BEFORE THE ARBITRATOR

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| In the Matter of the Arbitration of a Dispute Between | |
| LADYSMITH-HAWKINS SCHOOL DISTRICT | |
| and | Case 16 No. 40385 MA-5054 |
| NORTHWEST UNITED EDUCATORS | |

Appearances:
Mr. Alan D. Manson, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of the Union.
Mulcahy & Wherry, S.C., Attorneys at Law, 715 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, by Mr. Stevens L. Riley, appearing on behalf of the District.

## ARBITRATION AWARD

Northwest United Educators, hereinafter referred to as the Union or NUE and the Ladysmith-Hawkins School District, hereinafter referred to as the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the District, requested the Wisconsin Employment Relations Commission to appoint an Arbitrator to hear and decide the instant dispute. On May 4, 1988, the Commission appointed Mr. William C. Houlihan, a member of its staff, as impartial Arbitrator to resolve the dispute. Thereafter, hearing in the matter was held in abeyance pending the parties' attempt to enter into a stipulation of facts. The parties' attempts to enter into a stipulation of facts being unsuccessful, the matter was scheduled for hearing. Ms. Coleen A. Burns, a member of the Commissions's staff, was substituted as Arbitrator to hear and decide the instant dispute. Hearing was held in Ladysmith, Wisconsin on March 30, 1989. The record was closed upon receipt of posthearing briefs on May 4, 1989.

## ISSUE

The parties stipulated to the following statement of the issue:

> Did the District, by its actions in canceling paid lunch for the cooks, violate just-cause standards for reduction in rank or compensation in the negotiated agreement (Article 5(A))?
>
> If so, what is the appropriate remedy?

## RELEVANT CONTRACT LANGUAGE

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3. Management Rights

While it is agreed that NUE has the exclusive right to negotiate for associate staff as provided by law on questions of wages, hours, and working conditions, it is also expressly recognized and hereby agreed that:

A. The School Board and its agents have and will retain the exclusive right and responsibility in accordance with applicable law, rules, and regulations to select and establish the framework of educational policy and projects.

B. This written agreement between NUE and the School Board constitutes the entire agreement between said parties on all matters pertaining to wages, hours, and working conditions. All matters not specifically covered in this written agreement are and shall remain exclusively the prerogative of the School Board for the term of the agreement and NUE waives and gives up any right to negotiate further on wages, hours, and working conditions for the period covered by this agreement.

C. Rules, regulations, and policies of the school may be hereinafter adopted by the

School Board on any matter not specifically covered by this agreement. Such rules, regulations, and policies adopted in the future shall become effective and binding on all employees provided, however, that before a new rule, regulation, or policy becomes effective, at least five (5) days written notice of the proposed rule, regulation, or policy shall be given to the employees. Written notice thereof may be given by deposit in the employee's mail boxes, by posting on the employee bulletin board or in such manner likely to give notice as the School Board of (sic) Administrator shall determine.

. . .

5. Employee Rights

A. Following a six (6) month probationary period, no employee shall be disciplined, reduced in rank or compensation, or discharged without just cause. The probationary period shall be defined as a cumulative total of six months actual employment in the same position.

. . .

9. General Provisions

A. This Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary mutual consent of the parties in written and signed amendment to this Agreement.

BACKGROUND

NUE has represented the Ladysmith Associate Staff, including hot lunch employes, since 1981-82. The first complete collective bargaining agreement was the 1982-83 agreement. The Management Rights provision from that 1982-83 agreement (Article 15) is unchanged in its content and appears in the 1986-88 agreement as Article 3. The Employee Rights provision (Article 4) of the 1982-83 agreement appears unchanged as Article 5 in the 1986-88 contract.

Since before the 1981-82 agreement and up until February 1, 1988, the normal work day for the cooks has remained substantially the same. The cooks, who are on duty during their lunch, receive a paid lunch period and are unable to leave the premises during their paid lunch period. Since before 1981-82 and up until February 1, 1988, the cooks were permitted to eat, as their lunch, the food which had been prepared for the hot lunch program and, further, the cooks were not required to compensate the District for this food.

On January 27, 1988, District Administrator, William F. Bobbe, issued the following memo to Louise Warner:

> As you have probably heard, the Food Service program has been struggling financially. It has been brought to my attention that many people have been receiving free lunch. This letter is to inform you that the District can no longer afford to provide this benefit. It may not seem like much to the individual but collectively the value of this benefit is $5,760. This will be effective beginning February 1, 1988.
>
> Your cooperation would be greatly appreciated.

Prior to issuing the memo of January 27, 1988, the District did not communicate to any NUE representative that it intended to no longer provide the cooks with the benefit of a paid lunch. Since February 1, 1988, the cooks have had to either buy lunch tickets from the District to eat the hot lunch program food, or bring food from home, or not eat during their lunch period. Individual cooks have done all three, i.e., some have purchased hot lunch tickets from the District, others have brought their own lunch from home, and others have not eaten during their lunch period.

Certain teachers have been provided with paid lunch by the District while serving as lunchroom supervisors. During the 1987-88 school year, paid lunches for those teachers were discontinued when they were relieved of their noon supervision duties.

There are thirteen cooks in the bargaining unit who have been affected by this change. There are 180 student days during the school year when hot lunches are served. The price of a lunch ticket for an adult, such as a cook, was $1.25 in 1987-88.

On or about February 2, 1988, Union Representative, Alan D. Manson, filed a grievance alleging that the District violated Article 5, Part A of the collective bargaining agreement by unilaterally terminating the "free lunch" benefit. In remedy of the alleged contract violation, the Union requested that the District rescind the memo of January 27, 1988, and restore the "free lunch" benefit to the employes affected, and to make whole any employe for any loss suffered as a result of the termination of the "free lunch" benefit. Thereafter, the grievance was denied by the District and submitted to grievance arbitration.

POSITIONS OF THE PARTIES

Union

The critical question to be determined is whether a lunch each workday, paid for by the District, worth $1.25 per day in 1987-88, and available continuously to all bargaining unit cooks from before the first Union contract in 1981 through a series of collective bargaining agreements until terminated by unilateral action of the District on February 1, 1988, constitutes a form of compensation. If it does, then it should be found by the Arbitrator that the unilateral discontinuance of the paid lunch benefit is a "reduction in rank or compensation" within the meaning of Article 5(A) of the parties' collective bargaining agreement. Inasmuch as "compensation" is a matter specifically covered by the written agreement, such a finding by the Arbitrator would make the District's reliance on Management Rights language inappropriate.

The District has given no substantial reason for making this change in the cooks' total compensation, at least none that appears remotely to meet the just-cause standard required to reduce an employe's compensation. The District is in a quandary. The more it claims the cost of the cooks' lunch to be, the greater the substance given to the Union position that a transfer of that cost to the employes results in a reduction in their compensation.

Had the parties intended the term "compensation" to cover only wages, then the parties would not have used "compensation", but rather "wages". Compensation includes wages and other forms of remuneration, such as employer retirement payments, insurance benefits, and the established fringe benefit of access by the cooks to eat the food they prepare each day as their own noon meal without paying the District for a meal ticket. This is not a free lunch, this is a negotiated benefit which is a form of compensation. Wisconsin Employment Relations Commission Arbitrator, Douglas Knudson, has found that when an employer required employes to pay to attend an inservice where previously the employes had not had to pay, that "such payment was a reduction in the teachers' compensation" (cites omitted).

The cooks' paid lunch benefit is a long-acknowledged and fitting part of the total compensation of the cooks. Not only are the cooks paid the lowest hourly wage, they are the only bargaining unit employes who are on duty during their lunch, paid wages during their lunch, and unable (due to the demands of their working conditions) to leave the premises during that lunch period. While the District has stated that it can no longer afford to provide this benefit, the Union suggests that a maximum $3,000 per year total cost ($225 per employe per year) is not an amount sufficient to justify such a claim by the District, particularly since the District has paid this benefit continuously since before 1981. While the District may well be concerned about its food service budget balance, a deficit in such food service budget does not provide the District with the right to abrogate the terms of a collective bargaining agreement and take away negotiated benefits.

As to its concerns for equity, the concept of equity, if anything, seems to justify the continuation of the paid lunch for cooks since they are still required to work during their lunch hour, while no one else is required to do so. The teachers, who were receiving paid lunch in exchange for supervising the lunch rooms, had this benefit discontinued when the teachers were released from their noon supervision duties. The Union respectfully requests the Arbitrator to find that the paid lunch benefit is a part of the total compensation of the cooks and, therefore, subject to the just-cause standard for reduction in compensation. The Union urges the Arbitrator to find that the District has not provided a just cause for a reduction in the compensation of the cooks. As remedy for this contract violation, the Union asks that the District be ordered to rescind its memo of January 27, 1988, and to make whole those cooks who suffered a loss as a result of that memo.

At the hearing, the District claimed and the Union did not dispute, that the District has not been reporting the cooks' lunches on their W-2 forms. However, the record is still silent as to whether or not the cooks individually reported the lunches as wages or not.

The District's claim that the parties agree that the value of the free or paid lunch has never been bargained at the table, is clearly and directly contested by the testimony of three witnesses that the Union did negotiate the protection of such compensation as paid lunches when the parties negotiated the just-cause language standard. As Union Representative, Al Manson, testified at hearing, he served as the chief spokesman for the Union during the negotiations for the 1982-83 collective bargaining agreement. Manson testified that the District asked what a reduction in rank would mean for a support staff employe as opposed to a teacher, and the Union replied that a transfer to a less desirable building or time slot of work would be examples. When the District asked, at the bargaining table, what compensation meant, Manson testified that he replied that it was wages and all current or existing fringe benefits that would cost employes money if not kept. Manson testified that the paid lunch tickets for cooks were not specifically mentioned in this dialogue. Manson also testified that no mention was made of the one-half-hour, paid meal break for night custodians, which is relevant to subsequent developments described below. Rod Marinucci and Bob Mattson, Union negotiators who were present during the bargaining session described by Manson, confirmed all of Manson's testimony. It is, therefore, unmistakably clear that the express intent and mutually accepted meaning of the phrase "reduced in rank or compensation" includes wages and those fringe benefits existing in 1982-83, the loss of which would cost employes money. Since the District's unilateral decision to require the cooks to pay for their lunch tickets, which they had not had to do since the contract was negotiated, does result in an increased cost to the cooks to cover a loss in benefits. Thus, the District's action is subject to the just-cause standard. At hearing, Marinucci testified that since the cooks were the lowest paid (hourly rate) employes in the bargaining unit, the Union had pointed this out to the District at the bargaining table during several attempts to obtain a higher percentage or cents-per-hour rate increase for the cooks than for other bargaining unit members. In connection with these bargaining table discussions and the agreements which resulted, Marinucci testified that the Union had some success in getting a higher raise for cooks, but not as much as the Union had requested. Marinucci further testified that in response to such requests by the Union, the District, at the bargaining table, had pointed out that the cooks had paid lunch tickets and, therefore, presumably, did not need as much of an extra increase as asked for by the Union. The relevance of this bargaining history is that, not only in the original 1982-83 negotiation for the just-cause language, but also in various subsequent bargaining sessions, for successor agreements, there was a link between fringe benefits and wages established for the purposes of negotiated compensation. The District was aware of the paid lunch benefit for the cooks and used that knowledge to argue against a Union proposal to provide the cooks a wage rate increase above that of the other bargaining unit members.

Marinucci also provided undisputed testimony involving the resolution of a potential grievance regarding the paid, one-half-hour meal break for night custodians. The matter was resolved when the Superintendent was informed that the one-half-hour extra pay for night custodians was a part of the bargaining history, including references to bargaining table dialogue remarkably similar to that outlined above for the cooks. Marinucci testified, and Union Exhibit 3 shows, that in past negotiations the District referred to the paid, one-half-hour meal break for night custodians when the Union proposed a night differential pay raise for those custodians. As indicated above, Manson testified that in the 1982 negotiations for just cause, the one-half-hour, paid lunch for night custodians was not mentioned in connection with the agreement on the just-cause standard for compensation.

The Exhibits entered into the record at hearing demonstrate that, until the arrival of the new Superintendent, the District normally ran a significant deficit in the food service annual budget. Whether this was a conscious policy based on a theory of providing a community of citizens with a higher quality and quantity of food in the lunch program is not known. It is apparent from the testimony of the Superintendent that the large deficits in the food service budget have been decreasing for some time. However, the actual amount "saved" by removing a negotiated benefit is, albeit small, irrelevant to the issue. The District does not have the right to unilaterally slash any wages or benefits during the term of a collective bargaining agreement simply because it desires to balance one portion of its overall budget which has traditionally not been balanced.

District

The termination of the cooks' free lunch by the District in January, 1988, did not constitute a reduction in the compensation as that term is used in Section A of Article 5 of the parties' collective bargaining agreement. Even if the Arbitrator should find that the termination of the free lunch constituted a reduction in compensation, the Union has expressly waived its right to bargain or grieve the decision to do so. Even if the Arbitrator should find that the Union did not waive its right to contest the District's decision, there was no violation of Article 5(A) because the District had just cause for the action taken.

The record demonstrates that the free lunch was a gift or gratuity. It was unilaterally instituted by the District long before the bargaining unit

came into existence and, therefore, cannot be considered as having been bargained for.

As the parties stipulated, the free lunch was never treated by the District as part of the cooks' compensation package reported to the IRS on the cooks' W-2 forms. Although the Union would not stipulate that the cooks had not indicated the value of the free lunches on their Wisconsin or Federal income tax returns, he offered no proof that any of them had. Inasmuch as the fact of whether or not the cooks treated the value of the free lunch as income was specifically questioned by Mr. Manson in his February 2, 1989, letter to Arbitrator Houlihan, and given the fact that it would be more natural for members of the bargaining unit to be called as witnesses by Mr. Manson than by the District, the Arbitrator may reasonably infer that the evidence which would have been given by the witnesses on the subject would be unfavorable to the Union (Wisconsin Jury Instructions/Civil, "410".) In other words, the Arbitrator may--and should--draw the conclusion that the value of the free lunch was not treated as income either by the District or by the cooks. During his testimony as a witness, Mr. Manson conceded that both parties had referred to costing data prepared by the District and that, to the best of his recollection, neither the cost of the free lunch to the District nor its value to the employes had been taken into consideration. As established by the testimony of District Administrator Bobbe on cross-examination, that portion of the preliminary budget for the food service operation, which includes specific references to the salaries and benefits received by cooks, does not include the value of the free lunch. The Black's Law Dictionary definition of "compensation" cited with apparent approval in the Union's brief, although referring to remuneration in any form, goes on to limit these forms to "salaries and fees, or both combined". The same conclusion is reached if one refers to Webster's New Collegiate Dictionary, 1973. If one starts with "compensation", and follows through the references to "payment" and "remuneration" which lead to pay and "recompense", it is clear that the word refers to wages, salaries or the equivalent. It does not include gifts or gratuities.

As a witness, Union Representative Manson described, somewhat in detail, discussions which took place during negotiations for the initial bargaining agreement, at which all of the provisions involved in this matter were agreed upon (which have remained unchanged through all successor contracts). Two aspects of his testimony are significant. He expressly conceded that at no time was the cooks' free lunch ever discussed. He unqualifiedly admitted that when questioned by the District's negotiators as to what constituted "compensation", he referred only to wages and fringe benefits. It is respectfully submitted that the "fringe benefits" to which Mr. Manson referred were understood by both parties at the time of that discussion to include the normal monetary benefits referred to in the Union's brief and in the costing data prepared by the District from which the parties worked, i.e., retirement, insurance and paid leave--nothing more. Such a conclusion is consistent with both dictionary definitions of "compensation". Mr. Manson is guilty of considerable overreaching in his attempt to graft the free lunch on to the body of the parties' original negotiated agreement.

Assuming arguendo, that Mr. Manson can successfully accomplish the graft, the District respectfully submits that by agreeing to the Management Rights language in the collective bargaining agreement, particularly when viewed in conjunction with the parties' bargaining history, the Union effectively waived its right to bargain over the termination of the cooks' free lunch or to grieve the District's decision to do so.

Breaking the Management Rights article down into its basic components, we find the following:

1. The parties' express agreement that the written document constitutes the entire agreement on all matters relating to wages, hours and working conditions.

2. The parties' express agreement that all matters not covered by the agreement remain exclusively the prerogative of the Employer.

3. The right expressly granted to the Employer to adopt rules, regulations and policies on any matters not specifically covered by the contract, provided the employes are given notice thereof.

4. The Union's express waiver of its right to bargain over matters not covered by the agreement for the term of the contract.

If the foregoing does not, by itself, establish the Union's waiver of any rights it might have to question the Employer's decision to terminate the free lunch, it was also established at the hearing that, during the negotiations of the first collective bargaining agreement between the parties, the Union sought

inclusion of the following language:

4. Standards Clause

> The Employer agrees that those rules, policies, and practices in effect when the Agreement was signed shall remain in effect during the term of the Agreement.

The Employer rejected this request and was successful in keeping the language out of the agreement. The Arbitrator's attention is respectfully directed to the citation of Aeronica, Inc. (cites omitted). The facts here are exactly the same as in Aeronica.

Even if the termination of the free lunch constituted a reduction in compensation, because the free lunch itself was never included in the written agreement, it is a subject on which the Union "signed off" when it dropped its request for maintenance of standards language and agreed to the Management Rights language proposed by the District.

Although the Union had opportunity to raise the issue of the free lunch at the time the initial contract was negotiated, thus avoiding the waiver, it did not do so. If it is as important an item as the Union would have us believe, it is difficult to understand why the Union did not put it on the table in the first place. In the event the Arbitrator should decide that the Union has not waived its right to challenge the Employer's termination of the free lunch, and further decides that the free lunch itself constitutes "compensation" under the terms of the contract, it is the Employer's contention that there still is no contract violation because there existed just cause for its action.

The traditional definitions of "just cause" developed by arbitrators over the years were, in the vast majority of cases, involved with the discharge or discipline of employes. These definitions obviously have only very limited application to the case at hand. However, guidelines do exist. In an arbitration award involving the School District of Juda, Arbitrator Sharon Imes held that for there to be just cause for a layoff it must have been:

(a) consistent with contractual requirements;

(b) consistent with other pertinent rules, regulations or laws; and

(c) neither arbitrary nor capricious.

These criteria clearly have been met by the Employer in this case. The District found it necessary to correct a serious deficit in its food service budget and took several steps to do so. These steps included much more than merely terminating the practice of providing free lunch to the cooks. In fact, that was only a small part of the action taken. No contractual requirements were violated or ignored, the action was not inconsistent with any applicable rules, regulations or laws, and the action clearly was not an arbitrary or capricious swipe at the cooks. There was just cause for the District's termination of the cooks' free lunch.

The Union's reliance on the testimony regarding the settlement of the dispute regarding the paid lunch hour for night custodians, and attempts by the Union to obtain greater than normal increases for cooks during post-1984 contract negotiations are irrelevant to the issue at hand. When the Superintendent met with the Union for an explanation as to why the custodians were receiving a paid lunch period, they discovered that, at the time of hire, the night custodians were informed that they would receive a paid lunch period. Via a non-precedent-setting agreement, the parties agreed to continue the situation. The fact that the condition was not reflected in the bargaining agreement was never a factor, perhaps because of the loss of one-half hour of pay per employe per shift would clearly result in a decrease in wages. The pay could hardly be described as a gratuity or gift.

When asked what arguments the District used to support its opposition to extraordinary increases, Marinucci referred only to the cooks' paid lunch period. (The cooks do not punch out to eat, but eat when convenient during their shifts.) It was only after prompting by Mr. Manson that Marinucci "remembered" that the free lunch may have been mentioned, too. Remarkably enough, when the undersigned later led him through the same scenario, Marinucci again mentioned only the paid lunch period being raised by the Employer as an argument in opposition to the Union's attempt to gain an extraordinary increase. The facts here are similar to those in Vulcan Iron Works, Inc. (cites omitted) in which Arbitrator Williams found that an annual Thanksgiving turkey from the Company is analogous to a gift and, as such, may be discontinued by the Company at any time, with or without notice, and without prior negotiation. In concluding that the turkeys were gifts, and not wages, the Arbitrator found that the value of the turkey was not listed on the employes' W-2 tax forms and the employes did not report the value of the turkeys as income. In Board of Public Utilities and IBEW (cites omitted), the Employer unilaterally discontinued a "free coffee" benefit to unionized employes after ten years of providing coffee at no charge. "Free coffee" was not specifically provided for in the labor agreement. In sustaining this grievance, the Arbitrator found that the evidence established that, during

negotiations, the Board cited its free coffee custom as an employe fringe benefit worth at least 3.38133 cents per hour to each employe and that the collective bargaining agreement was negotiated with both parties implicitly assuming that this well-established, fixed, and clearly enunciated free coffee practice would continue. The value of the paid lunch has never been bargained at the table and, thereby, has neither implicitly nor explicitly been incorporated into the labor contract. Rather, the free lunches for cooks were instituted unilaterally by the District and, therefore, can be unilaterally eliminated. The strong, unambiguous language of Article 3, Paragraph B, indicates that the Union knowingly and voluntarily waived its ability to negotiate matters not specifically set forth in the labor agreement. The facts in this case are similar to those in City of Tampa, Florida (cites omitted) where management for the City unilaterally eliminated a program which allowed police officers to "take home" assigned police vehicles. The Arbitrator denied the Union's grievance, not solely on the basis of the "zipper" clause, but upon specific language in the contract which provided that prevailing departmental policies could be altered only if the alteration was not performed in an arbitrary or capricious manner. The validity of "zipper" clauses has been upheld in the courts in Aronica, Inc. vs NLRB, wherein a Federal Court of Appeals ruled that Aronica could unilaterally eliminate the ongoing practice of giving its employes Christmas turkeys because of management's "zipper" clause and the Union's abandonment of a maintenance of benefits clause during contract negotiations. The "zipper" clause at issue now is similar to that in the Aronica case. NUE has expressly waived and given up any right to negotiate further on wages, hours and working conditions for the period covered by this agreement. By this waiver, NUE has given up its right to prosecute this action and, accordingly, the grievance should be dismissed.

Since the labor agreement between the District and NUE does not provide a definition for "just cause", the District believes that, reading the contract as a whole, the Arbitrator should interpret just cause in this case as a prohibition of arbitrary and capricious action by the District. The District action in this case, the elimination of free lunches, was not done in isolation but in conjunction with other cost-cutting measures. In addition, the District followed and fully complied with the notice requirements of Article 3(C). Accordingly, the District acted with "just cause" when it discontinued free lunches for certain employes. In conclusion, the termination of the free lunch was not a reduction in compensation for the cooks. Even if it were, the Union had clearly waived any right it might have to challenge the termination. Even if the Union did not waive its right to challenge the termination, just cause existed for the District's action. If the Arbitrator contends, after review, that the District improperly curtailed paid lunches for the cooks, then the District believes under the rationale of Arbitrator Crowley's decision in City of Madison (cites omitted) that any make-whole remedy be limited to the term of the labor agreement only, which in this case would be from February 1, 1988 to June 30, 1988. After June 30, 1988, any continuation or reinstatement of free lunches should be the subject of negotiations in the collective bargaining process.

DISCUSSION

The initial question to be determined herein is whether the provision of the "paid lunch" is "compensation" within the meaning of Article 5(A) of the parties' collective bargaining agreement. The term "compensation" is not defined in the parties' agreement and, thus, it is appropriate to consider the evidence of negotiations history to determine the definition intended by the parties.

Union Representative Manson acknowledges that the provision of the "paid lunch" was not specifically addressed by either party during the negotiation of the parties' initial collective bargaining agreement. Manson maintains, however, that the parties did discuss the definition of "compensation", as that term is used in the language of Article 5(A). According to Manson, District Representatives asked what was meant by "compensation" and Manson replied, "all wages and fringe benefits in effect which, if removed or reduced, would cause an employe to pay something". According to Manson, the Union had dropped its proposal for a standards clause and, thus, wanted to be specific that the language of Article 5(A) maintained existing standards affecting money. According to Manson, the District Representatives agreed to the language after being advised of the Union's position.

Union witness, Rod Marinucci, who has represented the Union during the bargaining of all of its contracts with the District, corroborated the testimony of Manson. Additionally, Marinucci, who was present during subsequent contract negotiations at times when Manson was absent, stated that the Union, on several occasions, had requested that the cooks, as the recipients of the lowest hourly wage, be given a higher percentage wage increase than other bargaining unit members. 1/ According to Marinucci, the

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1/ On cross-examination, Marinucci stated that he believed that the cooks did receive a special increase in the 1986-87 contract, but that the Union had attempted to seek a special increase "pretty much every time

District always responded to such requests by stating that the cooks "could eat what they were cooking and they got a paid lunch period". 2/

Manson's testimony and Marinucci's testimony was corroborated by Union witness, Bob Mattson, who has been a Union bargaining representative since the time the parties negotiated their initial contract. The testimony of the Union witnesses concerning the parties' bargaining history was not contradicted by any other witness. 3/

The testimony of Manson demonstrates that, at the time the parties bargained the language of Article 5(A), which language has remained the same, the Union put the District on notice that it considered the term "compensation" to include not only wages, but also existing fringe benefits, the reduction of which would cost an employe money. Since it is not evident that the District indicated that it had any disagreement with the Union's construction, the record supports the inference that the District agreed with the Union's construction. It is true that neither the District nor the Union expressly identified the cooks' "paid lunch" as "compensation" within the meaning of Article 5(A). Clearly, however, it is subsumed under the definition provided by the Union, i.e., it was an existing fringe benefit which, if removed or reduced, would cause the employe to "pay something", i.e., the employe would have to pay for the hot lunch.

Assuming arguendo, that Manson's testimony was not sufficient to demonstrate that the District had acquiesced to the Union's construction, the testimony of Marinucci is sufficient to persuade the undersigned that the District recognized that the provision of the "paid lunch" to the cooks was part of the cooks' compensation. It is true that the value of the lunches was not reported by the District as income on the cooks' W-2 forms and was not utilized by the District in costing proposals. This, however, does not alter the fact that the District, in discussions at the bargaining table, treated the cooks' "paid lunch" as a form of compensation.

For the reasons set forth above, the evidence of the parties' bargaining history leads the undersigned to construe the term "compensation", as that term is used in Article 5(A), to include the cooks' "paid lunch". Contrary to the argument of the District, the Union's claim does not involve a "matter not specifically covered" in the agreement, but rather, involves a "matter specifically covered by the agreement", i.e., it is compensation within the meaning of Article 5(A). Accordingly, the District's reliance on the language of Article 3(B), i.e., the "zipper" clause, is misplaced. For the same reason, the District cannot rely on the provisions of Article 3(C).

Having found the cooks' paid lunch to be "compensation", within the meaning of Article 5(A) of the parties' collective bargaining agreement, the question then becomes whether the District had "just cause" to eliminate the cooks' paid lunch. If not, then the District's conduct in eliminating the cooks' paid lunch is violative of Article 5(A).

As the District argues, many of the arbitral principles commonly relied upon to determine "just cause" have been developed within the context of discipline and discharge and, thus, have limited application to the present case. However, regardless of whether or not the case involves a disciplinary action, the Arbitrator is of the opinion that a "just-cause" standard requires more than a finding that the District's conduct has been "neither arbitrary nor capricious". Rather, the Arbitrator is persuaded that the record must demonstrate that the District had a good and sufficient reason to reduce the cooks' compensation.

During the 1987-88 school year, the District acquired a new Superintendent, Bobbe, who reviewed the lunch program and determined that the program was operating at a deficit and had been operating at a deficit for a number of years. Thereafter, Bobbe asked the Board of Education if it wished to continue to subsidize the food program from other District funds, as it had in the past, or if it wished to make the program budget balance, i.e., pay for itself. After being informed that the Board wished to have the program budget balanced, i.e., pay for itself, Bobbe introduced portion control and payment for milk break, increased adult lunch prices, laid off staff and eliminated the

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we bargained."

2/ Contrary to the District's representative, the undersigned found Marinucci's testimony to be clear and consistent.

3/ The District had one witness, Superintendent Bobbe, who was new to the District in September, 1987. At hearing, Bobbe stated that he was present during the negotiation of the most recent contract. While this contract term was not identified by Bobbe, other record evidence suggested that it was the July 1988--June 1990 contract and, thus, effective after the rise of the instant dispute.

cooks' paid lunches, as well as other employe paid lunches. 4/

While the District may have had a good reason to eliminate the cooks' paid lunch, i.e., to balance the food service program budget, such a reason is not sufficient to eliminate the free lunch. If the District wishes to balance its food service budget, then it may do so by generating sufficient revenue to cover the cooks' contractually required compensation, which includes the paid lunch. As the Union argues, to conclude that the District may unilaterally reduce employe compensation for the sake of a balanced budget would be to vitiate the collective bargaining agreement and render meaningless the collective bargaining process.

In conclusion, at the time the District unilaterally eliminated the cooks' paid lunch in February, 1988, the cooks' paid lunch was "compensation" within the meaning of Article 5(A) of the collective bargaining agreement in effect at that time. The District did not have just cause to unilaterally eliminate the cooks' paid lunch in February, 1988, and, thus, violated the provisions of Article 5(A) of the collective bargaining agreement when it eliminated the cooks' paid lunch.

In remedy of this violation, the District is to immediately restore the cooks' paid lunch and continue such paid lunch unless and until the paid lunch is discontinued in accordance with the requirements of the parties' collective

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4/ The affected employes, teachers, are not subject to the collective bargaining agreement in dispute herein.

bargaining agreement. 5/ In further remedy of this contract violation, the District is to reimburse each cook for each lunch which was lost as a result of the District's contract violation. In calculating this reimbursement, each lunch is to be valued at the price of the adult lunch ticket in effect at the time that the lunch was lost.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The District, by its actions in cancelling the paid lunch for the cooks, violated the just-cause standard for reduction in rank or compensation contained in Article 5(A) of the negotiated agreement.

2. The District is to immediately restore the cooks' paid lunch and continue the paid lunch, unless and until, the paid lunch is discontinued in accordance with the requirements of the parties' collective bargaining agreement.

3. The District is to immediately reimburse each cook for each lunch lost as a result of the District's contract violation.

Dated at Madison, Wisconsin this 11th day of August, 1989.

By _____
Coleen A. Burns, Examiner

5/ The District has argued that the Arbitrator should limit the terms of the make-whole remedy to the end of the 1986-88 contract period, i.e., June 30, 1988, because the continuation or reinstatement of the lunches should be the subject of negotiation in subsequent contract negotiations. To the extent that the District considers the subsequent contract negotiations to have affected the rights determined herein, such considerations are for another forum and cannot be determined on the basis of the record presented to the undersigned.