ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
NORTHEAST WISCONSIN TECHNICAL COLLEGE	)	CASE 91 NO. 54136 INT/ARB 7976
And	)	
NORTHEAST WISCONSIN TECHNICAL COLLEGE FACULTY ASSOCIATION	)	[Dec. No. 29320-A]

Impartial Arbitrator

William W. Petrie
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Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Green Bay, Wisconsin
October 13, 1998

Appearances

For the District	GODFREY & KAHN, S.C. By Robert W. Burns Attorney at Law Post Office Box 13067 Green Bay, WI 54307-3067
For the Association	BAYLAND TEACHERS UNITED By Miguel E. Salas, Executive Director Suzanne Dishaw-Britz, Associate Director 1136 North Military Avenue Green Bay, WI 54303

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Northeast Wisconsin Technical College Faculty Association, with the matters in dispute the wages, hours and conditions of employment for the AODA Specialist and the Student Health Nurse classifications, which classifications became a part of the bargaining unit pursuant to a modification of the description of the bargaining unit represented by the Association to include "...other related professional personnel who are employed in a professional capacity to work with students..."[1]

The parties met in continuing negotiations, and after they had failed to reach full agreement, the Association on June 4, 1996 filed a petition with the Commission seeking arbitration pursuant to Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on March 12, 1998 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on April 27, 1998 it issued an *order appointing arbitrator*, directing the undersigned to hear and decide the matter.

An interest arbitration hearing took place before the undersigned in Green Bay, Wisconsin on October 13, 1998, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and the record was kept open by agreement of the parties to allow them to modify certain exhibits and to make certain changes in their final offers. Both parties thereafter closed with the submission of post-hearing briefs and reply briefs, the last of which were received by the Arbitrator on February 25, 1999.

THE FINAL OFFERS OF THE PARTIES

The two relatively detailed final offers, hereby incorporated by reference into this decision, govern the wages, hours and conditions of employment for the AODA Specialist and the Student Health Nurse for November 6, 1995 through August 15, 1997. A copy of the parties' current collective

[1] See the November 6, 1995 order of WERC, a copy of which is contained in Association Exhibit #7.

bargaining agreement is included in the record as Association Exhibit #9, and the parties generally agree and disagree, as follows, relative to the application of this agreement to the two classifications:

(1) They agree that the terms "*other related professional personnel*" or "*other professionals*" should be added to the various articles, sections and points contained in the first eleven articles in the current agreement, to appropriately describe their intended applications to the Student Health Nurse and the AODA Specialist classifications.

(2) Apart from the above referenced change in *terminology*, the parties agree that Articles I, II, IV, V, VII, VIII, IX, X and XI should apply, without further change, to the Student Health Nurse and the AODA Specialist classifications.

(3) Relative to Article III, the parties agree that all of the subpoints of Sections B, C and D shall apply to the two new classifications; they disagree, however, relative to the Association's proposal that all of the subpoints of Section A also apply to these new classifications, versus the Employer proposal that only Section A, subpoint #3 apply.

(4) Relative to Article VI, the parties agree that all of the subpoints of Sections B, C, D, E and F shall apply to the two new classifications. The Association also proposes that all of the subpoints of Sections A, G and H shall apply, while the Employer proposes that Section A apply, with the single exception of subpoint #6.

(5) As an extension of the above, the parties each proposed language governing the placement of the two additional classifications into the collective agreement in the following generally described areas: *probation, discipline and cause*; *vacancies and transfers*; *reassignment, layoff and recall*; *and wages and hours*.

(6) Finally, the parties proposed the following levels of compensation for the two classifications.

(a) The Employer proposed annual rates for the AODA Specialist classification of $45,732 effective November 8, 1995, and $47,214 effective August 14, 1996; it proposed annual rates for the Student Health Nurse classification of $36,228 effective November 8, 1995, and $37,404 effective August 14, 1996.[2]

(b) The Association proposed annual rates for the AODA Specialist classification of $38,430 effective November 6, 1995, and $39,665 effective August 14, 1996; it proposed annual rates for the Student Health Nurse classification of $39,070 effective November 6, 1995, and $41,665 effective August 14, 1996.[3]

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[2] The Employer proposal is based upon a 12 month work year, prorated for less than full year assignments, and with new hires receiving 90% of the listed rate for the first year, 95% for the second year, and 100% beginning the third year of employment.

[3] The Association proposal is based upon a 35 hour work week, 213 work days per year, plus two inservice days and four professional days.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

> "7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature to administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
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> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
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> d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
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> e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
>
> f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
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> g. The average consumer prices for goods and services, commonly known as the cost-of-living.
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> h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
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> i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.
> j. Such other factors not confined to the foregoing, which are

normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE ASSOCIATION

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Association emphasized the following principal considerations and arguments.

(1) The previously established comparable pool is the most appropriate primary comparables to use in these proceedings.

(a) The Union and the Employer agree that the vocational, technical and adult education districts within the geographic proximity of the NETC should be used as comparables by the Arbitrator, but the Employer proposes to exclude Milwaukee Area Technical College and the Madison Area Technical College from its comparables.[4]

(b) The Employer includes private sector hospitals, and public and private sector employees wages in Door, Brown and Marinette Counties,[5] while the Union submits that private sector hospitals and selective use of county public health nurses should be excluded from arbitral consideration, and that Employer information relating to private sector employment is both selective, incomplete and cannot provide a reliable basis for comparison herein.

(c) In a previous interest arbitration decision, Arbitrator Sharon Imes outlined the appropriate comparables for consideration as follows: "Among those considered most important by this arbitrator are the vocational technical and adult education districts within the geographic proximity of Northeast Wisconsin Technical Institute, all vocational, technical and adult educational districts in the state and the K-12 feeder schools to Northeast Wisconsin Technical Institute."[6]

(i) Arbitrator Imes noted in the decision that both parties had submitted the same comparables, she defined the primary comparable group to be the geographically proximate technical colleges (Nicolet, Northcentral, Fox Valley, Lakeshore and Moraine Park).[7]

(ii) The remaining ten technical colleges across the state are also included as comparables, and the Arbitrator did not exclude Milwaukee and Madison from her discussion.

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[4] Citing the contents of Employer Exhibit #16.

[5] Citing the contents of Employer Exhibits #30-#44.

[6] Citing the *decision of Arbitrator Imes* in Northeast Wisconsin Vocational, Technical and Adult Education District, Dec. 17465-A, (1980)

[7] Citing Association Exhibit #9.

(d) The Employer's exclusion of Milwaukee and Madison is illogical, no explanation was offered at the hearing in support of their exclusion, and it is reasonable to infer that the action was based on the Student Health Nurse and AODA Specialist salary and benefits level at these colleges.

(2) The responsibilities of the accreted positions warrant placement on the existing salary scale.

(a) The largest difference between the parties' final offers is found in the wage proposals.

(i) In cases such as the one at hand, which involve the accretion of positions into an existing bargaining unit, a comparison of the wage offers between the accreted positions and others in the bargaining unit is more useful and significant, particularly when the accreted positions perform jobs of similar work to those already in the bargaining unit.

(ii) The Student Health Nurse and the AODA Specialist classifications perform similar work to the Counselors at the College, in that they are responsible for keeping students in school and assisting them in achieving their educational goal of graduation; in this sense they have the same mission as the teachers, which is why they were included in the bargaining unit in 1995.

(b) The Arbitrator should not base his decision on whether the accreted positions teach classes, but whether they have similar responsibilities and skills.

(i) Obviously the issue is not whether the accreted positions teach courses in a classroom, in that there are currently non-teachers at NETC paid according to the faculty salary schedule.

(ii) All of the Guidance Counselors and the Minority Affairs Coordinator are on the salary schedule, even though the Guidance Counselors are not teachers, and the Minority Affairs Coordinator is neither certified nor a teacher.

(c) The two accreted employees testified at length as to their work history, educational backgrounds and job responsibilities at the College.

(d) The credentials, duties, responsibilities and experience of AODA Specialist Dale Strebel are as follows:

(i) He has been employed by NETC since 1990 as the AODA counselor and the Traffic Safety Coordinator, he was previously employed as an alcohol and drug counselor for almost 13 years at the Brown County Mental Health Center, he is a state certified alcohol and drug counselor, he holds a Bachelor's degree in adult education and is currently enrolled in a Master's program in guidance and counseling, and his position with NETC requires him to maintain a five year AODA certification from the VTAE Board.

(ii) He described his basic job activities as follows: the prevention and intervention of alcohol and drug abuse, which includes teaching in the classroom and preparing

lesson plans for AODA prevention presentations; the planning and delivering of an annual Alcohol and Drug Awareness Week; providing and coordinating services to individuals who are in treatment or recovery, and working with them and their instructors on individual bases; coordinating the EAP program, including early intervention and prevention programs for the School Staff, which is contracted out; working with individual students, assessing them, and referring them for assistance, thus assisting them in achieving their personal goal and in the classroom; providing outreach services to area high schools and community groups.[8]

(iii) In addition to his counseling responsibilities, Mr. Strebel is a VTAE certified instructor for Department of Transportation Courses offered at NETC, he has developed the curriculum and courses for the traffic safety, group dynamics, multiple offender program and juvenile education, he has written curriculum for AODA education, he participates on the Board which develops statewide curriculum for multiple offender and group dynamics programs, he had taught juvenile AODA education courses and group dynamics, and he also held a VTAE certificate for teaching 500 level courses at Fox Valley Technical College.[9]

(iv) He has developed the program and the course curriculum of the Wisconsin Department of Transportation required NETC traffic safety program as part of his AODA Specialist position, which responsibilities are clearly comparable to any other faculty member or counselor at the College.[10]

(v) He is part of the counseling department, he regularly works with the other college counselors in assisting students and referring individuals to other agencies; he attends regular staff meetings with other counselors, and his primary difference with other counselors is that they are paid on the salary schedule and he is not.[11]

(vi) The fact that Mr. Strebel's position is largely funded by an annual grant should not be determinative, in that the Multi Cultural Student Counselor is also a grant position, but is paid according to the teaching salary schedule.

(vii) While the day to day responsibilities of the AODA Specialist are different from classroom teaching, the reason the position exists is to further the educational outcome for every student, the AODA

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[8] Citing the contents of Association Exhibits #56-#58, and the *testimony of Mr. Strebel* at Hearing Transcript, pages 94-95, 103-107 and 126.

[9] Citing the contents of Association Exhibit #58, and the *testimony of Mr. Strebel* at Hearing Transcript, pages 99, 108-110.

[10] Citing the testimony of Mr. Strebel at Hearing Transcript, page 127.

[11] Citing the contents of Association Exhibit #73, and *the testimony of Mr. Strebel* at Hearing Transcript, pages 113-114.

Specialist works with students on a daily basis, and it is appropriate to compensate his position in the same manner as every other professional employee in the bargaining unit.

(e) The credentials, duties, responsibilities and experience of Nurse Aimee Van Goethem are as follows:

(i) She was the College's Student Health Nurse from 1987 to 1996; prior to NETC she was employed for nine years at Bellin Memorial and St. Vincent Hospitals as a Registered Nurse to surgical and intensive care patients; her experience includes three years at Brown County Mental Health Center as a Staff Registered Nurse and Psychiatric Nursing Assistant; she was a teaching assistant at the University of Wisconsin-Green Bay, where she provided instruction to nursing students; and she has taught various health programs to students and staff during her tenure at NETC.[12]

(ii) She holds a technical nursing degree from the Bellin College of Nursing and a BSN from the University of Wisconsin-Green Bay; she completed a Bachelor's degree from UWGB with co-majors in humanity and psychology; she completed a Master's degree in nursing/health education from the University of Wisconsin-Oshkosh; she is certified as a college health nurse by the American Nurse's Association, and is certified in occupational health nursing by the American Board of Occupational Health Nurses; she had taken all but one of the VTAE-required certification courses for instructors, and she would have been eligible to teach either psychology or human development at NETC.[13]

[12] Citing the contents of Association Exhibit #26.

[13] Citing the contents of Association Exhibits #27 and #29, and the testimony of the Grievant at Hearing Transcript, pages 62-63 and 66.

(iii) No new instructor at NETC is certified to teach at time of hire, they obtain temporary certification until they complete the necessary course work for a complete certification, it is rare for instructors to hold a certification prior to being hired, because the Wisconsin Technical College System does not grant licenses until individuals are employed at a technical college; she needs only one course in the history and philosophy of the VTAE system to complete her instructor certificate; Mr. Evans testified that instructors are hired based on their experience and education and whether they meet the minimum requirements for state certification, that they thus must be certifiable rather than certified at hire, and Ms. Van Goethem qualifies as a certifiable technical college instructor based on her education and experience both inside and outside of the NETC system.[14]

(iv) Ms. Van Goethem has the qualifications and experience necessary to bid on a teaching vacancy in her department, and she has in fact bid on and been interviewed for an ADN Nursing Instructor position; based upon her education and experience, she would also be qualified to apply for health information coordinator, and instructor for the surgical tech program, licensed practical nurse program and medical assistant program.[15]

(v) The Student Health Nurse position exists to meet the College's student health philosophy, which generally stated that health services at NETC primarily exist to aid students in identifying, achieving and maintaining the highest level of health possible in order to achieve career goals; part of her job duties included student health education and health counseling; and during the 9 month school year in 1995-1996, the last year she was employed by the District, there were 2,617 student visits and 860 staff visits to the School Nurse.[16]

(vi) In order to meet its policy goals the Student Health Nurse was expected to teach educational issues in the classroom and to assist teachers with a health curriculum, and Ms. Van Goethem also developed the curriculum for the College's annual Health Awareness week.[17]

(vii) The primary duties of the Student Health Nurse are health education and counseling 'to eliminate any health-related barriers that may impede students from

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[14] Citing the *testimony of Ms. Van Goethem and Mr. Evans* at Hearing Transcript, pages 67, and 197.

[15] Citing the contents of Association Exhibit #41, and the *testimony of Ms. Van Goethem* at Hearing Transcript, page 75.

[16] Citing the contents of Association Exhibits #36 and #38, and the *testimony of Ms. Van Goethem* at Hearing Transcript, page 73.

[17] Citing the contents of Association Exhibits #42-#44, and the *testimony of Ms. Van Goethem* at Hearing Transcript, pages 73 and 76.

> achieving their academic goals, to that end they function in support of the educational program at NETC, they participate in educating the student body, and they play a key role in ensuring successful graduation of students from the College.[18]

(3) The final wage offer of the Union is the more appropriate of the two offers.

(a) That the Union proposes placement of Ms. Van Goethem and Mr. Strebel on the salary schedule be based upon their years of service and education, and that this placement be continued in the future.

(b) The Employer proposes a single annual salary for the accreted positions independent from the salary schedule, with the annual salary only applying to new, 12 month employees; the Employer proposed salaries would be pro-rated for the incumbents in the accreted positions, and there is no indication how future increases would be based.

(c) Effective November 6, 1995, the Union proposes placement of the AODA Specialist in the Bachelor plus 8, step 9 or $38,430, and effective August 14, 1996 it would move up one experience step to $39,665. The Employer's offer would freeze the AODA Specialist for both years at his 1994-1995 salary.

(d) Effective November 6, 1995, the Union proposes placement of the Student Health Nurse at the Bachelor plus 24, step 9 or $39,070, and effective August 14, 1996 it would move up one experience step to $41,665. The Employer's offer would place the Nurse at $36,228 in 1995 and $37,404 in 1996, with the proposed wages prorated for less than full year assignments; this would result in a wage freeze for 1995-1996 and an annual increase of approximately $183.00 in 1996-1997.

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[18] Citing the *testimony of Ms. Van Goethem* at Hearing Transcript, page 88.

(e) The AODA Specialist's wages, unilaterally determined by the District for 1995-96 and 1996-97, are almost identical to BA plus 8, Step 9 on the salary schedule; for all practical purposes, therefore, the District has already considered the incumbent to be on the salary schedule and paid him accordingly.[19]

(4) A fatal flaw in the District's wage offer is its manner of pro-ration of annual salaries for the incumbents.

(a) While it will argue it is establishing a 12 months work year and salary for anyone in either position, there has never been more than one person in each position.

(b) There is nothing in the record to indicate any discussions related to increasing AODA services, and the Student Health Nurse has been laid off since 1996 and replaced by a 700 hour per year contracted service.[20]

(c) One can only assume that there is no urgent need to expand the work hours or length of the work year for either position, from a 9 month school year to a 12 month work year.

(d) The NETC faculty, guidance counselors and the Minority Affairs Coordinator work the traditional school year, any additional work days are treated as extra-contractual duties, and employees are paid over and above the salary schedule for the extended work year.[21]

(e) When one reviews the differential between the positions under the Union's offer versus the Employer's offer it is obvious the accreted positions are treated more alike under the Union's final offer.

(i) The vast difference between the AODA Specialist and the Student Health Nurse under the Employer's final offer is inequitable.

(ii) Both classifications are professional positions, the incumbents have similar educational backgrounds, and there should not be a $10,000 difference between the positions.

(f) The District's wage exhibits are misleading in that they purport to show the parties' final offer broken down to hourly rates, which rates are based on incorrect assumptions for annual work hours.

(i) Employer Exhibits #8-#10 compare the parties' annual salary offers without considering the Employer's proration to the incumbents for maintaining their current work year, and it understates the total annual work hours for both positions which skews the resulting hourly rate calculations.

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[19] Citing the *testimony of Mr. Evans* at Hearing Transcript, page 159

[20] Citing the contents of Association Exhibit #8, page 8.

[21] Citing the contents of Employer Exhibit #1.

(ii) Employer Exhibit #8 refers to a 7 hour day for calculating annual work hours and hourly rates per the District's final offer; however, its final offer clearly states an 8 hour day is proposed for both positions.[22]

(iii) Paid holidays and vacation time should not be subtracted from the Employer proposed 260 work days, since both are compensated days and must be included when determining annual hours; accordingly, a 2,080 hour work year is the appropriate basis by which to calculate the District's final offer, rather than 1,606.5 hours as used in Employer Exhibit #8.

(iv) The calculations used in Employer Exhibit #8 could mislead the Arbitrator into believing that there is not much of a difference between the current work schedules of the incumbent and its final offer; in reality, however, its offer expands the work day by 1/2 hour for both positions, and the work years for the accreted positions are extended by 60 and 72 days.

(v) With correct calculations, Employer Exhibit #8 should contain the following information: annual wages of $45,732 (1995-96) and $47,214 (1996-97) for the AODA Specialists, with the hourly rates available by dividing these figures by 2,080; annual wages of $36,228 (1995-96) and $37,404 (1996-97) for the Student Health Nurse, with the hourly rates available by dividing these figures by 2,080.

(vi) The incorrect assumptions used by the District in Employer Exhibit #8 resulted in gross overstatements in its proposed hourly rates for both positions.

(vii) Properly utilizing the wage information contained in Employer Exhibit #15, would show an $.08 hourly decrease for the Student Health Nurse in 1995-96, and a $2.75 hourly decrease for the AODA specialist for the same year.

(viii) The Employer's proration of salaries for the incumbents based upon a 12 month work year is illogical, and inconsistent with the work years of both the Student Health Nurse and the AODA Specialists.

[22] Citing the contents of Employer Exhibit #4, page 4.

(ix) The Employer's 1995-96 offer for the nurse classification amounts to a lower annual salary than actually earned for that year, and amounts to a wage freeze for the AODA Specialist position in 1995-96 and in 1996-97.[23]

(x) Employer Exhibit #10 is incorrect as it relates to the annual hours worked of both positions under the Union's final offer, thus overstating the hourly equivalents by several dollars per hour.

(xi) With correct calculations, Employer Exhibit #10 should contain the following information: annual wages of $38,430 (1995-96) and $39,655 (1996-97) for the AODA Specialists, with the hourly rates available by dividing these figures by 1,600; annual wages of $39,070 (1995-96) and $41,665 (1996-97) for the Student Health Nurse, with the hourly rates available by dividing these figures by 1,504.

(xii) The District's wage offer is not based upon any commonly accepted method of compensating technical college professionals, but placing all professional employees on one salary schedule based on years of experience and education is a reasonable and equitable solution to this dispute.

(5) The external comparables favor selection of the Union's final wage/salary offer.

(a) Arbitrator Imes established the *primary external comparable VTAE Districts* as Fox Valley, Lakeshore, Moraine Park, Nicolet Area and Northcentral.[24]

(i) A majority of the above comparables support the inclusion of the AODA Specialist in the faculty salary schedule.[25]

(ii) For school nurse comparison purposes, the above comparables are not that helpful, since two districts do not have school nurses, Fox Valley and Lakeshore do not include them in the faculty unit, and only Moraine Park has a school nurse in the bargaining unit, but it includes the classification in the salary schedule.[26]

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[23] Citing the contents of Association Exhibit #4.

[24] See the contents of Association Exhibit #18.

[25] Citing the contents of Employer Exhibit #29.

[26] Citing the contents of Employer Exhibit #26.

(b) Of the *secondary comparable VTAE Districts* which have school nurses and AODA counselors in the faculty bargaining unit, a majority include the positions on the faculty salary schedule, and Milwaukee and Madison use separate schedules for them with advancement based upon years of experience.[27]

(c) Of the *tertiary comparable group of K-12 School Districts*, a majority support the placement of the Student Health Nurse and AODA Specialist on the faculty salary schedule.[28]

(i) Eighteen of the districts employ student nurses, and ten of these include the classification on the professional salary schedule.[29]

(ii) All thirty-two districts employ either counselors or social workers, and all of them include these positions on the professional salary schedule.[30]

(6) The Union's proposals on the remaining language items area are more reasonable.

(a) *In connection with leaves*, the Association proposes retention of Article VI, Sections G and H, providing limited rights to sabbatical leaves, outlining the rights of limited term employees, and providing for pay deductions for abuse of emergency leaves at the rate of 1/1533 of the annual salary for each hour of unapproved leave.

(b) *In connection with probation, discipline, cause*, the following considerations should be determinative.

(i) The parties agree that all new hires should serve an 18 month probationary period; the Employer proposes a one year probationary period for incumbents, but the Association offer does not include a probationary period for either the incumbent AODA Specialist, or in the event of recall of the Student Health Nurse.

(ii) The Association urges that forcing the incumbents in the accreted positions to serve an additional probationary period because they have been added to the bargaining unit would be an inappropriate penalty, particularly in that Article III, Section P provides no just cause protection for probationary employees.

(c) *In connection with vacancies and transfers*, the following considerations should be determinative.

(i) The Association proposes the right to bid for vacancies in the Student Services or the Health Occupations Departments if qualified as determined by the Employer; the Employer's offer allows them to bid

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[27] Citing the contents of Association Exhibits #22-#23, and Employer Exhibit #26 and #29.

[28] Citing the contents of Association Exhibits #18, #20 and #21.

[29] Citing the contents of Association Exhibit #25.

[30] Citing the contents of Association Exhibit #25.

for vacancies only in the positions covered by Article XII, i.e. the Student Health Nurse and the AODA Specialist classifications.

(ii) The right to bid for vacancies is afforded every other bargaining unit member and should not be withheld from the accreted positions; the Employer is at no risk with the Union's offer because the administration retains the right to determine qualifications.

(d) *In connection with reassignment, layoff and recall*, the following considerations should be determinative.

(i) The Union's proposal for reassignment in either the Student Services or Health Occupation Departments, while the Employer would limit reassignment within Article XII.

(ii) Both offers only allow reassignment to positions with comparable hours, with the parties differing in the percentage to be used in determining comparability; the Employer's 75% proposal is inconsistent with the treatment of layoffs within the rest of the bargaining unit.

(iii) The parties do not differ in re layoff, but they differ relative to recall rights: the Union's proposal would allow a laid off employee to continue participation in group insurance for two years at their own expense, while the Employer proposes nothing beyond the employee's 18 month continuation rights under COBRA.

(iv) The Union proposal does not prevent the laid-off employee from securing other employment, while the Employer does not address this.

(v) The Union proposes traditional recall in order of seniority, while the Employer proposes recall to the most highly compensated posted vacancy, which is ambiguous and makes no sense.

(vi) The Union proposes the recall of accreted employees to positions for which they are qualified in student services and health occupations, while the Employer proposes recall only to their own positions. The Employer thus unreasonably restricts the ability of laid off employees from retaining employment with the College.

(e) *In terms of work hours and work year*, the following considerations should be determinative.

(i) The Union proposes 35 hour work weeks and 219 work days per year for both accreted positions; the incumbents, however, would retain their current work schedules of 188 days for the nurse Student Health Nurse and 200 days for the AODA Counselor, with each working an 8 hour day. The Union proposal is based on the Faculty Association Master Agreement and work week and calendar.

(ii) The Employer proposes a 40 hour work week and proposes to extend the work year for both positions to 12 months, or 260 work days. The Employer proposal would

change the entire structure of the work year for these positions to year-round positions.

(iii) The AODA Specialist and Student Health Nurse have been supporting positions to the student body and their services have been primarily utilized within the academic year. The Employer proposes extending the work year without any rational justification for such action.

(iv) The Union's final offer maintains the status quo relative to the incumbent employee's work years and, in effect, grandfathers their work schedules. The Employer proposal would penalize the incumbents by paying them a prorated salary in exchange for maintaining their current work schedules.

(7) The final offer of the Association best promotes the interests and welfare of the public.

(a) The best interests of the public are served through recruitment and retention of qualified employees, which necessitates competitive wage and benefits packages.

(b) The College will argue that the Union's salary proposal is exorbitant and unreasonable, particularly to the Student Health Nurse, but it will not and cannot argue inability to pay.

(c) The Association's offer for the two accreted professional positions is consistent with the method of compensating all of the other unit professionals, in recognizing years of experience and education as a basis for determining salaries. Faculty, guidance counselors and the Minority Affairs Coordinator are all paid in accordance with the salary schedule, and it serves the public interest to pay the professional accreted positions in the same manner.

(f) The Employer's former Vice President of Human Resources testified that historic salary decisions have been based on the premise that additional education translates to better student learning, that a Master's degree for an "unclassified" position makes a better employee, but in connection with "operational" positions additional education is not relevant to individual job performance.[31] That such distinctions are ridiculous, in that more experience and better educated nurses or AODA counselors will deliver a better product to the students and staff of the college; it is thus in the best interests of the public to correlate salaries to both experience and education.

(g) That while the Employer may argue that Master's degrees are not required for the accreted positions, they are also not required for most faculty positions and other counseling positions.

In conclusion that the Association's position is more reasonable and the following considerations should be determinative:

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[31] Citing the *testimony of Mr. Evans* at Hearing Transcript, pages 157, 165-166.

(1) Its proposed comparable pool is more reasonable in this dispute and is based upon a prior arbitrator's decision. The Employer proposed comparables would include non-organized employee groups and, if accepted, would alter the previously accepted comparables.

(2) The Union's final offer to pay the accreted positions consistent with the salary schedule, according to individual employee experience and education is inherently more reasonable than the offer of the District.

(3) The Union's offer to maintain the status quo with respect to incumbent employee work hours and work years is more reasonable than the Employer's offer which would extend the work year to a full 12 months.

(4) The external comparables which employ unionized student health nurses and AODA counselors support the Union's final offer.

(5) No rational basis exists for treating the accreted professional positions any differently than other professionals covered by the collective bargaining agreement.

(6) On the basis of all of the above, that the Arbitrator should select the final offer of the Union in these proceedings.

In its *reply brief* the Association emphasized or reemphasized the following principal considerations and arguments.

(1) The District has not proven a rational basis to alter the established comparable pool.

(a) The District is attempting to *reinvent the wheel* by urging a different comparable group than previously established between the parties by Arbitrator Imes in 1980.

(b) The District appears to be establishing a comparable group for just the accreted positions, but it is unreasonable to create separate comparability groups for employees of a single bargaining unit.

(c) That certain cases cited by the Employer in support of its position are misleading when read in their entirety.[32]

(d) That if the Arbitrator were to accept the Employer's proposed comparable group in these proceedings, it would encourage similar attempts to modify the comparables in the future.

(e) That a review of job descriptions and daily job duties for K-12 districts, supports their inclusion in the primary external comparables.

(f) That the Employer's attempt to include the three counties in which its campuses are located should be rejected; further, that various of the County employee comparisons urged by the

[32] Citing the following arbitral decisions: *Arbitrator Frank Zeidler* in Gateway VTAE District, Dec. 17168-A (1980), wherein he distinguished the cities of Milwaukee and Madison as having "*special characteristics*" but retained them in the comparable pool; and *Arbitrator Byron Yaffe* in Waukesha County Technical Institute, Dec. 19868-A (1983), wherein he discounted but did not reject Milwaukee and Madison from the comparable pool.

Employer are invalid because they involve non-comparable classifications.

(g) That the private sector comparisons urged by the Employer are both incomplete and irrelevant on various grounds.

(2) The Union offer best promotes *the interests and welfare of the public*, and ability to pay is not an issue.

(a) That the interests and welfare of the public are best met through the recruitment and retention of qualified employees, the achievement of which requires competitive wages and benefits.

(b) That while the negotiated benefits for teachers, librarians, guidance counselors and the minority affairs coordinator are fairly comparable externally, the District's proposed wages for the AODA Specialist and the Student Health Nurse are supported by neither internal nor external comparisons.[33]

(c) That the placement of the two accreted positions on the teachers' salary schedule is consistent with the treatment of other professional bargaining unit employees.

(d) That the District offer of a twelve month work year with prorated amounts for the incumbents working academic years would result in the following: the AODA Specialist wage/salary for Mr. Strebel's would be 23% less than $45,732 for 1995-96 and $57,214 for 1996-97; the Student Health Nurse wage/salary for Van Goethem's would be 30% less than the $35,214 and $36,355 proposed for the two years; since both employees previously exceeded the proposed pro-rated earnings and the Employer proposed that neither would earn less under its final offer, both would suffer a wage/salary freeze for the two years in issue.

(e) Since all other professional employees in the unit receive salaries based upon experience and education, both this practice and its underlying logic support the same practice for the two accreted positions; further, that such a practice would not create morale problems for other employees.

(f) Maintaining two wage/salary structures would complicate future bargaining as the accreted employees would continually be seeking internal and external catch up.

(g) Employer arguments that the Union proposed increase for the Student Health Nurse is too large, have been rejected in analogous arbitral proceedings.[34]

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[33] Citing the decisions of *Arbitrator Frank P. Zeidler* in City of Dodgeville, Dec. 27590-A (1993), and Unified School District of Antigo, VIP, (1990).

[34] Citing the *decision of Arbitrator James Stern* in Vilas County (Highway), Case 57, No. 55470, INT/ARB-8206 (1998).

(h) There is no *inability to pay* in these proceedings, but rather only an *unwillingness to pay*.[35]

(i) The Union proposed increases for the two incumbents will have little or no impact upon the $14 million faculty salary and benefits package.[36]

(3) The appropriate compensation is the method of payment to other members of the bargaining unit.

(a) When making internal comparisons in cases involving wages, arbitrators typically compare the percentage increases generated by the final offers; in the situation at hand, with the accretion of two classifications into the bargaining unit, the same principle should apply.

(b) Both incumbents in the accreted positions have advanced degrees and more than nine years experience with the District, and they should be comparably treated as their 200 colleagues in the bargaining unit, and have their salaries based upon education and years of service.[37]

(c) While the District's primary objection to placement of the accreted positions on the teachers' salary schedule is that they do not teach, but the librarians, guidance counselors and minority affairs coordinator do not teach, but have always been on the professional salary schedule.

(d) The differential of almost $10,000 per year between the AODA Specialist and the Student Health Nurse classifications is unjustified, in that both incumbents are degreed professionals working with student and staff, and the large wage/salary gap is unjustified and inequitable.

(4) The District's salary proposal is unreasonable.

(a) The Employer's twelve month, prorated salary offer is inconsistent with hours actually worked by the incumbents and/or with the remainder of the bargaining unit, and it is deliberately misleading.

(b) The length of the work year is more relevant for comparison purposes than annual hours because daily hours vary from college to college.

(c) The Employer offered no reason to alter the past relationship by designing a twelve month salary for a nine month position, and it offered no quid pro quo in exchange for adjusting the work year.

(5) The District's wage comparisons are flawed.

(a) Its comparisons on the basis of twelve month, 2,080 hour years are not appropriate.

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[35] Citing the decision of the undersigned in Burnett County (Courthouse), Case 79, No. 54837, INT/ARB 8096 (1998).

[36] Citing the contents of Association Exhibit #14.

[37] Citing the *decision of Arbitrator Byron Yaffee* in Douglas County, Dec. 27379-A (1993).

(b) The actual wage/salary of a school nurse working 1,504 hours would be 72.3% of the amounts offered by the Employer, or approximately $26,000 for each of the two years.

(c) The actual wage/salary of an AODA specialist working 1,600 hours would be $38,325 and $39,664 for the 1995-96 and 1996-97 years.

(d) When the above prorations are factored in, the District's arguments about the extent to which its offers exceed the comparables are misleading.[38]

(e) That various of the Employer AODA comparisons are flawed, in that Mr. Strebel is a Counselor III, not a Counselor I or II; further, that this classification is not comparable to social work classifications.

(f) That counties serve a different client base, their employees do not deal with students in an educational setting, and their objectives are different than the mission of the college; accordingly, their employees should not be considered comparable in these proceedings.

(6) The District's reference to the unit clarification decision as support for its wage proposal is totally misplaced in this matter.

(a) A unit clarification proceeding is not a contest about what is or is not appropriate in terms of wages, hours and conditions of employment.

(b) The recognition clause in the agreement has historically covered more than just teachers, and thus it is not merely a teacher unit.

(c) That the Milwaukee Area VTAE decision cited by the Employer in its initial brief is not "on point" with the case at hand on various grounds, including the fact that it dealt with the question of whether the existing salary schedule should be restructured.[39]

(7) The final offer of the Association is not ambiguous.

(a) In connection with the matter of vacancies and transfers the Employer refers to *serious implications* if school nurses or AODA specialists have the right to post for other positions within their departments; that no such problems have previously arisen, however, with librarians, guidance counselors and the Minority Affairs Coordinator.

(b) Under the Union's proposal, the "Employer retains the right to determine qualifications and shall advance only those deemed qualified by the Employer."

(c) The Union proposal does not confer automatic rights of bidders to obtain another position, there is no reason employees should not receive full rights of the master agreement to the positions they occupy, and the lack of another probationary period for accreted employees bidding

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[38] Citing the chart contained at page 7 of the Employer's initial brief.

[39] Citing the *decision of Arbitrator Zel Rice* in Milwaukee VTAE, Dec. 18232-A (1981).

into new positions is not a problem. In the latter connection that teachers bidding from one academic area into another do not have to complete new probationary periods, and the District's evaluation process of teaching skills provides a way of addressing employees not performing up to standards.

(d) No undue seniority problems are raised by the Union's final offer, in that unit-wide seniority for the accreted positions is no different than all other employees in the bargaining unit, and it would be ridiculous to create separate seniority for two positions in a bargaining unit of more than 200 employees.

(e) The District proposed prohibition of transfer into any other position by either of the accreted positions creates a sub-unit in the bargaining unit and placed the accreted employees at a great disadvantage.

(f) The Union proposed transfer language appropriately limits recall to Student Service and Health Occupation department positions for which the employees are qualified, which neither allows for automatic recall or back door access to other positions; the Employer proposed recall language, however, would provide virtually no hope for recall to the district.

(g) Contrary to the argument of the District, the Union is not proposing vacation for the accreted positions; its proposed vacation payout at layoff mirrors a similar provision in the Employer's offer and would only apply if an individual had previously accrued vacation.

(i) The incumbent School Health Nurse and AODA Specialist do not receive paid vacation due to the nature of their academic work years, and new hires would not receive vacation pay under the 219 day calendar proposed by the Union.

(ii) The Union is not proposing the receipt of vacations, and the vacation/holiday reference in its final offer addresses only holiday breaks and summer vacation periods found in the standard academic year.

(h) The Employer layoff language is flawed because it attaches greater workload proration for full-time equivalency to accreted positions than to the rest of the unit; the Union's offer, on the other hand, establishes 85% as a basis for determining work load reduction and is consistent with Article IV, Section F of the agreement.

(i) The Employer criticizes the Union's probation language but ignores serious inherent problems with its own offer, such as requiring the two accreted employees to serve additional one year probationary periods.

(j) Arguments similar to various of those advanced by the Employer in these proceedings, have been rejected in other arbitral proceedings.[40]

[40] Citing the *decision of Arbitrator James Stern* in Vilas County (Highway), Case 57, No. 55470, INT/ARB-8206 (1998).

On the basis of all of the above, that the following summarized considerations should be determinative: the comparable pool established by Arbitrator Imes should be utilized in these proceedings; the accreted professional employees should be paid in a manner consistent with every other professional employee in the bargaining unit; the District has already established the standard for salaries for non-teaching professionals in the bargaining unit, in connection with the librarians, guidance counselors and the Minority Affairs Coordinator; the District has not proven a need to expand the work year of the accreted positions to twelve months; the unit clarification does not support the position of the Employer; the District proposed transfer language is inherently flawed in that it does not provide for the accreted positions to bid on other positions for which they may be qualified; the proposed one year probationary period for incumbents is punitive; teaching is not the appropriate criteria by which to determine whether placement in the salary schedule is justified. On the basis of the entire record in these proceedings, that the Union's offer is more reasonable than that of the District and it should be selected by the Arbitrator in these proceedings.

POSITION OF THE EMPLOYER

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Employer emphasized the following principal considerations and arguments.

(1) That the most relevant comparables in these proceedings are the following proposed by the Employer.

(a) A *primary comparable pool* including all the technical colleges within the state of Wisconsin, with the exception of Madison and Milwaukee.

(b) A *secondary comparable pool* consisting of Brown, Door and Marinette Counties, due principally to the fact that the College has campuses in each of these counties.

(c) Certain *private sector comparison data* from the State of Wisconsin, local hospitals and the local chamber of commerce.

(d) That there has been no defined set of guidelines utilized by arbitrators in selection of comparables to be used in technical college districts. In this connection, some arbitrators utilize all technical colleges, others place greater emphasis upon such factors as proximity and size, and others have been known to include counties, school

districts and private sector employers as comparable.

(e) Because of the lack of established guidelines and due to the fact that the issues before the Arbitrator in these proceedings are not simply a matter of determining wage increases, the Employer feels it necessary to review how other colleges deal with issues such as salaries, benefits, recall and bumping rights, for Student Health Nurses and AODA Specialists in technical college settings.

(f) That the Employer proposed exclusion of Madison and Milwaukee from the primary comparables is based upon size and arbitral precedent.

(i) That Employer Exhibits #19-#23 provide revenue and expense data for each of the Technical Colleges, and they reveal that Madison and Milwaukee are simply too large in comparison to the other Technical Colleges.

(ii) That various interest arbitrators have recognized that Milwaukee and Madison are in a class by themselves.[41]

(g) That the secondary pool selected by the Employer is proper for the dispute at hand.

(i) That Brown, Door and Marinette Counties, each of which contain a campus of Northeast Wisconsin Technical College, provide nurse's wages which are slightly below the Employer's offer in these proceedings, and AODA Specialist's wages which average over $10,000 below the final offer of the Employer.

(ii) That no appropriate justification has been advanced to justify expansion of the above differentials.

(iii) That the duties and responsibilities of the two classifications are very similar within this proposed secondary pool.[42]

(h) That the statutory criteria also provide for arbitral consideration of other employees in private employment.

(i) That the contents of Employer Exhibits #34, #38, #39 and #40-#44 contain private sector comparisons which support the final offer of the Employer in these proceedings.

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[41] Citing the following arbitral decisions: *Arbitrator Frank Zeidler* in Gateway Vocational, Technical and Adult Education District, Dec. 17168 (1980), wherein he concluded that Milwaukee and Madison Technical Colleges had "special characteristics of size and enrollment which put them in categories of their own"; and *Arbitrator Byron Yaffe* in Wisconsin Indianhead Vocational, Technical & Adult Education District, Dec. 27114-A (1992), wherein he selected seven comparables identified by both parties, but excluded the larger districts located in the southeastern part of the State, and in Waukesha County Technical Institute, Dec. 19868-A (1983), wherein he agreed with Arbitrators Gundermann and Zeidler, *by way of dicta*, that the Madison and Milwaukee district were less comparable than others due to their distinct size.

[42] Citing the contents of Association Exhibits #34 and #38, and Employer Exhibit #33.

(ii) That Ms. Van Goethem, an Association witness, testified that her duties and responsibilities in private employment were comparable to her previous duties for the Employer, and that arbitral consideration of her annual salaries, benefits and working schedules supported arbitral selection of the final offer of the Employer in these proceedings.[43]

(c) That no basis has been established to further increase the wage differential between the Employer and the private sector comparables.

(2) That the Employer proposed primary comparables are more appropriate than those proposed by the Association.

(a) The Association proposes a comparable pool composed of geographically proximate technical colleges, the remaining technical college districts, 32 feeder K-12 districts, and other internal bargaining units.

(b) The prior arbitral award cited by the Association cannot be assigned determinative weight in these proceedings, principally in that it did not involve the Student Health Nurse or the AODA Specialist classifications.

(c) The geographically proximate comparisons are not alone persuasive on the following principal bases:

(i) Nicolet does not employ a Student Health Nurse, Northcentral contracts out its nursing services, Fox Valley's "school nurse" is a "Supervisor - Health & Safety Services," a *management staff* position, and Lakeshore's nurse is not part of the teacher bargaining unit.

(ii) If the Arbitrator chose to recognize the above Employer's as primary comparables, the evidence in the record would favor the position of the Employer in these proceedings.

(d) That the K-12 districts urged by the Association are not comparable on various bases:

(i) The contents of various exhibits and the testimony of Ms. Van Goethem support the conclusion that college health nurses, as individuals and in specialty groups, face many problems unique to the college community.[44]

(ii) Arbitral precedent supports the exclusion of or limitation upon consideration of K-12 districts.[45]

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[43] Citing the *testimony of Ms. Van Goethem* at Hearing Transcript, pages 84, 85 and 86.

[44] Citing the contents of Association Exhibits 46-53, and the *testimony of Ms. Van Goethem* at Hearing Transcript, pages 81-82.

[45] Citing the following decisions of *Arbitrator James W. Engmann* in Northcental Vocational, Technical & Adult Education District, Dec. 299303-B (1998), and *Arbitrator Sharon Imes* in Mid-State Vocational, Technical and Adult Education District Faculty Association, Dec. 28269-A (1995).

(iii) That the duties and responsibilities of a Student Health Nurse in a technical college system are simply not comparable to those in K-12 settings.[46]

(iv) That the 32 feeder school districts urged by the Association should not be found comparable in these proceedings.

(e) That the internal bargaining units are not a viable comparable pool in these proceedings, in that their duties and responsibilities are not related to the duties of the two classifications in issue in these proceedings.[47]

(3) That arbitral consideration of the comparables supports the conclusion that the Nurse and the AODA Specialist classifications should not be placed on the teacher's salary grid.

(a) The majority of Technical College Nurse and AODA Specialist salaries are not determined by the teacher salary grids.[48]

(b) The majority of K-12 Nurse and AODA Specialists are not determined by the teacher salary grids.[49]

(4) That the wages proposed by the Association are *out-of-line* with the Comparables.

(a) Apart from the dispute relative to the placement of the Student Health Nurse and the AODA Specialist on the teachers' salary grid, is comparison of the proposed wages, themselves, which also supports arbitral selection of the final offer of the Employer.

(b) That the minimum and maximum 1996-1997 wages paid for the Student Health Nurse classifications by the thirteen statewide comparables, exclusive of Madison and Milwaukee, averaged $27,673 and $38,820 respectively, and the comparable figures proposed by the parties as follows: Employer offer - $33,664 and $37,404; and Association offer - $26,730 and $50,345.[50]

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[46] Citing the *testimony of William Evans*, the Employer's former Vice President of Human Resources, at Hearing Transcript, pages 156 and 190-191.

[47] Citing also the decision of *Arbitrator Zel Rice* in Northeast Wisconsin Vocational, Technical and Adult Education District (Auxiliary Personnel), Dec. 26365-A 91991).

[48] Citing the contents of Employer Exhibits #26 and #29, and Association Exhibits #22 and #23, which indicate the 3 of the 15 technical college districts in the State include school nurses on the faculty salary schedule, which 8 of 15 do so for AODA Specialists.

[49] Citing the contents of Association Exhibits #24 and #25, and urging that the *guidance counselors* used at the K-12 level are not comparable to the *AODA Specialist* classification.

[50] Citing the contents of Employer Exhibit #24.

(c) Pursuant to the above, that while the Employer wage proposal for the Student Health Nurse is similar to that paid by comparable districts, the Association proposes maximum rates which exceed the average maximum by $11,525 per year; indeed, the Association proposal would also exceed the maximums paid by the Milwaukee and Madison districts.[51]

(d) That the minimum and maximum 1996-1997 wages paid for the AODA Specialist classifications by the thirteen statewide comparables, exclusive of Madison and Milwaukee, averaged $29,494 and $44,412, respectively, and the comparable figures proposed by the parties are as follows: Employer offer - $42,493 and $47,214; and Association offer - $39,665 and $50,345.[52]

(e) Pursuant to the above, that while the Employer wage proposal for the AODA Specialist is above the average paid by other districts, the Association is requesting a higher maximum wage than necessary to remain competitive; indeed, the Association proposal would also exceed the maximums paid by the Milwaukee and Madison districts.[53]

(5) Contrary to arguments advanced by the Association, that the covered classifications will receive wage increases under the Employer's final offer.

(a) The issues to be decided in these proceedings are the wages and benefits of the Student Health Nurse and the AODA Specialist classifications, rather than the wages of Ms. Van Goethem and Mr. Strebel.

(b) Contrary to certain arguments of the Union based upon Association Exhibit #4, there is nothing in the Employer's offer which would require Ms. Van Goethem to work more hours than she has in the past, because the Company offer specifically provides that "no individual employed before 1/1/96 shall suffer a reduction in holiday or vacation time nor an increase in the days of obligation (i.e. 188 days) as a result of the above." Those hired prior to 1/1/96 are thus recognized as having a 9 month schedule of 188 days of obligation, which makes it simpler to compute the Student Health Nurse' salary as a percentage of annual hours.

(c) Pursuant to the above, Ms. Van Goethem would receive a 29% increase in 1995-1996 and an additional increase of 3.2% in 1996-1997, and Mr. Strebel would receive a 15% increase in 1995-1996 and an additional 3.2% increase in 1996-1997.[54]

(d) In accordance with the above, both individuals would receive wage increases higher than any other technical college district has offered any of its employees, and they both have the opportunity to work the same number of hours as worked by them in the past.

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[51] Citing the contents of Employer Exhibit #14 and Association Exhibit #22.

[52] Citing the contents of Employer Exhibit #27.

[53] Citing the contents of Employer Exhibit #14 and Association Exhibit #23.

[54] Citing the contents of Employer Exhibits #4 and #15.

(e) By way of contrast with the above, the Association wishes to provide wage increases which simply are not justified and clearly are not in the best interests of the public; if the two individuals had their wages determined by the teacher salary schedule, they would receive truly extraordinary additional increases.[55]

(6) That arbitral selection of the final offer of the Association could cause morale problems.

(a) If the Employer decided to employ two or three nurses and/or AODA specialists, they would be working side by side with individuals earning between 64% and 88% higher wages.[56]

(b) While arbitrators discuss morale problems which arise when internal bargaining units do not settle for the same percentage wage increases, selection of the Association's final offer could result in significant earnings disparities between employees performing the same duties and working side by side with one another.

(7) That the recognition clause identifies the Nurse and the AODA Specialist classifications as "other related professional personnel", not as teachers.

(a) In the above connection, that the Commission's decision on the matter indicated in part as follows:

"Turning to fragmentation, the College argues that there could in the future be another more appropriate professional unit for the Student Health Nurse. Initially, we would note that the issue before us is whether the expanded unit sought by the Association is an appropriate unit, not necessarily the most appropriate unit.[57]

(b) That in an award on point, Arbitrator Zel Rice recognized the substantial differences between teachers and counselors, and identified the teachers' salary index as emanating from an historical background unique to them.[58]

(c) That the AODA and the Student Health Nurse classifications are not *teaching* positions, and there are many differences between teachers and counselors and between a Student Health Nurse and a Nursing Instructor.[59]

(d) That there are many distinctions between teaching, nursing and counseling, and if the nurse and the specialist wish to be paid as teachers, they will have to go through the normal

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[55] Citing the contents of Employer Exhibit #15.

[56] See the *testimony of Mr. Evans* at Hearing Transcript, page 185.

[57] Citing the contents of Association Exhibit #7 at page 27.

[58] Citing the *decision of Arbitrator Rice* in Milwaukee Area Board of Vocational, Technical and Adult Education (Teachers), Dec. 18232-A (1981).

[59] Citing the *testimony of Mary-Louise Holloway*, the Dean of Health, Community Service and General Education of the College, at Hearing Transcript, page 220.

channels to receive that benefit.

(8) That the *Association's final offer* is ambiguous in various respects.

(a) Its *vacancies and transfers proposal* could create a situation which the Student Health Nurse or the AODA Specialist could obtain a teaching position in health services.

(i) Employer recruiting for a teacher is significantly different from recruiting for a Student Health Nurse or an AODA Specialist.

(ii) Transfers to a teaching position under the Union's proposal would mean that all of the terms and conditions of the teachers contract would apply, without the normal recruitment process and without the normal three year probationary period, and without having been evaluated on teaching skills.

(iii) Transfers with a five day bidding time line, such as proposed by the Union, would mean that teaching jobs could be picked off in advance of teacher bidders working under a 15 day time line.

(iv) Even if the Association proposal applied solely to positions within student services and health occupations, it would pose substantial seniority problems.[60]

(v) Another problem is identified by the fact that if the two classifications in question are granted district wide seniority under the Master Agreement, it would create the possibility of Student Health Nurses and AODA Specialists having seniority preference to teaching jobs ahead of other teachers at the College. In this connection, that Ms. Van Goethem, if reinstated, would move ahead of 112 teachers in the District.[61]

(vi) By way of contrast with the above, the Employer's offer on Vacations and Transfers is very clear, it would allow the Student Health Nurse and AODA Specialist to bid only for vacancies within these two positions, and it is much more precise than the proposal of the Association.

(b) Its *layoff and recall rights proposal* would also create recall to posted positions within "Student Services and Health Occupations," which could create recall rights for instructor positions.[62]

(i) The above factor would create a *back door in recall*, allowing the Student Health Nurse and the AODA

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[60] Citing the *testimony of Mr. Evans* at Hearing Transcript, pages 176-1798.

[61] Citing the contents of Employer Exhibit #47.

[62] Citing the *testimony of Mr. Evans* at Hearing Transcript, pages 181-184.

specialist to be recalled to positions without having the experience normally required of teachers in the District.

(ii) By way of contrast, the Employer's offer clearly lays the foundation for who and what is required under the recall provision, by stating that "Other related Professional Personnel shall not have recall rights to positions outside of those positions covered by this Article (XII)."

(c) Its *vacation proposal* is confusing in providing that "*Employees noticed of layoff may request payment of any and all accrued vacation pay at anytime during the period of their layoff. Said notice shall not extend the effective or layoff nor extend recall rights,*" and that "*Vacation/holidays will coincide with the standard instructional calendar and the summer instructional calendar. No individual employed 1/1/96 or before shall suffer a reduction in holiday or vacation time nor an increase in the days of obligation as a result of the above.*"

(i) Why is the Association requesting a payoff for a position which is based on the teacher's working schedule?

(ii) The Association is requesting that the individuals be placed on the teacher's salary schedule and work hours, but that they should be entitled to a vacation when on layoff?

(d) Its *probationary period proposal* is ambiguous in that it requires an 18 month probationary period for all new hires, but apparently provides no probationary period if such an employee hired as a nurse, for example, later obtains a "teaching" position in health occupations.

(i) Under the master agreement, any teacher hired by the Board serves a three year probationary period, but the application of this language to a transferee who had already served an 18 month probationary period is uncertain.

(ii) Arbitral authority supports the selection of clear rather than ambiguous contract language.[63]

(e) The Employer's final offer is clear with respect to who is entitled to the layoff, recall and bidding rights language, while the Association's expressed intent differs in various respects from its proposed language.

In summary and conclusion, the Employer urges that the following considerations should be determinative:

(1) That its comparable pools provide a good basis for determining the outcome of these proceedings; that the issues are complex and a review of the statewide technical college wages and benefits are crucial in deciding the issues herein; that there is a limit,

[63] Citing the *decision of Arbitrator Joseph B. Kerkman* in Altoona School District, Dec. 24398-A (1987).

however, to accepting all technical college districts, in that Madison and Milwaukee have been shown to be separate and distinct from other districts; that inclusion of the counties containing the campuses must be considered; that private employer comparisons must be accorded weight; and that K-12s and internal bargaining units have no place in this dispute.

(2) That one of the main issues is whether the salaries of the two classifications should be based on the teachers' salary schedule, or separated from this schedule: that the evidence clearly supports the Employer in this connection, in that there is no apparent trend to place these classifications on the teachers salary grid; and a majority of comparable districts have not done so.

(3) Apart from the salary structure, that wages paid by the *surrounding districts*, *counties* and *private employers* support the final offer of the Employer rather than that of the Association.

(4) Contrary to the position of the Association, Ms. Van Goethem, if reinstated, will receive wage increase in excess of that granted by any other technical college in the State.

(5) The Association's wage demand could create morale problems and the Employer should not be required to deal with such discontent; its vacancy, transfer, recall and layoff language is totally ambiguous and could negatively impact on the rights of incumbent teachers; and its proposal is inconsistent with the recognition clause which distinguishes between teachers and other professional personnel.

(6) On the basis of all of the above, that the Arbitrator should select the final offer of the Employer in these proceedings.

In its *reply brief* the Employer emphasized or reemphasized the following principal considerations and arguments.

(1) The alleged "established comparable pool" is not appropriate for this interest arbitration.

(a) Contrary to the claim advanced in the Union's brief, Arbitrator Imes did not establish appropriate comparables in her March 10, 1980 decision.

(i) The Unit compared in 1980 was a teacher's bargaining unit, the Student Health Nurse and the AODA Specialist were not then in the unit, and no arbitral consideration was given to these classifications.

(ii) The 1980 arbitral decision involved a fair share proposal, not wages and benefits.

(iii) In the case at hand, both parties have selected language items separate and distinct from the teachers, and it simply cannot be assumed that comparables from almost twenty years ago are relevant.

(iv) The Arbitrator should compare the benefits and wages offered to comparable nurses and AODA Specialists and, at the same time, observe the usual and customary criteria in selecting a comparable pool.

(v) While arbitrators are reluctant to change an established comparable pool, that is only relevant when the parties being compared in the past are

identical to those to be compared in the future, and neither the AODA Specialist not the Student Health Nurse classifications were part of the bargaining unit during the prior arbitration.

(vi) The Employer did not exclude Milwaukee and Madison from its comparables for the reasons stated by the Association, but rather due to frequent arbitral recognition of the fact that they are separate and distinct from other technical colleges in the State.

(vii) The Employer's exclusion of Madison and Milwaukee from the comparisons is not self serving, in that neither includes the nurses and specialists in the teacher's bargaining unit or on the faculty salary schedule.

(b) Arbitral consideration of the Fox Valley, Lakeshore, Moraine Park, Nicolet Area and Northcental VTAE districts, the so-called primary external comparisons identified by Arbitrator Imes, does not provide the Arbitrator with a consistent pattern to establish the way in which the AODA Specialist and the Student Health Nurse classifications should be paid.

(i) Nicolet and Northcentral do not employ school nurses and Fox Valley and Lakeshore do not include them in the faculty unit.

(ii) Two of the colleges pay their specialists by way of the teacher's salary grid, but two others either do not employ such specialists or they are non-union positions.

(c) Arbitral consideration of the secondary pool of technical colleges supports the Employer's final offer.[64]

(i) Two of the colleges do not employ a school nurse, three employ a nurse but do not pay them via the teachers' salary grid; two contract for nursing services; and only three which employ nurses pay them according to the teachers' salary grid, a mere 27% of these comparables.

(ii) Although all of the technical colleges employ an AODA Specialist, only half base their salaries on the teachers' salary schedule.

(iii) No trend thus exists which would support the Association's position that the two accreted positions must be paid in accordance with the teachers' salary grid.

(d) The duties and responsibilities of the Student Health Nurse and the AODA Specialists are not comparable to those held by similar positions in a K-12 setting.[65] Even if the K-12 districts were considered, only 10 of 32 place their school nurses on the teachers' salary schedule, and the districts' counselor or social workers positions are simply not comparable to the AODA Specialist classifications.

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[64] Citing data shown at page 17 of the Employer's initial brief.

[65] Referencing the arguments advanced at pages 18-19 of its initial brief.

(e) Pursuant to the above that the following conclusions are appropriate.

(i) Arbitral consideration of the comparables should be in accordance with the following considerations: all of the state technical colleges should be considered, with the exception of Milwaukee and Madison; of those employing school nurses and/or AODA specialists, the trend is not to pay them in the same manner as teachers.

(ii) Even if Madison and Milwaukee are considered as comparables, their methods of paying nurses and AODA specialists are similar to those proposed by the Employer.

(iii) The K-12 districts are not comparable and should not be considered.

(iv) Private sector comparisons are much more consistent with the Employer's than the Association's final offer in these proceedings.

(2) The AODA Specialist is not a counselor.

(a) In its brief the Association loosely interchanges the terms "AODA Specialist" and "AODA Counselor", but these two classifications are not the same.

(b) The recognition clause of the master agreement already recognizes "counselors" but the AODA Specialist falls within the definition of "other related professional personnel."

(c) While a *specialist* may perform some of the duties of a *counselor*, the two categories are not the same.

(d) An *AODA Specialist* is not a counselor position, as such, and it is not entitled to the same wages and benefits provided to *academic counselors*.

(3) The comparables do not support the fact that the responsibilities associated with the accreted positions warrant placement on the salary schedule.

(a) While Ms. Van Goethem and Mr. Strebel clearly possess the education and skills to carry out the functions of their positions, this arbitration is not about their individual abilities.

(b) The placement of the two positions is the question before the Arbitrator, and merely because the Association alleged that they have the same mission as teachers and are in the same bargaining unit, does not warrant their wages to be tied to the teacher's salary schedule; if this were the case, there would be overwhelming support among comparables to support the theory.

(i) Lakeshore, Madison, Milwaukee and Wisconsin Indianhead all employ *school nurses*, but none of them are paid the same as teachers; Gateway, Southwestern, Western and Moraine Park include the nurse on the teachers' salary grid; and Fox Valley, Blackhawk, Chippewa Falls, Mid-State, Nicolet, Northcentral and Waukesha are either non-union, do not employ school nurses, or contract out for nursing services. Thus, there is

little support for the Association's allegation that because the duties and responsibilities associated with the nursing position are the same as held by teachers, that they should be paid as teachers.

(ii) Even Madison and Milwaukee, the two largest colleges in the state, pay their nurses on a separate schedule not associated with the teachers' salary grid, and the benefits and contract language items for these positions are also separate and distinct from those governing teachers.

(iii) The information relative to AODA *counselors* is also not supportive of Association's position: Chippewa Valley, Gateway, Lakeshore, Moraine Park, Nicolet, Northcental, Southwest and Western provide salary tied to the teachers' salary grids for *counselors*; Blackhawk, Fox Valley, Mid-State, Madison, Milwaukee, Waukesha and Wisconsin Indianhead, however, all employ *specialists* whose salaries are not tied to the teacher's salary grid.

(iv) Despite the fact that the duties and responsibilities associated with the two positions are significant, in the absence of strong comparable support they should not be placed on the teachers' salary grid.

(4) The Association's wage offer is flawed on various bases.

(a) Its criticism of the Employer's offer is misplaced. While it urges that the Employer had provided no information regarding how future wage increases would be based, such increases will be bargained by the parties during the next round of contract renewal negotiations.

(b) The Employer is not proposing a wage freeze, and this allegation by the Association requires review of the wage proposals of the parties.

(i) The Employers consideration of paid holidays and vacation time was appropriate and consistent with its treatment of these items in the past.[66]

(ii) Why is the Association assuming that Ms. Van Goethem would have to work an addition 56.5 work days to receive a full year's salary, when it is clearly stated in the Employer's offer that the incumbent would not suffer an increase in the days of obligation.[67]

(iii) The Employer believes it is more accurate to calculate the incumbent's salaries on a percentage of hours worked based upon their current work schedules, and thus Ms. Van Goethem's annual wage would be 81.917% of the salary schedule of a new employee hired after 1/1/96.

(iv) The true wage/salary increases to be reviewed and analyzed in these proceedings are as represented in

[66] Citing the testimony of Mr. Evans at Hearing Transcript, page 172.

[67] Citing the language contained in Employer Exhibit #4.

the Employer's brief at pages 24 and 25, not the wage freeze suggested by the Association. Accordingly, the Employer has proposed increases in Ms. Van Goethem's wage/salary from $26,000 in 1994-95, to $29,677 in 1995-96, and to $30,640 in 1996-97 (increases of 14% and 3.2%), and increases in Mr. Strebel's wage/salary from $38,324 in 1994-95, to $42,700 in 1995-96, and to $44,084 in 1996-97 (increases of 15.1% and 3.2%).

(c) A comparison of the salaries paid by other colleges must not be ignored.

(i) The Association's brief did not include a comparison of the actual wages paid by the other technical colleges, despite the relevance of such information.

(ii) Arbitrators tend to review comparable wage information when rendering decisions.[68]

(iii) Employer Exhibits #24 and #25 identify the annual and actual wages paid to school nurses in comparable colleges, and they support selection of the final offer of the Employer.

(iv) Employer Exhibits #27 and #28 identify the annual and actual wages paid to AODA specialists in comparable colleges, and they also support selection of the final offer of the Employer.

(d) The way in which the AODA Specialists' Wages were initially determined does not warrant future increases to be based on the Teachers' salary grid.[69]

(e) The Employer has a right to structure its offer based upon the needs of the College.

(i) The Association makes many unsupported allegations relative to the Employer's decision to schedule the disputed classification on a full time basis (excluding the incumbents).

(ii) The Employer has the right to propose a work schedule for what it believes will meet the needs of the college, and it is not required to continue past patterns for future hires or other "related" classifications in the future.

(iii) The needs of the Employer should prevail in this area, not the work schedule of the incumbents prior to their inclusion in the bargaining unit.

(5) The language items proposed for the two positions are best represented under the Employer's final offer.

(a) In connection with *sabbatical leaves*, the Employer simply

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[68] Citing the *decision of Arbitrator James Stern* in Vilas County (Highway), Dec. 29315-A (1998), wherein he favored the Union's position on wage comparability grounds, in a dispute involving two employees accreted into the highway unit.

[69] Citing the *testimony of Mr. Evans* at Hearing Transcript, pages 159-160 and 163-164.

believes that it should apply to teaching positions rather than to the two accreted classifications.

(b) In connection with *limited term employees*, the Employer does not believe that their wages should be tied to the teacher's salary grid.

(c) In connection with the *emergency leave provision*, the Employer feels that its proposed deduction for each hour of unapproved absence is consistent with how it has tailored its offer, and that it is under no obligation to customize this provision to fit the teachers' form of calculating emergency pay.

(d) In connection with *probation, discipline and cause*, its proposed one year probationary period for incumbents expired on November 6, 1996, and has thus become moot.

(e) In connection with *vacancies and transfers*, the Employer believes the Association's offer would grant the two new positions bidding rights to other teaching positions within the College, and, by virtue of their seniority, could bump into teaching positions held by actual teachers. The Employer believes that they should have the right to "apply" for positions within the College, but should not have the right to bypass the normal hiring process in obtaining a teaching position.

(f) In connection with *reassignment, layoff and recall*, the Employer's position is as follows: it believes that *reassignment rights* are applicable to "other related professional personnel" and not to those outside that group; it believes that its *full time status* proposal is consistent with the current method outlined in the Master Agreement; it believes that an *outside employment* provision is geared to teachers under contract, and its absence would not limit those in the accreted positions from securing other employment while on layoff status; it believes that the *Employer's recall preference* to the most highly compensated posted vacancy is appropriate, and that the Association is interpreting it too narrowly.

(g) In connection with *work hours and work year*, it has distinguished between new hires and incumbents, it believes a different work schedule will better serve its future needs, and it is under no obligation to submit an offer identical to that of the Association.

(6) The Association's offer is not in the best interests of the public.

(a) The Employer has not put forth an inability to pay argument, but simply believes that the wages and benefits proposed by the Association are inconsistent with what is paid to comparable positions.

(b) While the Association believes the public is best served by employees who are more experienced and who can deliver a better product to students and staff at the College, this service should not come at the high price proposed by it.

(c) There is no question that the incumbents of the two accreted positions have educated themselves far beyond what their positions require; if they are interested in earning more money based upon their educations, they must apply for

positions which determine wages based on educational achievement.

On the basis of all of the above emphasized considerations and in summary, that the accreted positions are not the same as teachers and must not be treated as such, that they were accreted into the teachers' unit, *an appropriate* rather than the *most appropriate* unit, that they are not automatically entitled to all of the rights bargained by and afforded to other bargaining unit members, and that the record justifies arbitral selection of the final offer of the Employer.

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and rendering an award in these proceedings, the undersigned will offer certain preliminary observations relating to the *nature of the interest arbitration process*, including the *normal application of the comparisons criteria*, and the significance of the *interests and welfare of the public criterion* and the normal significance of *proposed changes in the status quo ante*. Thereafter the offers of the parties will be addressed in relationship to the various arbitral criteria, and the more appropriate of the two final offers will be selected and ordered implemented by the Arbitrator.

The Nature of the Interest Arbitration Process

As the undersigned has emphasized in many prior decisions, the Wisconsin interest arbitration process operates as an extension of the contract negotiations process, and its primary goal is to attempt to put the parties into the same position they would have occupied but for their inability to achieve complete agreement at the bargaining table. The *final offer procedure*, which limits an arbitrator to selection of either final offer *in toto*, is designed to facilitate the achievement of this goal by motivating the parties to reduce their areas of difference and to move as close as possible to agreement prior to submission of an impasse to arbitration. If the process is successful, it may succeed in putting the parties into the same position they would normally have reached at the bargaining table; if parties remain significantly apart on a variety of impasse items, however, an arbitrator may be faced with the need to select from two final offers, neither of which

approximates the settlement they might have reached at the bargaining table.

In attempting to accommodate the addition to the bargaining unit of the Student Health Nurse and the AODA Specialist classifications, the parties remain at impasse on a considerable number of items of operational and economic significance. The failure of their preliminary negotiations process to more significantly reduce the number of impasse items will, therefore, have an important and negative impact upon the effectiveness of the interest arbitration process in these proceedings.

Although the statutory criteria have not been comprehensively prioritized by the Wisconsin Legislature, it is widely recognized by interest arbitrators that comparisons are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria and, in the absence of very strong evidence to the contrary, the most persuasive comparisons are normally the so-called *intraindustry comparisons*.[70] These considerations are well described in the following excerpts from the still authoritative book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards."[71]

When parties disagree as to the makeup of the so-called intraindustry

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[70] The terms *intraindustry comparisons* derive from their long use in the private sector. The same principles of comparison are used in public sector interest impasses, however, in which situations the so-called *intraindustry comparison groups* normally consist of other similar units of employees employed by comparable governmental units.

[71] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54 and 56. (footnotes omitted)

comparison group, arbitrators will normally recognize and utilize the comparables used by the parties in prior negotiations, including prior interest arbitration proceedings, which principle is referenced as follows by Bernstein:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or to create a differential...
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> The last of the factors related to the work is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[72]

The above described principles are also briefly addressed in the following excerpt from the widely cited book originally authored by Elkouri and Elkouri:

> "...Arbitrators frequently use for the comparison the prevailing practice of the particular industry (or public sector occupational group) in question, as opposed to industry in general, within the area.
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> Where each of various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons that the parties themselves had considered significant in free collective bargaining, especially in the recent past."[73]

As is clear from the above, *intraindustry comparisons* normally take precedence in wage determination issues versus other types of comparisons, and arbitrators are very reluctant to change the specific comparisons utilized by the parties in their prior negotiations, including those confirmed in prior interest arbitration proceedings.

In applying the above described principles to the case at hand, the undersigned notes that the 1980 decision of Arbitrator Imes addressed, as follows, the significance of *internal comparables* then emphasized by the

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[72] The Arbitration of Wages, *supra*, pages 63, 66.

[73] Volz, Marlin M. and Edward P. Goggin, Co-Editors, *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Fifth Edition - 1997, page 1113. (footnotes omitted)

Employer versus other *external comparables*, and indicated in part as follows:

> "...this comparable advanced by the Employer is only one of several important comparables. Among those considered most important by this arbitrator are the vocational, technical and adult education districts within the geographic proximity of Northeast Wisconsin Technical Institute, all vocational, technical and adult education districts in the State and the K-12 feeder schools to Northeast Wisconsin Technical Institute. In all instances, when modified fair share is viewed the same as full fair share the percentages of those comparables having fair share range from 50% of the districts in the area, to 68% of those districts in the state to 77% of the K-12 feeder schools to the district. In view of these comparables, the trend is already set."[74]

Arbitrator Imes thus decided that the Employer urged *internal comparables* should not be accorded determinative importance in the *fair share dispute* then before her, and concluded that both geographically proximate and statewide *intraindustry comparables* were important, along with other *external comparables* consisting of the K-12 feeder schools to the Northeast Wisconsin Vocational, Technical and Adult Education District.[75] In the absence of clarification relative to what districts were considered to be *geographically proximate*, I infer that this group should consist of those with contiguous borders, or the Nicolet, Northcentral, Fox Valley, Lakeshore and Northeastern Wisconsin districts,[76] and that the overall group of *intraindustry comparables* in the case at hand should continue to consist of all of the vocational, technical and adult education districts in the State of Wisconsin. Without unnecessary elaboration, the undersigned notes that no persuasive basis has been advanced to justify abandoning or modifying the *primary and secondary intraindustry comparison* groups recognized by Arbitrator Imes.[77]

It will be referenced at this point that the statutory comparison criteria are broad ones, that they refer to various types of comparisons other than the so-called intraindustry comparisons, and that different types of

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[74] See the contents of Association Exhibit #18 at page 9.

[75] While Arbitrator Imes also considered various *K-12 feeder districts* in her final offer selection process, these school districts are simply not part of the Vocational, Technical and Adult Education District "***industry***" in Wisconsin, and they should not be part of the overall *intraindustry comparison group* in these proceedings.

[76] See the contents of Association Exhibit #19.

[77] Neither of the parties has suggested that the *overall intraindustry comparables* in these proceedings should include any such employers outside of the State of Wisconsin.

impasse items may result in different weights being assigned to various types of comparisons. Despite the arguments of the parties relating to the significance of, for example, the use of certain K-12 comparisons, general comparisons with certain other counties, and certain private sector comparisons, the undersigned has concluded that such comparisons are not entitled to significant or determinative weight in the final offer selection process in these proceedings.

The Interests and Welfare of the Public Criterion

It is next noted that both parties addressed the significance of the *interests and welfare of the public criterion* in these proceedings. While it is clear that the financial interests of the taxpaying public are an important part of this criterion, it is also clear that appropriately paying, attracting and holding well qualified employees in the District, including those holding the AODA Specialist and the Student Health Nurse classifications, also clearly serves the public interest. Since there is no claim of either inability or impaired ability to pay in these proceedings, and since the valid arguments of both parties are difficult to quantify, the undersigned has preliminarily concluded that arbitral consideration of the interests and welfare of the public criterion does not definitively favor the position of either party in these proceedings.

The Significance of the Status Quo Ante

What next of the fact that the Association's proposal to move the Student Health Nurse and the AODA Specialist classifications to the Teachers' salary structure is a significant change in the status quo ante. It is widely recognized by arbitrators that the proponent of significant change in the *negotiated* status quo ante has the burden of establishing a *very persuasive basis for such change*. Even though a lesser standard is required to support change in a *non-negotiated* status quo ante, the proponent of such change maintains both the burden of proof and the risk of non-persuasion.[78]

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[78] See the *decision of the undersigned* in Hamilton School District, Case 29, No. 50369, INT/ARB 7151 (1995), referencing therein at pages 17-18 a prior decision in Shiocton School District, Case 10, No. 47058, INT/ARB-6389 (1993).

The Wage/Salary Impasse of the Parties

The most significant of the various impasse items is, of course, the Association proposal that the Student Health Nurse and the AODA Specialist classifications be placed on the teachers' salary structure, where both the two incumbents and any future hires would have the quite substantial benefit of movement through the various education and experience lanes contained therein. In this area the Arbitrator is first faced with four principal considerations: *first*, the significance of the WERC ordered accretion into the bargaining unit of the two classifications; *second*, the normal intraindustry practice in use or non-use of the teachers' salary structure for the two classifications; *third*, the significance of the credentials of Ms. Van Goethem and Mr. Strebel; and, *fourth,* the comparable wages/salaries proposed for the two classifications by the parties.

While a single wage or salary structure covering an entire bargaining unit, with all of the various covered classifications placed therein, is a typical approach in collective bargaining agreements, it is far from universal. Many typical industrial bargaining units may cover unskilled, semi skilled and skilled classifications, with separate wage determination standards, separate wage structures, and/or diverse entry paths into the higher paying classifications.

In the above connection, the Employer emphasized the differences in salary structures, professional and functional distinctions between *teachers* and *other related professional personnel*. It is quite correct that the salary structures of teaching professionals, which normally contain multiple educational and experience lanes and significant differences from entry level to maximum salaries, are predicated upon widespread recognition of a *significant correlation between teaching expertise*, and *the degrees, educational credits and the full years of teaching experience of individual teachers*. The testimony of Mr. William Burns, former faculty member, negotiator, Association President, and later the Employer's Vice President of Human Resources, very well described the nature and evolution of faculty

salary schedules,[79] and in its initial brief the Employer also cited a decision of Arbitrator Zel Rice, wherein he addressed in part as follows, certain distinctions between teaching and non-teaching professionals:

> "Teachers and counselors are substantially different. They have different work settings, different duties and different responsibilities. The formal training and experience of a counselor is not as narrow as that of a teacher. The Employer's teachers have a great variety of training and capabilities. Those factors are major considerations in determining the assignment of teachers. Counselors are a homogenous group and their duties are quite similar.
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> The teacher's index has a historical background that is unique to it. The counselors have no such background and have worked without an index since the Employer first employed them. Their working conditions are not the same. The teachers are on a 190 day schedule including 7 holidays while the counselors are employed the full year and have 12 paid holidays and 4 weeks of paid vacation. Teachers and counselors both work with students but counselors work on a one on one basis while teachers work with groups. Teachers operate in a more structured environment....The salary proposal of the Employer retains the long established pattern that has been developed and adds to it an increase that is comparable to that provided to other employees in the bargaining unit and to other employees of the Employer outside of the bargaining unit."[80]

On the above described bases, the undersigned has preliminarily concluded that the WERC ordered accretion of the AODA Specialist and the Student Health Nurse classifications into the bargaining unit, did not create a *prima facie case* for their inclusion in the teachers' salary structure. Since the Association is proposing a significant change in the non-negotiated status quo ante, therefore, it has the burden of establishing an appropriate basis for such change.

What next of the practices of the primary intraindustry comparisons with respect to placement of the Student Health Nurse and the AODA Specialist classifications on the teachers' salary structure? This information is well summarized in Association Exhibits #22 and #23, which indicated as follows:

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[79] See the *testimony of Mr. Burns* at Hearing Transcript, pages 156-158.

[80] See the decision of Arbitrator Rice in Milwaukee Area Board of Vocational, Technical and Adult Education (Teachers), Dec. 18232-A (1981).

(1) Only two of the four other primary intraindustry comparables employ school nurses, neither of which place them on the teachers' salary structure.[81]

(2) Ten of the fifteen intraindustry comparables, statewide, employ school nurses. Two such comparables place them on the teachers' salary structure, one utilizes the BA education lane only, and the remaining seven do not use the teachers' salary structure.[82]

(3) All four primary intraindustry comparables employ AODA Counselors, and three of these four utilize the teachers' salary structure.[83]

(4) Fourteen of the fifteen intraindustry comparables, statewide, employ AODA Counselors. Seven such comparables place them on the teachers salary structure, one utilizes the BA education lane only, and six do not use the teachers' salary structure.

Because of the lack of definitive results in looking solely to the geographically proximate intraindustry comparables, the undersigned finds it appropriate, in reviewing the salary structure issues, to consider and give appropriate weight to all such comparables. The above information reflects far less than a well established practice among the intraindustry comparables of utilizing the teachers' salary structure for both the school nurses and the AODA counselor classifications, although the Union could have made a somewhat stronger case for the AODA Specialist alone. On these bases, the undersigned has preliminarily concluded that arbitral consideration of the intraindustry comparables does not alone persuasively support the placement of the Student Health Nurse and the AODA Specialist classifications into the teachers' salary structure.[84]

What next of the Association's arguments that additional education and experience are assets in all professional positions, that Ms. Van Goethem and Mr. Strebel have unusual professional and educational credentials, and that

[81] See the practices of the *Fox Valley* and *Lakeshore* districts in Association Exhibit #22.

[82] See the practices of the *Fox Valley, Gateway, Lakeshore, Madison, Midstate, Milwaukee, Moraine Park, Nicolet, Southwest* and *Indianhead* districts, in Association Exhibit #22.

[83] See the practices of the *Fox Valley, Lakeshore, Nicolet* and *Northcentral* districts in Association Exhibit #23.

[84] While Arbitrator Imes found that consideration of the K-12 feeder schools was significant in the fair share dispute then before her, these schools would not normally be considered part of the intraindustry comparison group, and both the school nurses and the various counseling positions would also be distinguishable in various respects from the Student Health Nurse and the AODA Specialist in the case at hand.

these considerations favor placement of the two classifications in the teachers' salary schedule? While it is quite clear that both Ms. Van Goethem and Mr. Strebel are valuable and impressively credentialed professionals and that they should be appropriately paid for their services, the Employer is quite correct that it is the *two classifications* that must be evaluated and appropriately slotted at an appropriate wage/salary level, not the *two individuals currently holding the classifications*. On these bases the undersigned has preliminarily concluded that the unusual professional and educational credentials of Ms. Van Goethem and Mr. Strebel do **not** justify the placement of the Student Health Nurse and the AODA Specialist into the teachers' salary structure.

What next of the comparisons of the actual pay proposals of the parties for the two classifications, versus the primary and secondary intraindustry comparables, the process normally utilized for the purpose of determining whether the levels of pay for particular classifications are competitive with the comparables, regardless of the exact salary structure within which the classifications are slotted. The Union has presented little data directly comparing the specific wages/salary of the two classifications with the primary intraindustry comparables, but such comparisons were offered in Employer Exhibits #24, #25, #27 and #28.[85]

(1) Employer Exhibit #24 compares the *actual wages* paid to those holding *the school nurse classifications*, and indicates that the wage/salary proposals of both parties exceed the intraindustry averages for both 1995-96 and 1996-97.

(2) Employer Exhibit #25 compares the *potential range of annual wages* for *the school nurse classifications*, and indicates that the wage/salary proposals of the Employer are significantly above at the minimums and slightly below at the average maximums, while the Union offer is somewhat below at the minimum and very significantly above at the average maximums for both 1995-96 and 1996-97.

(3) Employer Exhibit #28 compares the *actual wages* paid to those holding *the AODA Specialist classifications*, and indicates that the wage/salary proposal of both parties exceed the intraindustry averages.

[85] The Employer's exhibits exclude Madison and Milwaukee, but as indicated in Footnote #30, *supra*, these two comparisons normally receive *selective* or *discounted* use, and this is particularly true in direct wage rate comparisons.

(4) Employer Exhibit #27 compares the *potential range of annual wages* for *the AODA Specialist classifications*, and indicates that the wage/salary offers of both parties exceed the intraindustry averages at both the minimums and maximums for both 1995-96 and 1996-97.

On the above referenced bases the Impartial Arbitrator has concluded that the final offer of the Employer is closer to the intraindustry average wages/salaries reflected in the above referenced evidence. Accordingly, the final wage/salary offer of the Employer, rather than that of the Association is clearly supported by arbitral consideration of the intraindustry comparison criterion.[86]

On the basis of all of the above, the Arbitrator has preliminarily concluded that the Employer's final offer is clearly favored over that of the Association, in the wage/salary impasse component of the two final offers.

The Various Language Items

What next of the significant number of *language impasse items*, which occupy several pages in the final offers of each party? In this area both parties argue that the final offer of the other is ambiguous in various important respects. They also disagree in such areas as the operational significance of Association proposals governing the seniority rights of the AODA Specialist and the Student Health Nurse classifications, including such areas as *probationary periods, vacancies, transfers, reassignment*, and *layoff and recall*, and they dispute the merits of the Employer proposed *one year additional probationary period* for the two accreted positions. In these connections, it is apparent that in their preliminary negotiations on the various language items, the parties simply did not effectively reduce their areas of disagreement. Despite the fact that the final offer statutory interest arbitration process is not well suited to handling broad areas of language disagreement, the undersigned finds the following described considerations to be persuasive.

Normal probationary periods are designed to provide employers with a

[86] While the referenced exhibits did not separately break down the comparisons among the *primary intraindustry comparables*, Nicolet, Northcentral, Fox Valley, Lakeshore and Northeast Wisconsin, such a specific comparison would not have changed this preliminary conclusion.

single opportunity to evaluate new employees prior to their becoming permanent. Collective agreements also commonly provide for promotional and transfer preference for incumbent employees and for *secondary trial/probationary periods,* within which employers and/or employees have the right to rescind transfers or promotions within certain additional periods. Both types of probationary or trial periods are in issue in these proceedings.

(1) The Employer has proposed, in effect, that the incumbents filling the two accreted classifications would be required to complete a new one year probationary period, despite the undisputed length and quality of their prior service.[87]

No persuasive bases have been advanced by the Employer in support of this proposal, it is difficult to understand how it became a part of its final offer, and the principal argument advanced in its support is the fact that because of the passage of time it would have no effect upon either of the incumbents.

(2) The Association has properly proposed that those holding the accreted classifications would be considered in filling any bargaining unit vacancies, and that once a "...bargaining unit member became an instructor or guidance counselor, all applicable sections of the Master Agreement shall then apply."[88]

In his testimony, however, Mr. Evans described the preliminary interview and evaluation processes used in the employment of teachers and the normal need for and use of three year probationary periods thereafter. He persuasively and reasonably emphasized that the Association proposal would allow non-teacher incumbent bargaining unit employees to fill teacher vacancies with full and immediate rights to be retained in such positions, without provision for evaluation of teaching skills during any probationary teaching period.[89]

While interest arbitrators are normally reluctant to select final offers which are ambiguous on their faces and/or in their intended applications, this consideration cannot be assigned significant weight in evaluating the language impasse items, because the final offers of both parties are ambiguous in various significant respects.

On the basis of all of the above, the Impartial Arbitrator has preliminarily determined that the final offer of the Employer on the various language offers is somewhat favored over that of the Association, principally because of the considerations referenced in paragraph (2) above.

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[87] See the *Final Offer of the Employer* at page 2, Section 2.

[88] See the *Final Offer of the Association*, at page 2, Section 3.

[89] See the *testimony of Mr. Evans* at Hearing Transcript, pages 176-178.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitration has reached the following summarized, principal preliminary conclusions.

(1) The primary goal of a Wisconsin interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table.

   (a) The *final offer* procedure, which limits an arbitrator to selection of either final offer, in toto, is designed to facilitate the achievement of the above goal, by motivating the parties to reduce their areas of difference as much as possible prior to submitting an impasse to arbitration.

   (b) The parties remain at impasse on a considerable number of items, and this will have an important impact upon the effectiveness of the interest arbitration process in these proceedings.

(2) Although the statutory criteria have not been comprehensively prioritized by the Wisconsin Legislature, it is widely recognized by interest arbitrators that *comparisons* are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria and, in the absence of very strong evidence to the contrary, the most persuasive comparisons are normally the so-called *intraindustry comparisons*.

   (a) Arbitrators are very reluctant to change the specific intraindustry comparisons utilized by the parties in their prior negotiations, including those confirmed in prior interest arbitration proceedings.

   (b) In a prior interest arbitration proceeding between the parties, Arbitrator Imes appropriately recognized *primary and secondary intraindustry comparables*, composed of *geographically proximate* and *all statewide Vocational, Technical and Adult Educational Districts*, respectively.

   (c) By way of clarification of the above, the *primary intraindustry comparisons* should continue to consist of those districts with contiguous borders, or the *Nicolet, Northcentral, Fox Valley, Lakeshore and Northeastern Wisconsin districts*, and the secondary *intraindustry comparables* should continue to consist of *all of the vocational, technical and adult education districts in the State of Wisconsin*.

   (d) Despite the arguments of the parties relating to the significance of, for example, the use of certain K-12 comparisons, general comparisons with certain other counties, and certain private sector comparisons, the undersigned has concluded that *such other comparisons are not entitled to significant or determinative weight in the final offer selection process in these proceedings*.

(3) Since there is no claim of either *inability* or *impaired ability to pay* in these proceedings, and since the valid arguments of both parties are difficult to quantify, the undersigned has preliminarily concluded that arbitral consideration of *the interests and welfare of the public criterion* does not

definitively favor the position of either party in these proceedings.

(4) It is widely recognized by arbitrators that the proponent of significant change in the *negotiated* status quo ante has the burden of establishing a *very persuasive basis for such change*. Even though a lesser standard is required to support change in a *non-negotiated* status quo ante, the proponent of such change maintains both the burden of proof and the risk of non-persuasion.

(5) In connection with *the Wage/Salary impasse* of the parties, the undersigned finds the following considerations to be determinative.

(a) The Association proposal that the *Student Health Nurse and the AODA Specialist classifications be placed on the teachers' salary structure* is the most important of the impasse items before the Arbitrator in these proceedings.

(b) In this area, the undersigned is faced with four principal considerations: *first*, the significance of the WERC ordered accretion into the bargaining unit of the two classifications; *second*, the normal intraindustry practice in use or non-use of the teachers' salary structure for the two classifications; *third*, the significance of the credentials of Ms. Van Goethem and Mr. Strebel; and, *fourth,* the comparable wages/salaries proposed for the two classifications by the parties.

(c) The WERC ordered accretion of the AODA Specialist and the Student Health Nurse classifications into the bargaining unit, did not create a *prima facie case* for their inclusion in the teachers' salary structure. Since the Association is proposing a significant change in the non-negotiated status quo ante, therefore, it has the burden of establishing an appropriate basis for such change.

(d) Arbitral consideration of the *intraindustry comparables* does not support the placement of the Student Health Nurse and the AODA Specialist classifications into the teachers' salary structure.

(e) While it is quite clear that both Ms. Van Goethem and Mr. Strebel are valuable and impressively credentialed professionals, it is the AODA Specialist and the Student Health Nurse classifications which must be evaluated and appropriately slotted at an appropriate wage/salary level.

(f) The final wage/salary offer of the Employer, rather than that of the Association is clearly supported by arbitral consideration of the *intraindustry comparison criterion*.

(g) On the basis of all of the above, the Employer's final offer is clearly favored over that of the Association, in the wage/salary impasse component of the two final offers.

(6) In connection with the *language impasse items*, the undersigned has preliminarily determined that the final offer of the Employer is somewhat favored over that of the Association.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including all of the statutory criterion contained in *Section*

111.70(4)(cm)(7) of the Wisconsin Statutes, the Impartial Arbitrator has concluded that the final offer of the Employer is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of the evidence and arguments advanced by the parties and all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Employer is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Employer, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

May 2, 1999