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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

WINNEBAGOLAND UNISERV - SOUTH

To Initiate Arbitration
Between Said Petitioner and

OMRO SCHOOL DISTRICT

Case 25
No. 43004 INT/ARB-5414
Decision No. 26550-A

Appearances:

Mr. Gary L. Miller, UniServ Director, Winnebagoland UniServ, appearing on behalf of the Association.
Mr. William G. Bracken, Director of Employee Relation Services, Wisconsin Association of School Boards, appearing on behalf of the Employer.

ARBITRATION AWARD:

On August 2, 1990, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator, pursuant to 111.70 (4) (cm) 6. and 7. of the Wisconsin Municipal Relations Act, to resolve an impasse existing between Omro Education Association, referred to herein as the Association, and Omro School District, referred to herein as the Employer, with respect to the issues specified below. The proceedings were conducted pursuant to Wis. Stats. 111.70 (4) (cm), and hearing was held at Omro, Wisconsin, on October 18, 1990, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Final briefs were received by the Arbitrator on December 12, 1990.

THE ISSUES:

The issues in dispute between the parties are reflected in their final offers as follows:

1. SALARY SCHEDULE

| | | | |
|---|---|---|---|
| EMPLOYER OFFER - | 1989-90 | Base - $18,600 | Top - $32,320 |
| | 1990-91 | Base - $19,335 | Top - $33,496 |

| ASSOCIATION OFFER - 1989-90 | Base - $18,775 | Top - $32,600 |
|---|---|---|
| 1990-91 | Base - $19,690 | Top - $34,064 |

Neither party proposes any modification to the form of the salary schedule which existed in the predecessor Agreement.

2. PAY FOR UNUSED SICK LEAVE

The Employer proposes that the following sentence be added to Article VI, Section C (3) (b): "Teachers whose full-time equivalency status changes within the final five (5) years of tenure should have a per diem rate based on the average per diem rate of the final five (5) years of employment."

The Association proposes no modification to the provisions of Article VI relating to pay for unused sick leave.

3. FRINGE BENEFITS FOR PART TIME EMPLOYEES

The Employer proposes that the following sentences be added to Article VI, Section C (2) (e): "Teachers whose employment is on a regular part-time basis shall be eligible for fringe benefits pro-rated by the percentage of full-time equivalency. Current part-time employees will be grandfathered under this clause. Part-time teachers hired for the 1990-91 school year shall have fringe benefits pro-rated according to this provision."

The Association proposes to leave the language of the predecessor Agreement with respect to fringe benefits for part-time employees unchanged.

DISCUSSION:

Wis. Stats. 111.70 (4) (cm) 7. direct the Arbitrator to give weight to the factors found at subsections a through j when making decisions under the arbitration procedures authorized in that paragraph. The undersigned, therefore, will review the evidence adduced at hearing, and consider the arguments of the parties in light of that statutory criteria.

## SALARY SCHEDULE DISPUTE

We look first to the criteria which directs the Arbitrator to consider a comparison of wages, hours and conditions of employment of municipal employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services. The parties, in their evidentiary submissions, have relied on the same group of comparisons, i. e., the East Central Athletic Conference. The conference is composed of the school districts of Berlin, Hortonville, Little Chute, Omro, Ripon, Waupaca, Wautoma and Winneconne. While both parties have proposed that the East Central Conference be used for the comparison of wages, hours and conditions of employment, the Association argues that Hortonville should be excluded from these comparisons, while the Employer opposes that exclusion. The Association contends that Hortonville should not be considered because it is in the third year of a three year Agreement for the school year 1989-90, whereas, the instant dispute involves a proposal for a two year Agreement for 1989-90 and 1990-91. The Association argues that Hortonville frontloaded its three year Agreement in the first two years, and that the third year of its

settlement for the year 1989-90 is not representative of the settlement trends in the current round of bargaining for that reason. The Association points out that all of the other East Central Conference settled districts have bargained for the same time period as did the parties in the instant dispute.

The undersigned has reviewed the settlement data for the three year Contract at Hortonville, and agrees with the Association that Hortonville settlement for its three year Contract which ends in 1989-90 is frontloaded. In support of its position, the Association cites Arbitrator Nielsen in Berlin Area School District, Dec. No. 26241-A (May 20, 1990). In Berlin, Nielsen arrives at the following conclusion:

> The Hortonville settlement was significantly frontloaded, with large increases at the benchmarks in the first two years, and a flat $400 per cell in the third year. For comparison purposes, the increases at the benchmarks have been averaged across the last two years of the Contract in the following chart. Even with this modification, the undersigned remains mindful of the lesser weight to be given the Hortonville settlement, as it was negotiated in different economic times.

The undersigned agrees with Nielsen's opinion as it goes to comparisons of patterns of settlement. Therefore, when considering patterns of settlement, both as a percentage as well as a dollar increase per returning teacher, this Arbitrator will disregard the third year of the Hortonville Contract. However, we are presently considering a comparison of salary to salary at the appropriate points of the schedule, and for that purpose, Hortonville is deemed to be an appropriate comparison. This is so because even though the three year settlement was frontloaded, the net effect of the aggregate increases over the three year period of time results in a salary level which has the effect of averaging out the increases over a three year period of time. The undersigned has considered Arbitrator Nielsen's commentary with respect to the differences in the economic conditions which existed at the time of the Hortonville settlement compared to those which are in existence presently. The undersigned is of the opinion, however, that the present economic environment has not changed significantly since the Collective Bargaining Agreement was negotiated in Hortonville. Consequently, the salary comparisons, including Hortonville, are deemed to be appropriate. As stated supra, when comparing patterns of settlement, the Hortonville data will not be considered in those comparisons.

We look now to a comparison of salaries among the schools in the East Central Conference. The comparisons upon which this Arbitrator will rely are the BA minimum and maximum, the MA minimum and maximum and the salary schedule maximum.

The Arbitrator will first look to the comparative rankings. The Association has submitted historical rankings dating back to the 1983-84 school year. The Employer opposes considering the historical rankings back to 1983-84. The undersigned is satisfied that the appropriate comparisons are those which compare the last year of the predecessor Agreement with the rankings generated by the final offers of the parties. The Association brief, at page 33, summarizes the rankings accurately, in the judgment of the undersigned. That summary reveals that at the BA base, Omro ranks 6th in the 1988-89 school year, and that if the Association offer is adopted, it will rank 5th in 1989-90, and 4th in 1990-91. If the Board's offer is adopted, the ranking at BA base will be 6th in 1989-90 and 7th in 1990-91. At the BA max, Omro ranked 3rd in 1988-89. If the Association offer is adopted,

Omro will rank 3rd in 1989-90 at the BA max and 2nd in 1990-91. If the Employer offer is adopted, Omro will rank 4th in 1989-90 and 3rd in 1990-91. At the MA min, Omro ranked 6th in 1988-89. If the Association offer is adopted, the rank will continue to be 6th at the MA minimum. If the Employer offer is adopted, the ranking will be 8th in both 1989-90 and 1990-91. At the MA maximum, Omro ranked 7th in 1988-89. If the Association offer is adopted, Omro will rank 5th in 1989-90 and 1990-91. If the Employer offer is adopted, the ranking will remain at 7th at the MA max for both 1989-90 and 1990-91. Finally, considering the schedule maximum, Omro ranked 7th in 1988-89. If the Association offer is adopted, Omro will rank 6th in 1989-90 and 1990-91. If the Employer offer is adopted, Omro will rank 7th in 1989-90 and 1990-91.

From the foregoing comparisons of rankings, the Arbitrator finds no preference for either party's offer. While the Employer offer is closer to maintaining the historic ranking which existed in the year 1988-89, this is offset by the fact that at the schedule max and the MA max, the Employer offer continues to be last among the comparable school districts. Furthermore, at the MA minimum, the Employer offer ranking drops from 6th to 8th, and at the BA max the Employer offer drops from 3rd to 4th in 1989-90, but resumes third position in 1990-91. These data are offset, however, by the fact that the Association improves its relative ranking at certain of these relevant benchmarks, i. e., the Association offer improves its ranking at the BA minimum from 6th to 5th for 1989-90, and to 4th in 1990-91, and from 3rd in 1988-89 to 2nd in 1990-91 at the BA maximum. All of the foregoing causes the undersigned to conclude that ranking comparisons are inconclusive.

We now turn to a comparison of actual salaries paid at the BA base, the BA max, MA base, the MA max and at the schedule max. The comparisons are made between the last year of the predecessor Agreement (1988-89) to the actual salaries proposed by the parties for 1990-91. It is unnecessary to make a comparison for the year 1989-90 because it is the comparison at the end of the Contract period which is relevant. All of the comparative data will exclude the Omro School District from both averages and median considerations where they are discussed. In comparing the BA base, we find that in 1988-89, Omro's base was $17,855. The average base was $18,052, and the median base was $18,100. Thus, at the BA base, Omro was $197 under the average in 1988-89 school year, and $245 under the median. For 1990-91, at the BA base the Employer offer of $19,335 is $376 less than the average and $422 less than the median. The Association offer of $19,690 is $21 less than the average and $87 less than the median. We see from the foregoing, that the Employer offer results in an erosion from the average between the years 1988-89 and 1990-91 amounting to $179 while the Association offer results in an improvement of $176 in comparison of the BA base to the average BA base from 1988-89 to 1990-91. In making the same comparisons for the median, we find that the Employer offer results in slippage from the median amounting to $177 when comparing the years 1988-89 to 1990-91, while the Association offer improves the relationship to the median between the years 1988-89 and 1990-91 by $158. In the judgment of the undersigned, the results in comparing the base salaries to the averages and the medians are inconclusive and create a preference for neither party's offer.

In making the same comparisons at the BA max, we find that in 1988-89 the BA max at Omro was $26,783. This calculates to $26 above the average of the East Central Conference districts and $456 above the median. If the Employer offer is adopted for the 1990-91 school year, it will result in a BA maximum which is

$462 above the average and $925 above the median. If the Association offer is adopted, it will result in a BA maximum which is $994 above the average and $1,457 above the median. From the foregoing data, the undersigned concludes that there is a definite preference for the Employer's offer, because it improves the relative differential when comparing the BA maximum to the average BA maximum and to the median BA maximum of the comparables.

We look now to a comparison of the parties' final offers at the MA base and the MA max, compared to the median and the average of the East Central Conference schools. In 1988-89, we find that the MA base was $19,055 in the Omro School District. The MA average in the conference was $19,613 and the median was $19,223. The MA base in the District was $558 under the average of the conference and $168 under the median. For 1990-91, the Employer offer is $1,032 below the average at the MA base and $785 below the median. The Association offer for the MA base in 1990-91 is $677 below the average and $430 below the median. From the foregoing, it is clear that the Association offer more nearly maintains the relative position to both the average and the median than does the offer of the Employer. It follows therefrom that the Association offer is preferred when making these comparisons at the MA base.

For 1988-89, the MA maximum in the District was $30,488 compared to an average in the conference of $31,070 and a median in the conference of $30,885. Thus, the MA maximum salary in the District was $582 under the average in the conference and $437 under the median. The same comparisons made with respect to the final offers in the school year 1990-91 reveal that if the Employer offer is adopted the MA max will be $1,139 below the average of the conference and $906 below the median. If the Association offer is adopted, the MA maximum for 1990-91 will be $571 below the average and $338 below the median. From the foregoing data, it is clear that the Association offer more nearly maintains the relationship between the average and the median than does the Employer offer. It follows therefrom that the Association offer is preferred when making this comparison.

We look now to the schedule maximum and find that in 1988-89 Omro's maximum salary was $31,128. The median salary for the conference in 1988-89 was $31,672 and the average for the conference in that year was $32,073. The salary maximum in the District, then, was $945 under the average maximum in the conference and $544 under the median in the conference in 1988-89. In 1990-91, if the Employer offer is adopted, the schedule maximum will be $1,822 under the average in the conference and $1,542 under the median in the conference for 1990-91. If the Association offer is adopted, the schedule maximum will be $1,254 under the average and $974 under the median in the conference for 1990-91. It is clear from the foregoing that the Association offer more nearly maintains the differential between the median and the average at the salary max than does the offer of the Employer. It follows therefrom that the Association offer is preferred.

A review of all of the foregoing comparisons causes the undersigned to conclude that when comparing the offers of the parties the Association offer is preferred when comparing wages generated by the offers of the parties compared to the average and the median salaries paid in the conference.

We now turn to a consideration of the patterns of settlement. Employer Exhibit Nos. 41 and 42 and 55 and 56 set forth the patterns of settlement in the conference which reveal both the percentage increases for salary only and salary

only average dollar per returning teacher, as well as percentage increase for total compensation and for average dollar total compensation per returning teacher for 1989-90 and 1990-91. The undersigned has deleted from the Employer Exhibits the references to Hortonville settlements for the reasons expressed earlier in this Award, and has recalculated the conference averages both for dollars per returning teacher as well as percentage for 1989-90. The recalculation was not necessary for 1990-91, because there is no settlement data available with respect to Hortonville in that year, and no recalculation was made for 1990-91. In 1989-90, the average dollar per returning teacher in the conference was $1,658 (6.25%); while the average total compensation dollar per returning teacher in the conference was $2,482 (6.9%). The Employer proposes for 1989-90 an average salary only dollar per returning teacher of $1,465 (5.4%); while the Association proposes $1,726 (6.3%). When considering total compensation dollar per returning teacher for 1989-90, the Employer proposes $2,272 per returning teacher (6.2%), while the Association proposes $2,583 (7.1%). From the foregoing, it is seen that when considering salary increase only the Employer is $193 per returning teacher below the conference average (-.85%); while the Association is $68 per returning teacher above the average per returning teacher in the conference (+.05%). When considering total compensation, the Employer offer is $210 below the average per returning teacher in the conference (-.7%); while the Association is $101 above the average per returning teacher (+.2%). From the foregoing, the undersigned concludes that the data supports the adoption of the Association salary schedule for 1988-89.

Turning to 1990-91, the patterns of settlement among the conference reveal an average salary only dollar per returning teacher of $1,624 (5.7%); and a total compensation average dollar per returning teacher of $2,491 (6.5%). For 1990-91 the Employer offer generates salary only dollars of $1,450 per returning teacher (5%); while the Association offer generates salary only dollars per returning teacher of $1,725 (6%). In considering total compensation dollars per returning teacher for 1990-91, the Employer offer generates $2,479 (6.4%); while the Association offer generates $2,806 (7.2%). From the foregoing, it is seen that when considering salary only dollars per returning teacher, the Employer offer is $174 under the conference average (-.7%); while the Association offer is $101 over the conference average (+.3%). When looking at total compensation dollars per returning teacher, the Employer offer is $12 under the conference average (-0.1%); while the Association offer is $315 above the conference average (+.7%). Thus, we have a salary only per returning teacher differential where the Employer offer is farther from the average than is the offer of the Association, and a total compensation salary per returning teacher where the Association offer is farther from the average than is that of the Employer, which is almost exactly on the average. The undersigned is of the opinion that the total compensation dollar per returning teacher should control in these comparisons, and for that reason, the 1990-91 data supports the adoption of the Employer offer. The undersigned is now faced with the circumstance where the first year salary proposal of the Association is favored, and the second year offer of the Employer offer is favored. In order to resolve the dilemma, the undersigned will compare the total of the patterns of settlement for the two years of the conference average with the total of the two year offers of the parties. In making this comparison, the undersigned will consider the total of the average dollars per returning teachers only, because the totals of the average of the percentages are a less reliable indicia. We find that for salary only the total of the two years of dollars per returning teacher in the conference is $3,282. The Employer offer total of $2,928 is $354 under that average, and the Association offer total of $3,451 is $169 over

the average. In comparing the total compensation dollars per returning teacher for the two years, we find that the conference average is $4,973. The Employer offer of $4,751 is $192 below that average and the Association offer of $5,389 is $416 above that average. Once again this data shows that the salary only dollars of the Association are closer to the conference average than is that of the Employer; while considering the total compensation dollars per returning teacher, the Employer offer is closer to the average than is the Association offer. Because the Arbitrator has concluded that total compensation controls, it follows that when considering the total of the two years, the data favors the adoption of the Employer offer.

The undersigned has now determined that the Employer offer is favored at the BA max, while the Association offer is favored at the MA base, MA max and schedule max. The undersigned has further determined that the data at comparisons of the BA base are inconclusive. The undersigned has also determined that when considering the changes of rankings generated by the parties' offers, that data is inconclusive. The undersigned has further determined that the total of the two year data favors the adoption of the Employer final offer when considering patterns of settlement. It is now necessary to determine which of the foregoing data is the most significant. The scattergram for 1990-91 reveals that more teachers are placed in the BA lane of the salary schedule (22.64) than in any other lane. This compares to 14 incumbents in the MA lane, 12 of whom are at the MA max, and 7.7 incumbents in the MA-12 lane. The foregoing data causes the undersigned to conclude that the patterns of settlement data should control over the salary comparison data where the data supports a conclusion that the Association offer is preferred. This is so because, it is at the BA maximum where the data supports the adoption of the Employer offer, the point of the schedule which carries more FTEs than any of the other lanes. For that reason, the undersigned concludes that the record narrowly supports the adoption of the Employer's salary schedule offer, based on these comparisons.

We turn now to a consideration of the remaining statutory criteria as it relates to the salary issue. Criteria e directs the Arbitrator to consider a comparison of wages, hours and conditions of employment of employees involved in the arbitration proceedings with other employees generally in the public employment in the same community and in comparable communities. The Employer argues that data submitted at hearing in Employer Exhibits supports the Employer offer. The Association argues that the settlement data submitted by the Employer with respect to public employees is sparse, because the Employer only submits settlement data with respect to custodial and secretarial employees of the School District, and the settlement data for employees of the State of Wisconsin. The Association further argues that arbitral authority has consistently given minimal weight to this criteria.

The undersigned has reviewed the evidence submitted by the Employer at its Exhibit 121-A. The Exhibit shows that administration employees received 4.2% and 5.9% increases for 1989-90 and 1990-91 respectively. The Exhibit further shows that the custodial unit received a 4.5% for 1990-91 and the secretarial unit received an increase of 5.8% for 1990-91. The Exhibit also shows that in 1990-91 the custodial package increases averaged 5.2% and the secretarial unit averaged 5.3%. In addition, there is the data contained within Employer Exhibit 123 which shows that employees of the State of Wisconsin received a 3.75% increase in 1988-89, and a 4.25% increase in 1990-91. Finally, the evidence at Employer Exhibit 127 shows that major collective bargaining settlements for state and local government workers across the country during 1989 settled at a rate of 5.1%.

Of all of the foregoing data, the most relevant data are the settlements reached in this District for secretarial and custodial employees. The total settlement percentages in these units are less than the offer of the Employer here, which would establish adequacy of the Employer offer under this criteria. The other evidence with respect to state and local government settlements is not persuasive to the undersigned, because it appears that they do not fit squarely with the criteria. The criteria directs the Arbitrator to consider these comparisons in the same community and in comparable communities. There is nothing in this record which establishes that the settlement between the State and its Union, or the settlement data of major collective bargaining agreements for state and local government workers for 1989 have been effectuated for employees in comparable communities. Since this proof is lacking in the record, that evidence is unpersuasive. While the internal settlement data for secretarial and custodial units on their face support the Employer offer, there is nothing in the record to establish precisely how those settlement figures were costed. The cost of settlement of teacher units and non-teacher units invariably are calculated on different bases. Increments are costed in the teacher settlements and frequently are not costed in non-teacher units. Because the record fails to establish whether increment data is included or excluded among the settlements in the secretarial and custodial units, the undersigned gives limited weight to the evidence directed to this criteria.

We turn now to a consideration of criteria f, comparison with private sector employees in the same or similar communities. We have in evidence Employer Exhibit 121, which is a survey conducted by Hewitt Associates, showing that salary increases averaged 5% in 1988 and 5.3% in 1989. Exhibit 126 is United States Bureau of Labor Statistic data revealing that major collective bargaining settlements in private industry in 1989 averaged 4% in the first contract year and 3.3% annually over the life of the contract. Employer Exhibit 124 shows that all company exempt employees received 5.1% salary increases in 1988 and 1989. As discussed in the preceding paragraph, the data in the Employer exhibits is unpersuasive because there is nothing to establish that these private sector settlements are in the same or similar communities, a condition which is requisite in the criteria which the Arbitrator is directed to consider. Consequently, this data is unpersuasive.

Criteria g directs the Arbitrator to consider the average consumer prices for goods and services commonly known as the Cost of Living. The Employer, in its exhibits and its argument, asks that the Arbitrator consider the increases in cost of living throughout the decade of the eighties, compared to the salary increases that have been negotiated during that same period of time. The argument of the Employer here seems inconsistent, because in another area of the evidentiary submissions of the Association, the Employer argues that the Arbitrator should not consider the salary relationships dating back to the early eighties. The undersigned, in making those comparisons, limited the comparisons to a comparison of the last year of the predecessor Agreement to comparisons of the 1989-90 and 1990-91 school years. Consistency would seem to dictate that the Arbitrator take the same approach with respect to cost of living data. Employer Exhibit 21 sets forth the percentage increase in the cost of living for the period of time between July, 1989, and July, 1990. The exhibit establishes that the percentage increase for the year ending July, 1990, calculates to 4.5%. The Employer estimates that for the year ending in July, 1991, the CPI increase will be 5.0%. The latest cost of living data available to the undersigned convinces the Arbitrator that the Employer estimate is understated by at least 1% and perhaps more. Recent reports indicate that the CPI increases are increasing

in the area of 6.1% to 6.2%. It is this number that the undersigned will consider in evaluating this criteria. The record establishes that the Employer offer, in terms of total compensation, is 6.4% in the 1990-91 year and 6.2% in the 1989-90 year. Both percentages exceed the actual CPI increase for 1989-90 and the projected CPI increase for 1990-91. It follows from the foregoing that the cost of living criteria supports the Employer offer.

Criteria h directs the Arbitrator to consider overall compensation, including direct wage compensation, vacations, holidays, excused time, insurance and pensions, medical and hospitalization benefits, etc. The Employer argues that superior health insurance provisions in this District, compared to the health insurance provisions in the remaining districts in the conference, support a conclusion that total compensation favors the Employer position. The undersigned has reviewed all of the argument and evidence, and is satisfied that the health insurance coverage provided by this Employer creates a more favorable total compensation generally than the comparable schools in the conference. All of this has previously been taken into account where the Arbitrator has determined that the total compensation average dollars per returning teacher are more significant than the average salary only dollar per returning teacher. It follows from the foregoing that the total compensation criteria favors the Employer offer in this dispute.

Criteria d directs the Arbitrator to consider the interest and welfare of the public. We have in evidence Employer Exhibit 12 which establishes that the 1989 mill rate in Omro is 17.35. The next highest mill rate in the conference in 1989 is 15.48. Employer Exhibit 17 establishes that the full value effective tax rate in Omro is .03056 for taxes levied in 1988 and collected in 1989, the highest of all of the tax rates in the conference. Employer Exhibit 18 sets forth the same data for taxes levied in 1989 and collected in 1990. Exhibit 18 establishes that Omro continues to maintain its leadership in full value effective rates at .03357 compared to the next highest rate of .03106 in Wautoma. Employer Exhibit 11 establishes that the Omro School District has the lowest equalized value per average daily membership for 1988-89 school year. The equalized value/ADM in Omro is $117,995 compared to the next lowest in Little Chute of $148,161 and a high of $192,339 in Wautoma. Employer Exhibits 131, 132 and 133 establish that milk prices for farmers have declined and are expected to decline further. The farm data is persuasive because Employer Exhibit 16 reflects that the Omro District is comprised of 73.8% rural properties. The undersigned is persuaded that the more conservative offer of the Employer is supported by this evidence, which suggests that the interest and welfare of the public is best served by a moderate salary increase. It follows from the foregoing, that criteria d favors the adoption of the Employer offer.

After considering all of the statutory criteria, and based on the discussions set forth in this section of the Award, the undersigned now concludes that the evidence supports the adoption of the Employer offer on the salary issue.

## PAY FOR UNUSED SICK LEAVE

The Employer proposes that the provisions found at Article VI, Section 3, (3) (b) be modified so as to provide that teachers whose full time equivalency status changes within the final five years of tenure, shall have a per diem rate based on the average per diem rate of the final five years of employment. The foregoing addition to the language of the Agreement is added to the language presently in place in the predecessor Agreement, which reads:

Upon retirement, layoff, or death, a teacher or his/her beneficiary shall receive payment in cash or paid up insurance equal to fifty (50%) percent of the teacher's unused accumulated sick leave based on said employee's per diem daily salary. Said amount shall be paid in one or more of the following options:

1) Cash payment - one lump sum;
2) Insurances of the teacher's choice paid in full until said amount of money is consumed, with the remainder, if any, to be paid to the teacher or beneficiary.

The Association proposes that the language of the predecessor Agreement remain unchanged. The Employer contends that the proposed language modification is to clarify a situation which was brought to the attention of the Employer when a grievance was filed over the calculation of benefits for Ms. Doris Strehlow. At the time of the grievance, the Employer and the Association had a difference of opinion as to how this benefit should be calculated pursuant to the language of the predecessor Agreement.

The Association opposes the language proposed by the Employer, arguing that the resolution of the problem should be left to the negotiation of the parties. In support thereof, the Association cites arbitral authority in support of the proposition that the status quo should be maintained as it relates to unnecessary and potentially harmful language changes (citations omitted). The Association further argues that the proposed change here is unnecessary, because it fails to meet the tests established by Arbitrator Robert Reynolds in Adams County Highway Department, Dec. No. 25479 (11/22/88). The Reynolds tests are that the proposer of language changes has the burden to show: 1) that the present contract language has given rise to conditions that require amendment; 2) that the proposed language may be reasonably expected to remedy the situation; and 3) that the alterations will not impose an unreasonable burden on either party.

It is axiomatic that the proposer of a change to contract language has the burden of proof to support that change. This Arbitrator in Columbus Schools in 1979 held that the proponent of the change is required to demonstrate that the language it is proposing to change is either inequitable or unworkable. In the judgment of this Arbitrator, the requirement enunciated in Columbus School District squares with Reynolds' test number 1.

The Association, in its argument, agrees that Reynolds' test number 1 has been met. The undersigned finds that the record supports that conclusion, because there was a grievance filed when an employee who had been full time was reduced to 4/7ths teaching status, and was informed that the Employer would pay unused sick leave at 4/7ths full time equivalency if she retired at the end of the 1988-89 school year. The grievance was ultimately withdrawn without prejudice because the employee determined that she would not retire at the end of the 1988-89 school year. Thus, it is established that there is an ambiguity in the present language which has the potential for creating an ongoing problem through the term of the Collective Bargaining Agreement now being arbitrated. The undersigned agrees that Reynolds' test number one has been met. The Arbitrator also finds that the remaining tests have been met by the Employer proposal. The Employer proposes that the ambiguity in the present Contract language be eliminated by averaging the last five years for the purpose of determining the amount of sick leave payout. In the judgment of the undersigned, the proposed language of the Employer reasonably can be expected to remedy the ambiguity, thereby fulfilling Reynolds' test number two.

With respect to Reynolds' test number three, the Association argues that to make the Award to the Employer would put the Association at a disadvantage with respect to bargaining a resolution of this problem in subsequent years. This may be true, however, the alternative possibilities could result in a greater inequity to an employee retiring who changed from full time to part time status prior to the date of retirement. Based on the difference of the parties' interpretation of the existing language, it is likely that a dispute could go to rights arbitration for a final resolution of the dispute. It is also conceivable that in a rights arbitration, the Employer position could be upheld, and that the retiring employee would be paid sick leave pursuant to the percentage of time he or she was working at the time of retirement. Of course, there is also the possibility that the Association could prevail in its position in a rights arbitration. Nevertheless, in the judgment of this Arbitrator, the downside risk to a retiring employee, if he or she lost a rights arbitration under the existing language, is too great to leave unremedied. Thus, for the balance of the time that this Contract is to run, employees of the District are better served to have the five year averaging concept as proposed by the Employer rather than to run the risk of having the benefit pro-rated by the part time status that the employee occupies at the time of his or her retirement.

Having concluded that the Reynolds' tests have been met by the Employer, it follows that the Employer has met its burden of proof to support its proposed change, and the undersigned, therefore, concludes that the language should be adopted.

## PRO-RATION OF FRINGE BENEFITS FOR PART TIME EMPLOYEES

The predecessor Agreement provided that the Employer pay the same amount toward insurance coverages for part time employees as they do for full time employees. The Employer proposes to modify the Agreement so that part time employees, who are hired commencing with the 1990-91 school year and thereafter shall have their fringe benefits pro-rated according to percentage of full time equivalency. Part time employees employed prior to the 1990-91 school year are grandfathered under the prior provision, and will continue to have full insurance paid.

The Association renews its arguments with respect to this change proposed by the Employer that they made with respect to the pay for unused sick leave issue in the preceding section of this Award. Additionally, the Association argues that there is no quid pro quo offered by the Employer for this reduction in the benefits.

The undersigned rejects the Association argument that there is no quid pro quo offered. The record evidence establishes that no part time employees who enjoyed the benefits previously are losing any of the benefits, because they are grandfathered to receive the same treatment as full time employees. Because there is nothing lost for these grandfathered employees, no quid pro quo is necessary.

It remains to be determined whether the Employer has carried its burden of proof to establish that the proposed change should be made. If the Employer is to carry its burden of proof, it must show that the predecessor language of the Contract is inequitable, because it is clear that the language is workable. There is no question that the Employer can continue to pay 100% benefits. The question

remains, however, as to whether it is equitable to provide the same insurance benefits to the part time employees as those enjoyed by full time employees. For the answer to that question, we turn to the prevailing practice in the conference for payment of fringe benefits for part time employees. We have in evidence Employer Exhibit 20, which sets forth the method by which other school districts in the conference handle benefits for part time employees in their teacher bargaining units. The exhibit provides the following information: Berlin School District provides no benefits for employees working less than 50%, and for employees working 50% or more time provides the benefits at a 50% level. In Hortonville, Little Chute, Waupaca and Wautoma School Districts, the Employer pro-rates the benefits based on the percentage of full time contract as the Employer proposes here. In Ripon, employees who work less than 20 hours per week receive no fringe benefits, and those who work 20 hours or more per week receive full time benefits. In Winneconne, employees who work 17 1/2 hours per week or less receive no benefits, and those working 17 1/2 hours or more pro rate the benefits based on the percent of full time contract. From the foregoing, it is seen that the Employer's offer is supported by the prevailing practice. The undersigned is satisfied that there is a rational basis for the pro-ration proposed by the Employer, which is supported by the practice, and, therefore, it is concluded that the Employer has carried its burden of proof for this proposal.

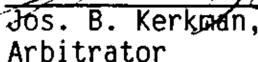
## SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the proposal of the Employer with respect to salary schedule is supported by the evidence, and that its proposed language changes are also acceptable. It follows therefrom that the final offer of the Employer will be adopted in its entirety. Therefore, based on the record in its entirety, and the discussion set forth above, after considering all of the statutory criteria and the arguments of the parties, the Arbitrator makes the following:

## AWARD

The final offer of the Employer, along with the stipulations of the parties, as furnished to the Wisconsin Employment Relations Commission, as well as those terms of the predecessor Collective Bargaining Agreement which remain unchanged through the course of bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement for the school years 1989-90 and 1990-91.

Dated at Fond du Lac, Wisconsin, this 7th day of February, 1991.



Jos. B. Kerkman,
Arbitrator

JBK:rr