

RECEIVED

DEC 30 1986

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
:
:
WRIGHTSTOWN COMMUNITY :
SCHOOL DISTRICT :
:
and : AWARD AND OPINION
:
:
WRIGHTSTOWN TEACHERS EDUCATION :
ASSOCIATION :

Case No. 12
No. 35108
Med/Arb 3301
Decision No. 23649-A

Hearing Date September 23, 1986

Appearances:

For the School District MR. WILLIAM G. BRACKEN,
Director of Employee
Relations

For the Association MR. LAWRENCE J. GERUE,
Program Director

Mediator/Arbitrator MR. ROBERT J. MUELLER

Date of Award December 29, 1986

BACKGROUND

On May 28, 1986, the Wisconsin Employment Relations Commission appointed the undersigned to serve as the mediator/arbitrator to attempt to mediate issues in dispute between the Wrightstown Community School District, hereinafter referred to as the District, and the Wrightstown Teachers Education Association, hereinafter referred to as the Association. When mediation efforts were unsuccessful in resolving the issues in dispute, the matter proceeded to be heard in arbitration. The parties presented documentary evidence, testimony and such arguments as they deemed relevant. Briefs were exchanged through the arbitrator. The arbitrator is required to choose the total final offer of one or the other parties by application of the factors set forth in Section 111.70(4)(cm)7, a through h of the Wisconsin Statutes.

FINAL OFFERS

Association Final Offer

1. Article VI, D. Class Load

Language in the 1984-85 contract is to be replaced by the following:

D. Class Load and Preparation Time

1. If a high school teacher is assigned to teach six (6) or more class periods per day, s/he will be paid an additional one-seventh (1/7th) of that teachers annual contracted teaching salary (one-eighth if the employer goes to an eight period day) for each class period in excess of five (5).

2. Preparation Period - High School
 - a. A seven (7) period day. A full-time teacher who is not provided with at least five (5) periods of preparation time per week shall receive compensation, in addition to their regular contracted salary, in an amount equal to the teachers regular hourly pay for each hour per week less than five (5).
 - b. An eight (8) period day. In the event the District elects to adopt an eight (8) period day, any teacher who does not have at least ten (10) preparation periods per week shall receive additional compensation as given in a. above for each hour less than ten (10).
3. Preparation Time - Elementary

Each full-time elementary teacher who is not provided with at least two hundred fifty (250) minutes of preparation time per week shall receive compensation, in addition to their regular contracted salary, in an amount equal to the teacher's regular hourly pay, on a pro-rata basis, for those minutes less than that provided in this article.
4. Part-time Teachers

For teachers with less than full-time contracts the amounts of preparation time and additional compensation shall be pro-rated according to the percentage of a full-time contract held by such teachers.

2. Article VII, B. Lay-off Clause

- B. 1. This procedure shall apply when the Board reduces the teaching staff. The Board shall have the sole right to determine the teaching position or positions to be eliminated or reduced. After the Board has determined which position(s) shall be eliminated or reduced, the following procedure shall be used based on seniority as defined below.
 2. State Statute 118.22 will be followed for purposes of elimination or reduction in staff. Any teacher so notified may displace a less senior teacher if the laid-off teacher is certified for the position.
 3. In the event two or more teachers have identical employment dates, seniority shall be based on the date the teachers signed their respective individual employment contracts. If a tie still exists it shall be broken by lot in a manner prescribed by the Association.
 4. As per tentative agreement.
 5. As per tentative agreement.
 6. a. Teachers who had been employed in the District as full-time teachers shall be recalled to any vacant full-time teaching position for which s/he is certified. Such teachers shall be offered any vacant part-time position that may exist and may decline such offer without jeopardizing their recall status for any vacant full-time position providing such full-time position occurs during that teacher's re-employment rights period. If such teacher accepts a less than full-time position, the two (2) year recall limitation (see 5 above) shall not apply.
 - b. Teachers who had been employed in the district only as a part-time teacher and subsequently laid-off shall be offered any vacant position for which s/he is certified and is senior to any other teacher on lay-off status.

3. Article XVII., I.

Add the following:

3. Dance Chaperones = \$9.00/person/event
4. Dance Clean-up Chaperones, if on a day following the dance = \$9.00/person/event
5. Float Chaperones = \$9.00/person/event

4. Appendix B - Salary Schedule

	BA	BA 9	BA 15	BA 24	MA	MA 9	MA 15	MA 24
0	15350	15650	15950	16250	16750	17050	17350	17650
1	15970	16285	16600	16915	17430	17740	18055	18360
2	16590	16920	17250	17580	18110	18430	18760	19070
3	17210	17555	17900	18245	18790	19120	19465	19780
4	17830	18190	18550	18910	19470	19810	20170	20490
5	18450	18825	19200	19575	20150	20500	20875	21200
6	19070	19460	19850	20240	20830	21190	21580	21910
7	19690	20095	20500	20905	21510	21880	22285	22620
8	20310	20730	21150	21570	22190	22570	22990	23330
9	20930	21365	21800	22235	22870	23260	23695	24040
10	21555	22000	22450	22900	23550	23950	24400	24750
11	22170	22635	23100	23565	24230	24640	25105	25460
12	22790	23270	23750	24230	24910	25330	25810	26170
	\$620	\$635	\$650	\$665	\$680	\$690	\$705	\$710

\$300 longevity for each year of experience after step 12.

NOTE: All provisions of the 1984-85 contract shall continue in the 1985-86 contract except for those tentative agreements reached by the parties and the Association's final offer.

Board Final Offer:

NOTE: All provisions in the 1984-85 Contract shall continue in the 1985-86 Contract except for any tentative agreements reached and the final offer below.

1. 1985-86 Salary Schedule (see attached)

16070 BA base

17170 MA base

Average salary only increase per teacher: \$ 2,001.49 or 9.53%.

NOTE: In building the 1985-86 salary schedule, the zero step was deleted. All teachers shall be entitled to the yearly increment and shall be placed on new 1985-86 salary schedule to reflect one additional year of teaching experience. All new hires at the BA base shall be hired at Step 1 rate. (Example: A Teacher at step 5 in '84-5 would be placed at step 6 in '85-6.)

2. ARTICLE VII. B. Layoff Clause

Delete entire clause and replace with:

B. 1. This procedure shall apply when the School Board reduces the teaching staff. The Board shall have the sole right to determine the teaching position or positions to be eliminated. After the Board has determined which position shall be eliminated, the following procedure shall be used to determine which teacher is to be laid off.

2. Teachers to be laid off for the ensuing school year shall be notified of such layoff on or before May 1.

3. Layoffs will be based upon the teacher with the least seniority and certification within the following departments:

- (1) K-8
- (2) 9-12 by subject matter
- (3) Specialists - art, music, phy ed, LD, ED, etc.

A teacher shall be considered to be within a department if that teacher is currently certified to teach in that department and has had successful teaching experience in that department within the last five years in the Wrightstown School District.

BB
4/21/86
BB
4-21-86

4. Add to tentative agreement: In the event of a tie in seniority, the Board reserves the right to determine the most senior person using such other factors as, but not limited to: teacher performance as measured by evaluations, extra-curricular activities, overall contribution to the total educational program, and level of educational attainment.
6. Teachers who were previously assigned to full-time teaching positions shall be recalled to full-time teaching positions, with such teachers having the option of accepting any part-time teaching position that may exist without jeopardizing their recall status for a full-time position providing such full-time position occurs during a teacher's reemployment rights period. Teachers who were previously assigned to part-time teaching positions shall have reemployment rights to only part-time teaching positions.

WRIGHTSTOWN SCHOOL DISTRICT
SALARY PAY SCHEDULE
85-6

BOARD FINAL OFFER

PAGE

	BA00	BA09	BA15	BA24	KA00	KA09	KA15	KA24
1.0	16070.00	16345.00	16620.00	16895.00	17170.00	17445.00	17720.00	17995.00
2.0	16670.00	16960.00	17250.00	17540.00	17830.00	18115.00	18405.00	18685.00
3.0	17270.00	17575.00	17880.00	18185.00	18490.00	18785.00	19090.00	19375.00
4.0	17870.00	18190.00	18510.00	18830.00	19150.00	19455.00	19775.00	20065.00
5.0	18470.00	18805.00	19140.00	19475.00	19810.00	20125.00	20460.00	20755.00
6.0	19070.00	19420.00	19770.00	20120.00	20470.00	20795.00	21145.00	21445.00
7.0	19670.00	20035.00	20400.00	20765.00	21130.00	21465.00	21830.00	22135.00
8.0	20270.00	20650.00	21030.00	21410.00	21790.00	22135.00	22515.00	22825.00
9.0	20870.00	21265.00	21660.00	22055.00	22450.00	22805.00	23200.00	23515.00
10.0	21470.00	21880.00	22290.00	22700.00	23110.00	23475.00	23885.00	24205.00
11.0	22070.00	22495.00	22920.00	23345.00	23770.00	24145.00	24570.00	24895.00
12.0	22670.00	23110.00	23550.00	23990.00	24430.00	24815.00	25255.00	25585.00
13.0	23270.00	23725.00	24180.00	24635.00	25090.00	25485.00	25940.00	26275.00
13.0 + 12.0	23570.00	24025.00	24480.00	24935.00	25390.00	25785.00	26240.00	26575.00
13.0 + 24.0	23870.00	24325.00	24780.00	25235.00	25690.00	26085.00	26540.00	26875.00
13.0 + 36.0	24170.00	24625.00	25080.00	25535.00	25990.00	26385.00	26840.00	27175.00
13.0 + 48.0	24470.00	24925.00	25380.00	25835.00	26290.00	26685.00	27140.00	27475.00
13.0 + 54.0	24770.00	25225.00	25680.00	26135.00	26590.00	26985.00	27440.00	27775.00
13.0 + 60.0	25070.00	25525.00	25980.00	26435.00	26890.00	27285.00	27740.00	28075.00
13.0 + 72.0	25370.00	25825.00	26280.00	26735.00	27190.00	27585.00	28040.00	28375.00
13.0 + 84.0	25670.00	26125.00	26580.00	27035.00	27490.00	27885.00	28340.00	28675.00
13.0 + 96.0	25970.00	26425.00	26880.00	27335.00	27790.00	28185.00	28640.00	28975.00
13.0 + 108.0	26270.00	26725.00	27180.00	27635.00	28090.00	28485.00	28940.00	29275.00
13.0 + 120.0	26570.00	27025.00	27480.00	27935.00	28390.00	28785.00	29240.00	29575.00
13.0 + 132.0	26870.00	27325.00	27780.00	28235.00	28690.00	29085.00	29540.00	29875.00
13.0 + 144.0	27170.00	27625.00	28080.00	28535.00	28990.00	29385.00	29840.00	30175.00
13.0 + 156.0	27470.00	27925.00	28380.00	28835.00	29290.00	29685.00	30140.00	30475.00
13.0 + 168.0	27770.00	28225.00	28680.00	29135.00	29590.00	29985.00	30440.00	30775.00
13.0 + 180.0	28070.00	28525.00	28980.00	29435.00	29890.00	30285.00	30740.00	31075.00
13.0 + 192.0	28370.00	28825.00	29280.00	29735.00	30190.00	30585.00	31040.00	31375.00
Steps	600.00	615.00	630.00	645.00	660.00	670.00	685.00	690.00

Longevity
below
line.

BB
4-10-86
4-21-86

Lanes 275.00 \$300 Longevity for each year experience after 12 years up to a maximum of 30 steps.

SUMMARY DESCRIPTION OF THE ISSUES IN DISPUTE

I. Salary and Salary Schedule

The Association's proposal would maintain the current salary structure while increasing the base salary from \$14,100 to \$15,350; increase the difference between the BA and MA lanes from the current \$1,000 difference to \$1,400 and would add \$20 for each increment at the various lanes; and maintain the existing longevity schedule.

The District proposal eliminates one step at the bottom of the schedule (Step 0) and adds Step 13. It would increase the base salary from \$14,100 to \$16,070 and increase the difference between the BA and MA lanes by \$100 (from the current \$1,000 to \$1,100). The District proposal would place a cap on the longevity schedule.

The average increase per teacher of salary and longevity only would be \$2,028 or 9.73% per teacher under the Association offer and \$2,002 per teacher or 9.61% under the District offer.

II. Layoff Clause

The Association contends its proposal restates the current layoff clause of the prior contract as closely as possible with certain modifications being made to correct deficiencies that existed in the prior clause. Their proposals seek to clarify the definitions of seniority and to define more precisely the status of full-time and part-time teachers with respect to recall rights.

The District's proposal contains a change in the layoff notification date from February 28 to May 1. The District's proposal would create three different departments within which seniority and certification would apply with respect to layoffs. The District's proposal also contains a procedure for resolving ties in seniority that differs from the Association proposal.

III. Class Load and Preparation Time

The 1984-85 Collective Bargaining Agreement contained various class load provisions in Article VI, D, which the District contended constituted permissive provisions under the law. As a result of such position, the Association proposed language directed at impact of teaching load and preparation time that had been addressed in the previous Article VII provisions. The District has proposed no Article VII substitute provisions.

IV Extracurricular Additions

The Association proposal would add three extra duty assignments to the existing list.

DISCUSSION

This case is somewhat unique from the usual interest arbitration cases. The fact which makes it somewhat unique is that the total dollar difference between the parties' final offers is extremely small compared to the normal interest arbitration case. The District computed the total package difference which included salary and all fringe benefit increases between the two offers as being \$3,422 for the total teacher compliment of 40.5 FTE. As a result, the arguments of the parties are concentrated more upon equitable considerations of the respective proposals and non-economic comparisons and arguments.

Salary Schedule Issue

The Association argued that the benchmark ranking comparisons support the Association's final offer despite the fact that the Board's proposal changes the structure of the salary schedule and causes a distortion in straight benchmark comparisons. The Association concedes that it finds itself in an unusual position of arguing against higher benchmark salaries and rankings that result from the District's proposal and structural changes in the salary schedule. As a result, they argue the benchmark rankings should not be given significant weight in making a choice between the two offers. The District's structural change results in significant wage increases for many of the teachers who have few years of experience on the salary schedule and lower wage increases for those teachers who have served the District for a number of years. As to the ranking, the Association presented comparative data as to benchmark rankings from 1981-82 to the present and contended that the Association's offer is to be preferred even on the ranking consideration because the Association's offer does maintain a closer relationship to previous rankings than does the Board's final offer.

The Association also argues that the dollar spread between the bachelor base lane and the master's degree base lane is the smallest of any of the comparables. They argue that one of the purposes of a salary schedule is to encourage teachers to obtain additional training so as to advance horizontally on a salary schedule. The Association's offer would increase the spread between the steps horizontally while the District's offer would reduce the dollar steps. In the interest of encouraging teachers to obtain additional training and advance horizontally, the larger monetary steps of the Association's offer would serve to encourage teacher improvement and advancement through additional training leading to master's degree and above.

The Association also argues that the District has offered no justification for its proposed change in salary structure that could, in certain instances, result in a new teacher being paid more than a current teacher already on the staff. They contend that such circumstance is inequitable and because of such possibility, the District salary structure proposal should be rejected.

Finally, the Association argues that the Board's proposed changes are radical in nature to the extent that arbitral precedent by other interest arbitrators calls for rejection of a proposal that seeks to radically change the status quo without there being shown a persuasive and convincing need for such changes or persuasive comparative or meritorious reasons. In this case, the District has not made such showing and for that reason the Association proposal should be preferred.

The District argues that its proposal better serves the

where the current teacher staff is located on the salary schedule, one finds that the majority of them are located in the bachelor lane. Such fact indicates that the current teacher staff is more concerned with advancing vertically on the salary structure than they are in horizontal advancement through obtaining additional teaching credits for master's degree and beyond. The Association final offer would serve to place more money at the higher levels at the expense of the lower paid teachers in the bachelor lane, who need greater improvement in the first instance, and the Association offer would therefore result in more dollars being given to fewer teachers and less dollars being given to a majority of the teachers. Clearly, such division of moneys is not equitable nor is it justified by any evidence presented in this case by the Association.

The District argues that its final offer more reasonably balances the public interest with the employee interest. They state at page 6 of their brief that,

Given the fact that both parties are changing the salary schedule structure the Board believes that the party that comes closer to addressing real needs is the offer that should prevail before the Arbitrator. Even the Union's own representative, Mr. Gerue, at the hearing, stated that under the Board's proposal there will still be 13 steps. It is just that the steps have been renumbered. The Union is changing the structure by changing the horizontal increment as well as the vertical increment. Since both parties are changing the structure the real issue becomes: Who is addressing the real needs of the school district? The Board believes that by deleting the zero step and adding one step at the top guarantees that the District will be poised for the future in being able to attract and retain qualified teachers. Under the Board's offer, all teachers will receive an increment. The Union's offer simply maintains the existing disproportionate impact of distributing salary increases on the schedule and does nothing to help attract more teachers into the profession. The Union's proposal also does nothing to make the District more competitive within its comparables.

Finally, the District argues that the benchmark analysis employed by the Association shows that the Board's final offer serves to improve the benchmark comparisons at every relevant benchmark. Analysis also reveals that the Board's offer results in a dollar and percent increase at the benchmarks that are not only higher than the established settlement pattern over which the parties have no disagreement, but also higher than the Union's final offer itself.

The District also argues that their offer will serve to benefit employees on the extracurricular schedule. Because the pay for extracurricular activities is computed on the BA base salary level, the higher BA base resulting from the District's final offer will serve to yield slightly higher salaries for extracurricular activities.

As to the longevity program, the District argues that it is one of only two districts out of the nine comparable schools that provides a longevity program. Under the District's final offer, a teacher can earn an additional \$5,100 under the Board's final offer. Seventeen out of forty teachers currently receive some type of longevity. Such program serves to significantly recognize the long term teacher and serves to remove much of the effect

that otherwise might be attached to the Association's argument that the salary schedule structure should be broadened so as to more adequately reward the long term teacher who also would advance horizontally.

In considering all arguments advanced by both parties on the salary schedule and salary proposal, the undersigned is persuaded that the District's final offer is more supported by application of the statutory factors and that the District's arguments as to the considerations applicable to weighing the merits of the two final offers is the more persuasive.

Layoff Clause Issue

The District identified what it viewed as the major points of disagreement between the two parties involving the layoff proposals in its brief as follows:

1. The layoff date. The Board proposes a layoff date of May 1. The Union proposes to follow Section 118.22, Wis. Statutes, which basically means a February 28 layoff date.
2. The Board proposes a departmental, seniority-based layoff system, while the Union proposes district-wide seniority. The Union proposal also includes bumping rights based on certification.
3. The Board proposes to break a tie by objective factors such as teaching performance, extra-curricular activities, overall contribution to the total educational program and the level of educational attainment. The Union seeks to break ties by the date the teacher has signed his/her respective individual employment contract, or by lot in a manner prescribed by the Association.
4. The Board has proposed that teachers previously assigned to part-time teaching shall be entitled and guaranteed recall rights only to part-time positions. The Union seeks to allow part-time teachers to be recalled to any vacant part-time or full-time position for which he or she is certified.

Each of these issues will be discussed separately in the following section.

The Association argues that its proposed changes to the layoff clause maintains for the most part the status quo of the current layoff provisions and makes changes only for purposes of clearing up ambiguity in the current language.

The District's final offer, on the other hand, proposes significant and radical changes from the current contractual provisions.

First, the current contract language requires the use of Section 118.22 of the Wisconsin Statutes in cases of layoffs. The Association's proposal would retain the Section 118.22 procedure and due process concepts. The District's proposal omits all of such safeguards and would leave the matter of laying off and non-renewing teachers open to arbitrary and capricious decisions and methods by the Board.

The District's final offer also proposes to change the notice of layoff date to May 1. The Association commented on such feature and their view that a March 1 date is more necessary in their brief as follows:

The Association's final offer simply continues the practice which has been used in this district.

On the other hand, the Board's final offer takes only one concept found in S.S. 118.22 (a timeline) and changes that. Consequently, under the current contract the Board would have to notify a teacher of a consideration of non-renewal by March 1; grant that teacher a fair and impartial hearing with due process rights; and issue a final notice of layoff by March 15. The March 15 date of final notice is replaced in the Board's final offer by May 1. Everything else is gone. No more preliminary notice. No more fair and impartial hearing before the Board to see the evidence used to determine the necessity for the layoff. No more Due Process rights. The teacher would simply receive a notice of layoff (either full or partial) sometime on or before May 1 with no need for the Board to justify its actions to that teacher, to the Association, or to the community.

The Association also argues that the District's proposal to provide three separate and distinct restrictive areas for layoff purposes is without merit and unsupported by the comparables.

They argue that the Wisconsin Department of Public Instruction is the only body in the State which has legal authority to determine whether or not a teacher is qualified to teach specific subjects and grade levels. Their determinations as to qualifications of an individual is accomplished through certification and licensure. Teachers are restricted so as to be able to teach only in the areas permitted by their license and certification. The Association does not believe that a district should be given the authority to impose additional limitations on their teachers. They argue that the District has not established any need to impose additional restrictions beyond that of certification and licensure by the DPI on teachers for the purposes of layoff. Additionally, on a comparison basis, three of the comparable schools contain additional restrictions while six of the comparable districts do not.

The Board contends the May 1 layoff notification date is reasonably necessary so as to afford greater flexibility to the District. They argue that the current February 28 layoff notification deadline is simply too early for the School Board to make an informed and sound managerial decision regarding layoff. They argue that accurate scheduling of classes is impossible to project by February 28 because enrollment figures, equalized valuations and the level of State aids are not known and cannot be reasonably projected at that time. They argue that the School Board needs the flexibility to adapt to changing conditions and that the February 28 notification date simply does not permit the flexibility to make changes as additional necessary facts become known. They further contend that the early notification date results in poor management practices. In order to protect itself in that respect, the Board necessarily must send layoff notices to more teachers than are actually necessary. Such action causes morale problems and creates a distraction and lowers the efficiency of those involved.

Finally, the Board argues that its May 1 proposed layoff notification date ties in with the issuance and return of individual teaching contracts which must be returned by April 15. At that point the Board then is aware of who will and who will not be returning to teach and it will then be in a position to determine with a greater degree of certainty and accuracy any layoff needs. Normally attrition has taken care of most staff reductions. By using the May 1 date, the Board can take advantage of the return of individual teacher contracts, take into account by attrition any that do not return to teach and thereby minimize the disruption of the staff and avoid layoff notices that are later rescinded.

Finally, the District argues that consideration of the comparables leads one to the finding that the layoff notification dates in comparable schools supports the District's offer as the most appropriate. The following data and comment is found at page 40 of the District brief.

LAYOFF NOTIFICATION DATES
IN
COMPARABLE SCHOOLS

Wrightstown	(U)	February 28
	(B)	May 1
Brillion		March 15
Denmark		Preliminary-May 1/Final-June 1
Freedom		Preliminary-May 1/Final-May 15
Hilbert		Not mentioned
Little Chute		May 1
Mishicot		April 15
Reedsville		May 1
Valders		April 1 or July 1 under exigent circumstances

U = Union final offer; B = Board final offer
Source: B-26

Not one school has a similar layoff notification date to the Union's proposal! Most districts give the same or less notice than the Board is proposing. The Arbitrator can easily see that May 1 is the most common notification date. The overwhelming practice in the comparables is to provide for a reasonable amount of notice to the employee while at the same time recognizing and balancing the needs of the District. The Board's offer best matches the prevailing pattern established among the comparable schools.

The second area of dispute under such article identified by the District, involved the District's proposal of a departmental type seniority based layoff system as opposed to the District-wide seniority layoff system proposed by the Association. The District contends the Union's proposal equates certification and qualification as being the same. They argue that they in fact are not. Simply because a teacher is certified or has been certified, does not mean that such teacher would make a good teacher in every position for which they are certified. Under the Union's proposal a teacher could displace a qualified teacher who has been teaching in a position for a number of years even though the one with the greater seniority has never taught in the area being bumped into.

The District argues at pages 43-44 of its brief that,

Wrightstown has an experienced staff with about 80 percent of its staff possessing DPI life licenses. These teaching certificates were issued many years ago enabling a teacher to teach a variety of subjects. Today teacher certification is much more narrow in scope with a requirement that teachers achieve additional coursework to maintain their certificate. This requirement does not apply to teachers holding life licenses.

It is conceivable that, under the Union's proposal, a high school teacher with a life license could bump an elementary teacher; even though the high school teacher has taught at the high school level for the past 25 years. The change in teaching methodologies at the high school versus elementary level are very different. From an educational standpoint, it would be very hard to justify an open-ended bumping procedure that would allow for this distinct possibility.

The Board's proposal contains language that allows teachers to move within departments if they have had successful teaching experience in that department within the past five years. The Board believes that this is a reasonable compromise designed to insure that students are receiving the best education from the most up-to-date teachers.

The District argues that the comparables are almost evenly split as between departmental layoffs and district-wide layoffs. They contend that the Board's proposal balances the need for employee protection via seniority with the interest of the District to be better able to retain current qualified teachers within the educational program.

The third issue within Article VII addressed by the District concerned that of language designed to break a tie between two competing teachers. The District argues that their proposal is a reasonable method to accomplish the goal of protecting employee rights of seniority and at the same time retaining the most qualified teacher on the teaching staff in the event of a tie. Under the departmentalized seniority system, seniority is the controlling factor along with certification in cases of lay-off. The seniority of employees are therefore protected under such procedure. Only in the case of ties do the other objective standards come into play. In that way the District will utilize such factors as good evaluations, willingness to handle extracurricular activities, willingness to contribute to the total educational program, and the advanced degree that a teacher might have earned. The Association's proposal places too much emphasis on seniority and ignores all other relevant factors. They contend the District offer is the more reasonable.

The fourth area of dispute identified by the District in the Article VII provisions involves that of recall of part-time teachers. The District proposes that part-time teachers have recall rights only to part-time jobs whereas the Association would grant part-time teachers recall rights according to seniority and certification to any part-time or full-time job opening.

The District argues that to grant part-time teachers recall rights to full-time jobs would go beyond the scope of the original hiring decision which the Board engages in in hiring full-time employees in the first instance. They contend that hiring a

teacher to a full-time position involves a multitude of factors which are evaluated by the District when deciding upon and hiring an applicant to a full-time position. The District considers much more than simply the certification of an applicant. If the Association's proposal was accepted, it would usurp the District's right and ability to apply all evaluation criteria available to applicants for full-time positions. They contend their proposal is the more reasonable.

Findings and Conclusions

The District's proposal provides that teachers scheduled for layoff shall be so notified by May 1. The Association's proposal would retain the February 28 notification date. From a review of the record evidence and the arguments of the parties on such issue, the arbitrator is of the judgment and persuasion that the District's offer is most supported by the statutory factors and evidence. The District's arguments concerning the advantages of such later notification date appear to contain merit. There is no doubt but that such date is more closely related to the date returning teachers must file their acceptance to a renewal contract with the District. It would further appear that such later date would permit the District to possess more specific knowledge and facts with respect to enrollment, state aides, and other factors upon which staffing and scheduling decisions are made.

It also appears that among the schools utilized by both parties as comparables, that the majority of such schools have moved from the February 28 date to a later date in the majority of instances. The May 1 notification date proposed by the District is therefore more supportable from a comparative analysis.

With respect to the Association's contention that the District's proposal contains a near fatal flaw in that it deletes in total the due process and hearing procedures provided within the application of Section 118.22 of the Wisconsin Statutes, the arbitrator is of the judgment that while the specific procedures embodied in such statutory section would serve to be made non-available, it would appear that an affected teacher would still have available the grievance procedure by which the District's action could be tested. It would seem that the availability to test the District's actions via the grievance and arbitration procedure would serve as an alternative procedure so that deletion of Section 118.22 procedure would not serve to leave an affected teacher totally unprotected.

Turning to the issue involving bumping rights and the departmental type seniority based layoff system proposed by the Board compared to the District-wide seniority system proposed by the Association, the arbitrator finds that each system is supportable by good and valid arguments. The Association's proposal simply places significantly greater, if not controlling, emphasis upon seniority within the system. The District offer, on the other hand, tends to modify the straight seniority and certification application.

A review of the layoff contractual provisions of the comparable districts is found in Board Exhibit No. 32 and reveals that departmentalized seniority layoff systems are contained in several of the comparable District contracts. In others where it is not departmentalized, one finds that the selection process is based on seniority and certification but in several cases there is a requirement that the employee to be laid off be permitted to bump only if he or she had actually taught the subject matter within a

certain specified number of years prior thereto. One therefore finds that even where there is district-wide application of seniority and certification, it is not completely subject to those two items such as proposed by the Association. It therefore appears to the undersigned that on the basis of comparative analysis of similar provisions in comparable districts that the District's proposal is more supportable.

Turning next to the proposals of the two parties with respect to breaking a tie between two competing applicants, the arbitrator is of the judgment that neither proposal is unreasonable. Further, it does not appear from the evidence that one proposal is shown to contain significantly greater merit or one worthy of significant preference over the other. The fact is that it would presumably be a rare instance when two applicants would bring such tie-breaking procedure into play. It simply is not deemed to be a significant element of the overall layoff clause so as to be a determining feature thereof.

Turning last to the issue involving recall rights of part-time teachers, the arbitrator is persuaded by the respective arguments of the parties that the District's proposal contains the greater merit. The District stated that when a new full-time position or a full-time existing position is available to be filled, that any laid off part-time employee would receive consideration along with any other applicants for such opening.

On this specific issue, it is again a case where the Association is proposing to give binding rights to staff with existing seniority where qualified by virtue of certification to any job to the exclusion of outside applicants. The Board objects to such provision for the reason that it removes the Board's ability to fully evaluate applicants to a full-time position which they otherwise exercise when evaluating applicants to full-time positions. The Association's intended purpose of their proposal is not without precedent. In both private and public sectors the granting of rights to an opening to current employees through binding or preferential provisions is commonplace. The Association's proposal would place a binding procedure on the District. It would seem that there exists ample room for the parties to compromise on such issue at some point so as to modify what the District herein proposes and at the same time to partially meet the Association's objectives through the negotiation of preference provisions for incumbent employees. Such item, however, is not so significant in the total layoff clause herein involved to be dominant to the final choice of one final offer over the other.

In the considered judgment of the undersigned a balanced weighing of the issues raised by the respective Article VII proposals favors the District's final offer as the more supportable and therefore the one to be preferred.

Class Load and Preparation Time

The Association has proposed impact language to replace the current class load language of Article VI, D, as a result of a threat by the Board to file for a declaratory ruling on class load language. As a result, the Union agreed to delete the current class load language and submitted language intended to address only the impact affect of class load and preparation time.

The Association set forth in its brief what it described as

pertinent facts established by the testimony during the hearing. They were,

1. High School teachers normal work load has been 25 teaching periods, 5 study halls, and 5 preparation periods per week. In addition a teacher was to have no more than 4 preparations.
2. A 6th teaching period could be assigned in lieu of a study hall assignment.
3. Attempts to negotiate overload pay as per Article VI, H. have not been successful. Consequently teachers who have had a 6th teaching assignment have not received any overload pay.
4. For some years the Board has been seriously considering changing to a 8 period day in the high school and it is their intent to assign teachers 6 teaching periods per day, one study hall assignment and 1 preparation period. Testimony made it clear that the 8 period day is still being given serious consideration by the Administration and Board for the near future.
5. Teacher leaders believe, rightly or wrongly, that one reason for the 8 period day would be to assign all teachers 6 teaching periods per day which would result in the layoff of some staff members and reduced teaching contracts for others.

The Association based and made some of its argument on the data contained in Board Exhibits 23 and 23A. Said two exhibits while unverifiable as to accuracy as claimed by the Union inasmuch as some of the information was presumably obtained from the individual employers by the District, were nevertheless utilized by the Association and argument made thereon and it is therefore of value to produce them herein. See Board Exhibit 23 and 23A attached hereto.

The Association argued that of the nine districts in the comparables, eight currently utilize a seven-period day. Of those eight, seven use the same standard teacher class load that is currently in effect in Wrightstown. Such data clearly supports the Association's attempt to present contract language that would tend to maintain the standards that are present in the current contract.

The Association had the following observation concerning Board Exhibit 23A.

...Again, since the Association had no opportunity to

the other hand, in the two Districts that do pay a significant amount for a 6th teaching, very few teachers are affected. Fairly clear evidence that a sizeable penalty for assigning teachers to an overload can serve as a deterrent to such a practice.

With respect to preparation time, the Association entered the following observations concerning comparable school districts.

Many of the district master contracts have guaranteed preparation time similar to that found in the current Wrightstown contract and the Association proposal.

<u>District</u>	<u>Contract Guaranteed Preparation Time</u>	<u>Contract Provision</u>
Brillion	All teachers equal to a high school period.	XV
Freedom	A guaranteed period for high school teachers.	XII, B
Hilbert	All teachers	VII
Little Chute	Impacted language - 1/6 of salary for high and middle school teachers if less than one preparation period. 1/390th of daily rate for elementary teachers if less than 60 minutes per day.	19 C
Valders	At least 250 minutes per week for all teachers. A 6th teaching assignment can only be given in lieu of a study hall assignment.	XVIII, B&C

As can be easily seen five of the eight (excludes Wrightstown) districts guarantee a preparation period or, in the case of Little Chute, provide overload pay if the Board chooses to take away a minimum preparation time.

There are three districts which have no preparation time language in the master contract. These are Denmark, Mishicot and Reedsville. The Wrightstown School Board wants to make it four.

In addressing the District's argument that the Association proposal would be prohibitive and costly, the Association argued that its proposal would entail no cost at all unless the Board chose to utilize the overload pay provision. They contend that it is obvious from the Board's position that it wants no overload pay provision in the contract so that it can unilaterally save money, overload teachers to a much greater extent than it already does and require six teaching assignments for all high school staff members without paying anything additional for such additional services received.

The District argues that the Association's proposal represents a far reaching and substantial change in the status quo that amounts to a complete restructuring of the parties' relationship. They contend the Union has failed to meet its burden of proof necessary to add an overload pay provision to the contract. They contend it is a well known and accepted principle of interest arbitration that an arbitrator ought not impose on the parties a proposal that radically changes the status quo unless an extremely persuasive case can be made to do so. They contend the Association's final offer on work load and preparation time is wholly inconsistent with that principle. They contend in the first instance, that the Association has established no need for overload pay. The evidence indicates that only one teacher has

been assigned a sixth class period in the 1985-86 school year and that several others have only on occasion been assigned a sixth class. Given the fact that there have been so few sixth period assignments over the past 15 years, the Association has simply failed to establish a solid basis or need for its overload proposal. Further, although there has been discussion about a possible eight-period day, the Union's proposal would effectively guarantee no eight-period day because the cost thereof would be prohibitive. The Board's flexibility to then adjust and meet the curriculum needs of students and offer new courses would be severely limited. Such proposal is clearly not in the best interests of the public nor the students.

The District further argued that the Association's proposal is ambiguous and costly. It addresses such matter in its brief as follows:

The Union's proposal on overload is ambiguous, vague and unclear which will certainly result in future grievances. The Board strongly objects to the Union's language because it is not clear exactly what is covered by overload pay. The Union presented one witness who may or may not be entitled to overload pay depending on the interpretation one gives the Union's language. Because overload is not strictly defined in the Union proposal it will result in conceivably all of the high school staff receiving overload sixth assignment pay for what has been over the years a standard contractual agreement that a teacher can be assigned six periods of work as long as they have one preparation period and one lunch period. Dr. Lark mentioned several of the other possible sixth assignments above (e.g. coordinator, supervisor, athletic director, etc.).

The cost of the Union's language, read in the most broadest terms, would be 20 staff members times \$3,000 equals \$60,000. This would have changed the 1985-86 tax levy increase from \$88,884 (or 7%) to \$148,884 or a 12% increase. This effect is significant, as testified to by Dr. Lark, and would make the present sixth assignment financially prohibitive. The Union proposal appears to be a way to circumvent the regular salary schedule and raise all teachers' salaries by at least an extra \$3,000 without being accountable to the public via the traditional salary schedule.

The Board believes that the Union's proposal is excessive and that the Board ends up paying twice. The Arbitrator should realize that the Board is not changing the teachers' workday. The teachers in Wrightstown still are scheduled to work from 7:55 a.m. until 3:45 p.m., with an early dismissal on Fridays, holidays and vacation days. Under the Union's proposal, the Board ends up paying twice for the Union's definition of 'overload': once for the sixth class assignment and once again for the loss of preparation time. This is an unjust enrichment that would accrue to the teachers and one which the Arbitrator should not accept.

The District argues also that the comparables support the District's position. Wrightstown teachers teach the second lowest number of face to face days and also have the second lowest number of total days. In addition, Wrightstown teachers have a relatively

short work day and teachers are allowed early dismissal on Fridays and the day before a holiday or a vacation period.

The District also argued that Exhibit 23A shows that other districts have assigned teachers to a sixth class much more frequently than has occurred at Wrightstown. Further, four of the districts who have assigned teachers the sixth class the most have done so without paying any overload pay. They contend the prevailing practice among the comparables clearly shows that the Association's proposal is in the minority.

With respect to guaranteed preparation time for elementary teachers, the District contends that not one single district of the comparables has similar language. Additionally, the District contends that the Union's proposal is extremely ambiguous. It does not define preparation time. One does not know whether it includes the beginning and end of a teacher's work day, whether it includes time between classes, and whether it includes time when other specialized classes are being taught to a teacher's students by another. The District argues that the Association's proposal should be rejected because it lacks sufficient detail and clarification to be operational without creating numerous disputes over its application.

Findings and Conclusions

Dealing first with the District's argument that the Association proposal should be rejected because it involves substantial changes in basic working conditions and change from the status quo without compelling reasons being shown therefor, the arbitrator finds that such argument has no basis in this case. The current contract contained class load and preparation time provisions that specified and set forth certain standards. Because of the arguably permissive nature of such provisions, the Association has sought to address the same provisions by an impact approach. While the Association's proposal of necessity must then approach the same problem from a different perspective, it necessarily will contain what on its face would appear to be new and substantively different provisions. The arbitrator is of the judgment that the Association's proposal in certain respects does exceed and go beyond coverage of the areas that were covered by the current class load and preparation time language. The arbitrator, however, is unable to determine the reason for the presence of such extensions in the final offer. There is no evidence in the record to indicate to what extent the parties bargained in good faith through exchange of proposals on substantive language dealing with impact in such article. In the final offers, however, the District made no offer on any part of class load and preparation time for substitution of the language found in the current contract. One cannot then determine as to whether or not the parties negotiated on the language contained in the Association's final offer so as to lead to any possible modification or compromise on the part of the Association with respect to some of such provisions. If in fact there had been no, or very little, negotiations between the parties on proposed substitution language for such article, it is understandable that the Association's proposal may then be somewhat far reaching and be arguably lacking in some respects as to specificity and ambiguities.

It seems to the arbitrator that the fact that the District has proposed no language in such area as a substitute for the current class load preparation time provisions, constitutes a much more substantial deviation from the status quo than does the provisions proposed by the Association. Under the current contractual provisions, teachers did have some protection from

the District's unilateral actions that might occur which would severely and significantly change the work loads of teachers and available preparation time that they enjoy under a current scheduling structure. In the absence of any restrictions, standards or impact provision language in the contract, teachers operate at the unilateral whim of the District. That is not to say that the District would in fact take action that would impose unreasonable and arbitrary burdens on the teachers, but the fact remains that the possibility is available without redress being available to the teacher or Association.

The arbitrator simply is unable to accept the District's argument that the Association has not shown a need for impact language on class load or prep time. Class load and prep time is a significant and important subject matter to teachers. It directly involves their working conditions. If one were to accept the District's argument on this subject matter, one could apply the same argument to a Union's first request to incorporate a layoff and recall provision in the contract to be based on seniority. Under the District's argument, if there were no contractual provisions dealing with such subject matter in the contract, the argument would be that to add such language would alter the status quo without there being a showing of need. The argument further would say that because we have always unilaterally followed seniority in layoffs and recall, there is no need for incorporating it into the contract. Such argument begs the question because based on such argument, where employees first organize and seek to enter into a first contract, the argument would be made that they do not need a contract dealing with anything because it would change the status quo. That is carrying it to the point of being ridiculous, but in the judgment of the arbitrator, the subject matter of class load and prep time is an important area that should be dealt with in a labor contract.

There is one aspect of this case that serves to delete the importance of that issue at this time and in this case. This case involves the 1986-87 school year. At this time the school year is approximately one-half over. It is not likely that the District could impose significant changes in class load and preparation time so as to impact severely upon teachers during the term of the contract covered by this arbitration. That is not to say that such opportunity would not be present in other school years. The fact of the matter is, however, that the contract subject to this arbitration is limited to the 1986-87 school year. The parties can engage in negotiations on impact language for future contracts.

It does seem to the arbitrator that there are some deficiencies and potential cost exposures in the Association's proposal that may be subject to reasonable compromise through negotiations. Ignoring the subject matter area and failing to negotiate any type of impact language as replacement for the previous class load and preparation time provisions, is assuredly not reasonable. The teachers and Association are clearly entitled to the inclusion of contractual provisions covering such an important area the same as they are entitled to a salary schedule, seniority and layoff provisions, and other similarly important contract subject areas.

On this issue, the District's failure to propose any language on such area causes the Association proposal to be preferred.

Additional Extracurricular Duties

The Association has proposed that dance chaperones, dance cleanup chaperones and float chaperones be added to the extracurricular duties and that the rate of pay be \$9.00 per person per event.

The Association contends that Association Exhibit No. 34 reveals that the rate of pay requested is reasonable in comparison to the comparable districts. In addition, they contend their exhibit shows that other districts pay teachers for such type activities.

The District contends the Association's exhibit is ambiguous as to whether or not extracurricular pay is in fact paid for the specific chaperon activities requested. They argue that under the current agreement, teachers may be assigned one extra duty without extra payment. They argue that chaperon duties fall within the scope of that language and the Union's proposal constitutes a change in the status quo.

Findings and Conclusion

The arbitrator finds the evidence to be inconclusive on such issue. One cannot tell from the evidence as to whether or not the extra duty without extra payment referred to by the Employer is one that can be totally divorced from the teachers' normal schedule of hours or at least scheduled contiguous to their normal work day. One further cannot determine precisely from the exhibits as to whether or not the comparable districts pay extra for chaperon type duties. It would appear that some do while others appear to be questionable. In the final analysis, such issue was not treated in detail by either party and was acknowledged as being a minor issue in comparison to the other issues presented in this arbitration. A finding one way or the other on this issue will therefore not determine the ultimate outcome of this case.

Final Findings and Conclusions

On the basis of the above facts and discussion thereon, the arbitrator reaches the overall conclusion that application of the statutory factors to the various issues in dispute between the parties herein leads to the conclusion that the total final offer of the District is subject to the greater support and is found to be the one preferred.

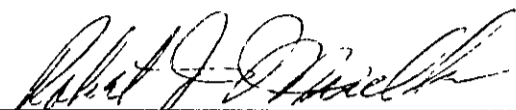
The undersigned finds the salary and salary schedule issue and the layoff issue as contained in the District's proposal to be the most supported by the applicable considerations under the statutory factors.

The undersigned finds the class load and preparation time issue as proposed in the Association's final proposal to be the one most supported and the one to be preferred. If such issue were to be a part of a two-year contract so that the impact of the class load and preparation time issue could be impacted upon the teachers by unilateral action of the District without procedure for redressing substantial impact changes, the arbitrator would be inclined to place much more weight upon such issue to the possible tipping of the scales in total to selection of the Association final offer. Because of the fact that this arbitration involves only the 1986-87 school year contract, the arbitrator is not inclined to place controlling weight upon such issue.

It is therefore concluded that based on an overall evaluation and balancing of the respective issues that the arbitrator issues the following

AWARD

That the final offer of the District be awarded and the parties are directed to incorporate such provisions into the 1986-87 contract as finalized.



Robert J. Mueller

Dated at Madison, Wisconsin
this 29th day of December, 1986.

OLYMPIAN ATHLETIC CONFERENCE
AND LITTLE CHUTE
CLASS PERIOD STRUCTURE

District	PERIODS PER DAY FOR :				Length of class periods	Does district pay "premium" or "overload" pay?	TOTAL	How many rec'd it in 1985-86?
	Number class periods in normal work day.	Prep time	Study Hall	Teaching Class				
Brillion	8	2	-	6 (could include one study hall)	47 min.	No	-	-
Denmark	7	1	1	5	53 min.	No	-	-
Freedom	7	1	1	5	49 min.	Yes	\$100/Qtr	9
Hilbert	7	1	0	6	50 min.	Yes	\$8.50/per.	0
Little Chute	7	1	1	5	52 min.	Yes	1/6 contracted salary	2
Mishicot	7	1	1	5 (can be 6 w/no study hall)	52 min.	No	-	-
Reedsville	7	1	1	5	53 min.	No	-	-
Valders	7	1	1	5	53 min.	Yes	1/6 of tchr. base salary minus \$200 for a semester or \$400 for a year-long course.	1 (for a semester)
Wrightstown	7	1	1	5	51 min.	No	-	-

OLYMPIAN ATHLETIC CONFERENCE PLUS LITTLE CHUTE

SUMMARY OF 6th CLASS ASSIGNMENT

1985 - 1986

<u>District</u>	<u># HIGH SCHOOL TEACHERS IN DISTRICT</u>	<u># ASSIGNED 6TH CLASS OF TEACHING *</u>	<u>\$ RECEIVED FOR TEACHING 6TH CLASS</u>
Brillion	32	16	- 0 -
Denmark	31	2	- 0 -
Freedom	37	9 (3 full year, 3 one sem., 2-3 quarters, 1-1 quarter)	\$100/quarter
Hilbert	16.2	7	- 0 -
Little Chute	26	3 (2 full year, 1 - 1 semester)	1/6 daily rate (contract amt. ÷ 190 days)
Mishicot	24	9	- 0 -
Reedsville	27	12	- 0 -
Valders	32 full 2 - ½ time	1 (for 1 semester)	\$1,858 for 1 sem.
Wrightstown	20	1	- 0 -

* 6th class meaning actual teaching in front of a class,
not another assignment such as study hall, curriculum
writing, etc.

SOURCE: WASB Survey of District Administrators