of the disputed portion added]

The District claims that the parties never intended to allow salary payments under the jury duty section for personal legal business, and the structure of the clause would appear to support this claim. The contemplation of pay for performing a civic obligation plainly does not apply to matters in which a teacher appears as a party to the suit, and experience suggests that this type of provision is most often directed to jurors and witnesses rather than plaintiffs and defendants.

The Association does not take a position on the actual intended meaning of the clause, relying instead upon its assertion that the District has failed to make a case for change. The undersigned disagrees. The District has made it clear that it believes the meaning of the provision is not accurately reflected in the language of the provision. The ambiguity of the clause, and the rather unusual benefit it would represent under the Association's view, justify some clarification. As for the claim that there has been no quid pro quo offered for the change, the relatively insignificant impact of the language makes a quid pro quo rather difficult to fashion. Only one case has been cited where it might have come into play. Furthermore, the District concedes that personal leave is available for the purpose of appearing as a party to litigation, and thus the practical effect of the change is quite a bit less than it might otherwise be if no provision were made for time off for personal legal business.

Where a party makes a credible claim to be seeking to clarify an ambiguity in a minor provision of the contract, the requirement of a quid pro quo for the change does not weigh heavily. The requirement of a quid pro quo flows from the practical reality of trading concessions for concessions in bargaining. Language clarifications do not generally require an offsetting concession in face to face negotiations, as there is an inherent benefit to both parties in avoiding the grievances created by ambiguous language. The District here has sufficiently shown problems with the Jury Duty language to justify its proposed change, even without an offsetting concession in another area.

V. Conclusion

The final offer of the Association is preferable on salary because of the traditional and logical linkage between the Riverview faculty and that of the Manitowoc Public Schools. The final offer of the District is preferable on the issue of payment for Jury Duty, as it seeks to clarify the contract language and avoid future disputes. The salary issue is of much greater significance, and accordingly the undersigned makes the following

AWARD

The final offer of the Association is the more reasonable under the statute, and together with the stipulations reached in bargaining, shall be incorporated into the collective bargaining agreement for the 1989-90 and 1990-91 school years.

Signed this 23rd day of September, 1990 at Racine, Wisconsin:

Daniel Nielsen, Arbitrator