

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

In the Matter of the Petition of

**NORTHERN EDUCATIONAL SUPPORT TEAM
(NEST)**

**To Initiate Arbitration Between
Said Petitioner And**

**SCHOOL DISTRICT OF RIB LAKE,
BOARD OF EDUCATION**

**Case 20
No. 58082
INT/ARB-8817
Decision No. 29927-A**

**Gil Vernon,
Arbitrator**

APPEARANCES

On Behalf of the Union: Gene Degner, Director - NTU-Central

On Behalf of the District: Richard J. Ricci, Attorney - Weld, Riley, Prenn
& Ricci, S.C.

I. BACKGROUND

The Union represents the newly organized support staff at the School District of Rib Lake. In the process of negotiating the first contract, the parties were unable to come to an agreement on all issues. As a result, on October 18, 1999 the Union filed a petition requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On December 16, 1999, February 9, 2000 and March 7, 2000, a member of the Commission's staff conducted investigations which reflected that the parties were deadlocked in their negotiations, and by June

7, 2000, the parties submitted to the investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. Thereafter the investigator notified the parties that the investigation was closed. The investigator also advised the Commission that the parties remained at impasse. On June 21, 2000 the Commission (WERC) issued findings of fact and ordered the parties to select an arbitrator from a list it provided them. The parties selected the undersigned and his appointment was ordered July 12, 2000.

A hearing was conducted on September 29, 2000 at which the parties submitted evidence. Post-hearing briefs and reply briefs were filed, the last of which was received December 1, 2000.

II. FINAL ISSUES AND OFFERS

There are a substantial number of issues before the Arbitrator. They are summarized as follows:

A. Article II: Management Rights

The parties have agreed to a Management Rights clause (Article II-A) that sets forth a list of enumerated rights. The District, in its final offer, proposes to add an additional enumerated right as Section 12:

“To contract out for goods and services.”

The Union’s final offer is silent on the issue of subcontracting.

B. Article IX - Fair Share Agreement

The parties have agreed to a Fair Share Agreement requiring that bargaining members pay their fair share of the cost of representation. The agreed-to language also contains detailed procedures. The difference between the parties relates to a ‘Grandfather’ clause proposed by the District that would exempt employees hired as of January 1, 2000 from the Fair Share requirement making this optional for these employees. Their proposal for Article IX Section F reads as follows:

“Any bargaining unit member employed as of January 1, 2000 and not a NEST member shall be excluded from the terms of this Article until such times as he/she elects to become a NEST member.”

The Union’s proposal contains no Grandfather Clause, resulting in the full application of Article IX Section F to all employees in the bargaining unit.

C. Article XIV - Holidays, Section F

The parties agreed to a number of paid holidays and agreed to eligibility language. The only difference in the proposals relates to how much an employee would be paid if he or she is required to work on a recognized holiday.

The District’s proposal for Article XIV - Holidays, Section F reads as follows:

“Employees scheduled to work on a holiday shall be paid their regular rate of pay in addition to holiday pay.”

The Union’s proposal reads as follows:

“Employees scheduled to work on a holiday shall receive time and one-half for all hours worked in addition to the holiday pay.”

D. Article XX - Retirement

The District’s Final Offer on retirement reads as follows:

1. Effective July 1, 2000, for bargaining unit employees scheduled to work 600 or more hours the District agrees to contribute, in July for prior years service, to each of said employee’s Self-Directed IRA, at a financial institution selected by the District, the following:

After three (3) years of employment - 4% of the employee’s annual salary
After four (4) years of employment - 5% of the employee’s annual salary
After five (5) years of employment - 6% of the employee’s annual salary
After six (6) years of employment - 7% of the employee’s annual salary
After seven (7) years of employment - 8% of the employee’s annual salary
After eight (8) years of employment - 9% of the employee’s annual salary
After nine (9) years of employment - 10% of the employee’s annual salary

2. The first year of this benefit was 1990-91, so the base year for computation of the amount due each employee shall be 1989-90.
3. No other bargaining unit employees shall be eligible for this retirement benefit.

The Union's Final Offer reads as follows:

1. The District agrees to contribute, on behalf of all employees working six hundred (600) hours or more per year the following percentages of their total salary as an individual retirement plan:

Year 1	4%
Year 2	5%
Year 3	6%
Year 4	7%
Year 5	8%
Year 6	9%
Year 7	10%

2. Bargaining unit members shall receive retirement contributions based on the above schedule, starting July 1, 1999. The following exceptions apply to the phase in:
 - 1) Bargaining unit members who have not yet received a retirement contribution but are eligible shall start at Year 1 for the 1999-2000 school year and progress one percent (1%) a year thereafter until reaching the maximum of ten percent (10%).
 - 2) Bargaining unit members already receiving benefits for the 1999-2000 school year shall not receive any additional contributions for the 1999-2000 school year. Starting with the 2000-01 school year, bargaining unit members will progress at a rate of an additional one percent (1%) per year until they reach the maximum ten percent (10%).
 - 3) Bus drivers with two (2) runs a day shall be presumed to have worked six hundred (600) hours a year.

5. Article XXV

The parties agreed to detailed language on assignments, workload and hours. The only difference is that the Union proposed language providing special compensation for employees who do building checks on weekends. The Employer proposed no language in this regard. The Union proposed adding the following language as Section H of Article XXV:

“Employees required to do building checks on weekends shall receive a minimum of eight (8) hours pay for each weekend of building checks (a maximum of three (3) building checks). Holiday building checks during the week shall be paid at a rate of four (4) hours pay for each weekday building check (a maximum of two (2) building checks). (Effective July 1, 2000)

F. Article XXVII General Provisions

There are several sections of Article XXVII in dispute. It should be noted that for clarity the District’s Final Offer incorrectly labeled these section headings (as it acknowledged in its brief.) The correct section designations are as follows.

1. Section D

The Union proposes the following language be Section D of Article XXVII:

“All bus drivers with two (2) runs per day shall receive 90% contribution towards health and dental premiums of \$200 to any such employee not covered by the District’s health insurance policy.” (Effective September 1, 2000)

The District makes no proposal on this subject.

2. Section E

Section E addresses uniforms. The parties agree that the District should provide uniforms and shoes, but disagree over how many uniforms should be provided. The District’s proposed language reads as follows:

“The District shall provide food service employees with two (2) sets of uniforms yearly, plus one (1) pair of work shoes.” (Effective July 1, 2000)

The Union's proposed language on uniforms is as follows:

"The District shall provide food service employees with three (3) sets of uniforms and one pair of work shoes, yearly." (Effective July 1, 2000)

3. Section G

Section G addresses extra trips by bus drivers. Both parties agreed drivers should be paid for extra trips, but disagree as to the amount. The District's proposal is as follows:

"All extra bus trips shall be paid at the rate of nine dollars (\$9.00) per hour for all time spent." (Effective July 1, 2000)

The Union's proposed language on extra bus trips reads as follows:

"All extra bus trips shall be paid at the rate of ten dollars (\$10) per hour for all time spent." (Effective July 1, 2000)

4. Section H

In addition to Section G, the Union proposes the following language also apply to extra bus trips:

"Bus drivers taking extra trips that overlap their normal run shall be paid their run plus all hours spent on the extra trip minus one hour of extra trip pay."

G. Schedule B Wage Levels

Both parties' Final Offers set forth the exact detail of their proposals on wage rates. For the sake of space and brevity, the Arbitrator offers the following summary. Both parties agree that there should be seven wage levels or classifications and agree what jobs are in each wage level. They both agree bus drivers are to be paid by the trip or run. Both parties agree that for 1999-2000 each employee should be paid at their current non-negotiated rate of pay.

For 2000-2001 and 2001-2002 both parties submit wage grids for each wage level with experience steps. Each party agrees to the same maximum rate for each position. The difference relates to the starting rate and the number of steps. The District proposes seven steps with the seventh being the maximum rate. The Union

proposes six steps to the maximum rates. So, while the employee would end up at the same rate under either offer, the Union's offer has the employee starting at a higher rate and has them reaching the maximum one year sooner than under the District's offer. Both parties propose red-circling employees whose pre-existing wage rates were higher than the negotiated or proposed wage rate under either offer. Each party puts forth a list of employees to be red-circled.

The Union, also as part of its Schedule B proposal, addresses mileage for bus drivers. Their proposal in this regard reads as follows:

"Bus/Van/EEN Drivers with daily mileage over 75 miles per day shall be compensated an additional 5 cents per mile for all miles over 75 per day"

H. Ancillary Issues

The parties also disagree over the school districts to be used for comparability purposes under paragraph 7R of the controlling statute. The District submits that the 10 school districts in the Marawood Athletic Conference comprise the appropriate comparable pool. Those school districts are:

Abbotsford	Pittsville
Athens	Prentice
Edgar	Rib Lake
Grantton	Spencer
Marathon City	Stratford

The Union's proposed comparable pool includes only the unionized school districts in the Marawood Conference, which eliminates Edgar, Marathon City, Spencer and Stratford from the above list. The Union then adds to its proposed comparable pool three non-conference school districts which the Union argues are comparable because they are contiguous to Rib Lake. Those districts are Gilman, Medford and Tomahawk.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. Subcontracting (Article II Management Rights)

1. The Union

The Union notes at the outset that, regardless of which comparable set is used, very few of the districts have the right to subcontract spelled out in their labor/management agreement. Thus, they argue, the comparables clearly support the Union position for leaving the contract silent on this position. They also view this as a “red herring”. First, the District leaves the impression that it needs the right to subcontract bus drivers. This, in the Union’s opinion, is a false impression since the Union never sought to have the current subcontracted drivers included in the bargaining unit. (Three of the seven bus routes in the District are subcontracted). Second, the issue of subcontracting was never discussed in bargaining but in the Union’s opinion was “...simply an after-the-fact thought by the District to support its rather egregious position of wanting to have the right to subcontract in the collective bargaining agreement.”

2. The District

The District stresses at the outset that the impact of a decision to subcontract must always be bargained, regardless of whether or not the decision to subcontract is a contractual right. They recognize this obligation. It not only subcontracts some bus routes, it subcontracts some professional services from CESA #9 and snowplowing. Under their offer they would still have the flexibility to do all these things. The right to contract out bus driving is “critical” in the District’s estimation because the evidence shows it is much more cost-effective to subcontract the three bus routes than to have District employees drive the routes. If the District were to discontinue subcontracting, its busing expenses would increase by at least an additional \$31,637/year (44 cents/mile x 71,460 miles/year driven by subcontractors.) The District has also considered subcontracting custodial services. As for good faith, the District hired a fourth driver rather than subcontract prior to the Union election. The District simply wishes to retain the flexibility it has always had under the prior status quo which should be recognized and continued.

The District also believes that the comparables support its proposal not the

Union's. Four of the ten Marawood Conference school districts are not organized. As such, the districts have an unlimited right to subcontract. With respect to the unionized contracts, one has language which supports the District's offer (Prentice), one has language which supports the Union's offer (Pittsville), and three contain no subcontracting provisions. The District argues that these three contracts are neutral in that they are open for negotiations regarding subcontracting each time a successor contract is bargained.

B. Fair Share Agreement - Article IX

1. The Union

It is because of proposals such as the Employer's subcontracting language that the Union believes that its Fair Share Agreement is particularly justified. They also note that the District's proposal to grandfather existing employees from the fair share requirement is not justified for the following reasons: (1) Only one of the organized comparables have a grandfathered Fair Share Agreement. (2) The District has had a history of not cooperating with the Union. (3) The District attempted to persuade members not to vote for the Union by threatening to subcontract cleaning services. They also cite a string of cases where arbitrators have favored either a full fair share over a grandfather provision, or fair share being incorporated into the contract based on comparability or other ideological reasons.

2. The District

The District states its rationale to grandfather existing employees from the fair share requirement is twofold. First, it allows those bargaining unit members who were employed as of January 1, 2000 and who do not wish to join the Union to be "grandfathered," or exempted, from paying fair share fees unless and until they elect at some future time to join the Union. Second, the District's proposal is almost identical to the language found in the collective bargaining agreement covering Rib Lake's teachers - language which was voluntarily agreed to by the same Union that is representing the support staff here. One-third of the bargaining unit voted against the Union.

Among the external comparables, the school district of Abbotsford has a similar provision in its collective bargaining agreement. Also, by its nature, it will

ultimately be “grandfathered” out of existence by its own terms, since normal attrition and turnover will eventually result in the departure of all employees to whom it applies. They also cite cases where arbitrators have recognized that such fair share “grandfather” provisions are not inherently unreasonable.

C. Holidays - Article XIV Section F

1. The Union

The Union, in support of their proposal, directs attention to the fact that by a two-to-one margin, the comparables support employees getting time and one half in addition to holiday pay when they are requested to work on a holiday. They also appeal to basic fairness. Unreasonably, they argue, the District treats working on a holiday like working on any other day.

2. The District

The District proposes to maintain the status quo on pay for working on a holiday. This has been more than adequate because employees are simply not required to work on holidays. The same is true in four of the comparable districts - Abbotsford, Edgar, Granton and Spencer. In Marathon City, employees receive compensatory time off for working on a holiday. Among the remaining four comparables, two districts pay employees their regular rate of pay (Athens and Prentice) and two pay employees time and one-half (Pittsville and Stratford). Thus, the pattern supports the District offer, which they view as inherently reasonable.

D. Article XX Retirement

1. The Union

The Union notes that with respect to both parties’ proposals, each proposes significantly less than that which exists in the comparables. All of the comparability groups surrounding the Rib Lake School District have retirement either in a private pension plan or retirement from the Wisconsin Retirement System (WRS). In every case, the employer pays the employee’s share and the employer’s share which amounts anywhere from 10.2% to 12.75% as indicated in the Tomahawk agreement for a private plan. Thus, bargaining unit employees are

behind by 6% starting out under the Union's proposal and are behind anywhere from 10-12% for three years under the District's proposal. Moreover, none of these other plans have a waiting period. The Board makes employees wait three years. These early years are critical in terms of contributions as the money compounds. This is one unreasonable aspect of the District's proposal.

They also note that the Union's retirement proposal to provide a retirement contribution in 1999-2000 is the only "new money" required of the District. Employees for 1999-2000 school year did not get any raise except an increment movement on that salary schedule. Therefore, they argue, it is only fair that those employees receive some additional compensation in lieu of a salary schedule adjustment. Regarding bus drivers, they should qualify because although paid by the run, they work three and one-half to four hours per day for 180 days. The Union states their proposal resolves any doubt on this point by spelling out coverage.

2. The District

It is the position of the District that the District's offer on retirement implements a significant improvement to the status quo, while the Union's offer demands too much, too soon. Both parties propose to continue the prior system of District contributions to a self-directed IRA. Previously, IRA contributions were made for employees working 1400 hours or more beginning with the third year of employment. The District contributed four percent of each eligible employee's previous year's salary into a self-directed IRA. Each year thereafter, the percentage of salary contributed by the District increased by .5%, until a maximum of 10% of the employee's previous year's salary was contributed after 15 years of employment. There was a \$2,000 cap. The program began in 1990-91.

The District's proposal makes several improvements: (1) It drops the eligibility to 600 hours (this results in more employees being covered) and (2) Employees who were previously eligible will continue to receive retirement benefits under the old sliding scale for the first year of the contract, and will move onto the new sliding scale effective with the second year of the contract.

The Union's proposal makes unwarranted changes in that it takes this a step further by requiring that bus drivers who drive two runs per day "shall be presumed to have worked 600 hours a year." Based on an average run of one hour

(the longest is 1.5 hours) twice per day, no driver works 600 hours per year. The Union offer grants them automatic coverage. The District describes this as “extravagant” and contends it has no support in the comparables. First, most of the comparable school districts subcontract their bus services. However, the two districts that employ their own bus drivers are both enrolled in WRS, which requires all employees to work 600 hours in order to be eligible.

The second change to the status quo made under the Union’s offer is that it compresses the sliding scale to an even greater degree than does the District’s proposal. The third change under the Union’s offer is that it, too, removes the \$2,000 cap. The fourth change is that the Union’s proposal calls for an implementation date of July 1, 1999 for the new plan for all employees who were previously ineligible (as compared to July 1, 2000 under the District’s proposal).

A final important difference between the parties’ offers is that the District’s proposal contains explicit language that continues the previous practice of using an employee’s previous year’s salary as the basis for applying the District’s retirement contribution percentage. In short, the District contends that the Union’s retirement proposal simply demands too much, too soon. The District’s final offer is preferable because it provides substantial improvements to the status quo while at the same time recognizing that there are significant costs attached to such improvements. The Union’s final offer generates total retirement costs that are more than 13% higher than the costs generated under the District’s proposal.

E. Article XXV - Weekend Checks

1. The Union

The Union recognizes that the comparables do not help decide this issue. The Tomahawk School District in the Union’s comparables is the only one that addresses building checks and it is the identical proposal that the Union made for the Rib Lake support staff collective bargaining agreement. However, in contrast, the District’s offer of “nothing” is, in their opinion, a refusal to bargain. The District’s reliance on normal call-in pay leaves open the question whether an employee would be expected to work the entire two hours to collect the pay. Their offer is preferred because it answers this question.

2. The District

The District's evidence shows that the Union's proposal is a much more generous payment system than is present in any other comparable school district. In three of the five unionized districts, there are no specific contractual provisions addressing custodial building checks. In the two remaining unionized districts, Pittsville pays one hour at time and one-half for furnace checks (or actual hours worked at time and one-half in the event of complications) and Granton pays one hour for each instance in which an employee is scheduled to open and close a school building on a day outside their normal work shift. Thus, the Union's offer is out of line with the comparables. Moreover, only one employee has been required to do building checks. Accordingly, the District contends the status quo of paying time and one-half for actual hours worked is preferable.

F. General Provisions - Article XXVII

1. Section D - Health Insurance for Bus Drivers

(1) The Union

The Union describes this as an issue of fairness since three of the four bus drivers are presently covered by health insurance at the 90% contribution level. It is only fair to have the fourth driver, who works just as much, also be covered.

(2) The District

The stipulations of the parties indicate the parties agreed that employees working 1400 hours got 90% of health and dental. Employees between 720 and 1400 hours get a prorated contribution. Yet the Union wants bus drivers to get a 90% contribution even though they work less than 600 hours (although three of the four drivers will be grandfathered). Bus drivers will get more health insurance contribution than employees working more hours (those between 720 and 1400 hours). This is without justification and "untenable". At the very least, the Union's proposal could have contained a provision for prorating insurance premiums based on annual hours worked, similar to the parties' tentative agreement for other support staff employees working less than 1,400 hours/year.

2. Uniforms - Section E

(a) The Union

In the Union's view, this issue has little economic consequence. The proposal is based

on need. Employees are required to wear uniforms. Kitchen uniforms get soiled easily and a clean uniform is required daily. It is more reasonable to provide three uniforms.

(b) The District

The status quo is for the District to provide only one uniform and no shoes. The District's offer is already a significant improvement and therefore, more reasonable.

3. Section G - Extra Trips By Bus Drivers

(a) The Union

Ten dollars per hour is closer to the pro-rated trip rate than nine dollars, therefore, is more reasonable. The regular rate of \$23.37 to \$24.07 for an estimated two hour run equates to almost \$12 per hour.

(b) The District

The status quo for extra trips is \$7.00/hour. The District views the Union proposal as excessive. The extra trip rates in other schools range from \$7.35 to \$8.50 per hour.

4. Section H - Overlap Trips

(a) The Union

The Union's offer continues the status quo.

(b) The District

The District does not believe in the continuation of the status quo. They note the practice finds no support among the comparables and, quite frankly, is inherently inequitable. It is unreasonable because drivers are not driving the regular run and the extra trip, because they can't be in two places at once. The District's offer, on the other hand, calls for payment of the hours actually worked.

G. Schedule B - Wage Levels

1. The Union

From the Union's perspective, the only remaining issue concerning salary structure is the starting wage rate in each classification. The Union has proposed that the beginning salary be uniform-90% of the full wage rate and increase 2% per year until reaching the maximum in year six. The District has proposed a seven-step salary schedule using the beginning wage rates which vary with some reflective of the 1998 perpetual salary schedule that the District had

attempted to impose upon the employees and others having some modification without any rationale. Compared to other districts, neither offer is clearly more reasonable. However, the Union contends that the necessity for the higher starting salary is based on the fact that employees in the Rib Lake District do not get the retirement benefits that the employees in the Athletic Conference schools get when they start. Thus, the higher starting salary is needed to compete with other districts on a total compensation basis.

2. The District

It is the position of the District that its offer provides the employees with generous wage increases that exceed both the internal and external comparables. The parties differ on the starting wage, the length of the schedule and the actual wage rates to be applied to several of the red-circled employees. The difference in cost impact, says the District, is significant. The District's offer, it asserted, is more consistent on the matter of starting wage rates and number of steps.

In terms of cost, in the first and third years of the contract, both parties' offers result in total wage increases across the unit of about 3%. In the second year, however, the District's offer results in a total wage increase of 8.78%, while the Union's offer applies an 11.64% total wage increase. The difference relates to the fact that the Union's offer simply applies a greater wage boost to certain employees. The result is an average cents-per-hour increase for the unit of \$1.09/hour, as compared to the District's more reasonable, yet still generous, 84 cents/hour. Compared to other Districts in the first and third years, the parties' offers provide the same 3% wage increases, or an average of 26 cents/hour in 1999-00 and 32 cents/hour in 2001-02. In the second year, the District's offer provides an average 84 cents/hour increase, the Union's offer provides an average \$1.09/hour increase, and the increases among the comparables range from 25 cents/hour to 97 cents/hour. Both offers exceed the average increase and the District's offer is closer to the wage settlement awarded to the District's other unionized unit, the teachers.

Also, as part of Schedule 'B', the Union proposes that bus drivers with daily mileage over 75 miles receive an additional 5 cents/mile for each mile over 75. However, the District argues the Union provides absolutely no evidence supporting why this proposal is necessary. The Districts that have mileage payments have significantly lower rates of pay.

The District also takes the position that the interest and welfare of the public do not support the extravagant wage and benefit demands of the Union. Under the "greatest weight" factor which relates to revenue caps, the District does not espouse an inability-to-pay argument. However, the District does assert an unwillingness to pay the Union's higher wage and benefits demands. The District has been facing declining state aids due to declining enrollment while costs have been rising. The tax burden has increased too. The District has had to increase its mill rate more than any other district in the Marawood Conference.

Concerning the "greater weight factor" which relates to the economic conditions within the District, the annual taxpayer's income in Rib Lake is over \$5,000 less than the average of the

comparables (\$31,983) and almost \$20,000 less than the highest-ranking comparable. The ‘cost of living’ factor, it is argued, also supports the District’s offer because it exceeds the CPI increase. “Total compensation” is also more appropriately addressed by the District’s offer. Their package of wages and benefits is highly competitive with comparable schools.

IV. OPINION AND DISCUSSION

A. Article II - Management Rights (Subcontracting)

The parties have already agreed to a fairly broad management rights clause, enumerating a number of recognized rights. The District wants to add to the list of explicitly recognized rights the right to subcontract.

The Union’s offer is silent on the issue of subcontract. However, even though silent on the issue, if accepted, the Union’s offer would not mean the District would be prohibited from subcontracting. This is for two reasons. First, management’s rights under the preamble of Article II are not restricted to those matters specifically set forth in Article II. Management would still retain all its inherent rights unless specifically contracted away or restricted by the labor agreement. Second, the language of Article II as stipulated in the tentative agreements of the parties is written broadly enough to arguably allow subcontracting in appropriate circumstances. The District under the already agreed-to language has the right to (a) relieve employees from duties for lack of work or legitimate reasons, (b) take whatever action necessary to maintain efficiency of school operations, (c) to determine the kinds of services perform and the number of positions to perform the work and (d) to determine the means and personnel by which school operations are to be conducted.

Thus, the practical difference between the parties is not as dramatic as first impressions might suggest. The explicit setting forth of the right to subcontract also, as the District acknowledges in their brief, does not give the District the unqualified right to subcontract. The District must bargain the impact of a decision to subcontract. Moreover, grievance arbitrators have held that even where the right to subcontract exists, it cannot be exercised in an arbitrary, capricious or wholly unreasonable way or in such a manner to unreasonably erode the bargaining unit.

Accordingly, the Arbitrator does not find that either final offer is dramatically different enough on this point to significantly influence the outcome of the case.

B. Article IX - Fair Share Agreement

On this issue, the Arbitrator believes the Union's offer is more reasonable. It is more reasonable to hold that, because all employees benefit from the fruits of collective bargaining including such rights as protection from unjust discharge and because the Union is obligated to fairly represent all members of the bargaining unit, all members of the Union should pay their fair share of the cost of representation. The comparables, regardless of which set is used, favors the Union offer as well.

C. Article XIV - Holidays, Section F

The practical impact of the offers on this issue is negligible because employees rarely, if ever, work on holidays. School is not in session on the designated holidays. Accordingly, this issue standing alone is neutral in its impact on the selection of one of the final offers.

D. Article XX - Retirement

Both parties propose to retain the basic self-directed "IRA" structure of the District's prior retirement plan. The District's Final Offer proposes a substantial number of improvements. The maximum contribution is now reached in the 9th year rather than 15th year. The eligibility threshold is dropped from 1,400 hours per year to 600 hours per year.

The Union proposes even more improvements. They propose contributions start after the first year of employment rather than the third year. The maximum contribution is reached after seven years. Facially, anyway, the Union also proposes a 600-hour eligibility threshold.

None of the above improvements proposed by the Union above and beyond the Employer's Final Offer is particularly unreasonable, especially when compared to other school districts (regardless of either comparable group). Typically, support staff employees have both shares of WRS paid by the employee.

However, the Arbitrator finds most unreasonable the Union's proposal to presumptively consider bus drivers to be working 600 hours per year. The Union attempts to justify this by asserting bus drivers work enough hours (even though paid by the run) to meet the eligibility for retirement. It is because the hours worked is "close" to 600 hours they suggest it is better to cement their eligibility.

The problem with the Union's rationale is that the evidence shows that, as a factual matter, bus drivers typically don't work 600 hours per year. The superintendent said the runs were one to one and one-half hours long for a maximum total of three hours. The Union uses some creative math and a false premise to conclude drivers would be working more than 600 hours. They contend the superintendent stated the "...average run was an hour and one-half to two hours (and) would indicate that the employees worked anywhere between three and one-half to four hours. This times 180 days would provide their entry into the retirement system." The

correct math based on the only testimony at the hearing is that drivers work a maximum of 540 hours per year.

The practical impact of the Union's proposal to presumptively cover bus drivers under the retirement program is to lower the eligibility below 600 hours. This is a problem because not one district in either comparable group provides retirement contributions for employees working less than 600 hours. In fact, it is probably safe to say that it would be extremely rare anywhere in the state that workers under Wis. Stats. 111.70 receive retirement with less than 600 hours per year. It also doesn't make a lot of sense to say on the front end of the contract that eligibility of retirement contributions is 600 hours and then effectively negate with "back door" language that lowers it. It would also set up an unjustifiable and perhaps illegal double standard if there were non-bus driver bargaining unit employees who worked less than 600 hours that remained ineligible for benefits.

This significant negative of the Union's offer outweighs the shortcomings of the Employer's retirement. The Employer's offer contains substantial improvement over the status quo. The Union's proposal to take these improvements even further and extend eligibility below the 600 hour mark is less reasonable. This is particularly true since the Employer's offer does not preclude bus driver eligibility for retirement if it can be demonstrated that a particular driver does work over 600 hours.

E. Article XXV - Weekend Checks

The Arbitrator doesn't find the Union's proposal particularly justified on the basis of need or on the basis of the comparables. Only one of the Union's own comparables support the full measure of their proposal to the extent minimum payments are required. However, these other provisions don't approach the Union's proposal or impose maximums.

It should be noted that contrary to the suggestion of the Union, the fact the District's Final Offer is silent on building checks does not mean the District is offering "nothing". It certainly is also without foundation for the Union to say the apparent silence on this topic is "tantamount to a refusal to bargain". While the District's offer doesn't provide for a minimum payment for a building check regardless of the time involved, employees can't be required to do building checks for "nothing". The District concedes that employees would receive time and one-half for the actual time, by virtue of the time being beyond 40 hours in a week or being beyond the fifth day. The Arbitrator also observes that Article XXV Section C provides a minimum of two hours pay for employees recalled to work after their regular hours.

The contract, as it exists in the tentative agreement, is more than sufficient to address the difficulties imposed on an employee called to do a building check. This is particularly true since the evidence suggests only one person is occasionally required to do building checks.

F. General Provisions - Article XXVII

1. Section D - Health and Dental Insurance For Bus Drivers

The Arbitrator's reaction to this issue is much the same as it is to the Union's proposal on retirement. The Union seeks to place bus drivers in a special status apart from other part-time workers and as such, creates an unacceptable double standard. The Union wants all bus drivers who have two runs a day to be afforded 90% health insurance. Yet, at the same time, they have agreed employees between 720 hours and 1,400 hours should receive prorated contributions. Necessarily, this means employees working less than 720 hours would not receive any contribution. Bus drivers who work approximately 540 hours per year would not only receive a health and dental contribution that a similarly situated employee would not, they would be receiving a disproportionate contribution compared to any employee between 720 and 1,400 hours. For instance, an employee at 1,000 hours would receive less of a contribution than a bus driver at approximately 540 hours. Thus, there is a potential for significant inequities under the Union proposal.

Moreover, this isn't just a matter of extending health insurance to a fourth bus driver as the Union suggests. Three of the bus drivers are grandfathered for health insurance contributions but not for dental. Adoption of the Union's proposal would extend dental to the three other drivers on a disproportionate basis compared to other employees working less than 1,400 hours.

The comparables don't present a compelling case for the Union's proposal either. Only two districts have organized drivers. The rest of the districts subcontract. Only Prentice provides the health insurance contribution sought by the Union. This is not enough to overcome the inequities and inconsistent treatment that comes with the Union's proposal. Moreover, it is not known if the benefit in Prentice poses the same inequities when bus drivers are compared to other employees.

The District's proposal is strongly preferred on this issue, especially since all employees including three bus drivers are grandfathered at the levels in effect January 1, 2000.

2. Uniforms - Section E

This issue does not have a startling economic impact but it is difficult to say that the District's offer is unreasonable when (1) its offer of two uniforms and one pair of shoes more than doubles the current benefit of one uniform and (2) not a single comparable provides uniforms for its food service workers.

3. Extra Trips By Bus Drivers - Section G

This is another issue whose impact will not be decisive. Nonetheless, it is again difficult to say the District's offer is unreasonable. The status quo was \$7.00. The District proposed an increase to \$9.00, over a 28% increase. Only two districts don't subcontract and the extra trip rate in these districts is \$7.50 and \$8.50 per hour.

4. Section H - Overlap Trips

This issue standing alone is not decisive. However, the Union's offer to retain the status quo is not unreasonable. While the District calls the practice inherently "inequitable" and "ludicrous" it is one wholly of their own making. If the District's proposal was clearly tied to some quid pro quo it would be easier to justify eliminating a practice it developed and maintained.

G. Schedule B - Wage Levels

The parties are in agreement on the wage rates for 1999-2000. The Employer's old wage schedule plus the normal step advancement would be in effect under both offers. Both parties are in agreement as to the wage levels and the maximum wage rate in each level in the second year (2000-2001) and the third year of the contract (2001-2002).

The differences relate to the starting rate which presently affects no one in the unit, the number of steps or increments to the maximum (6 versus 7) and the manner in which employees, who happen to be paid more than the maximums, are handled while the scheduled rate catches up with their actual rate. While both propose to "red-circle" these employees, no one's wage rate is actually frozen. Everyone in the unit gets a wage increase in each of the contract years under the Employer's offer. However, because of the wide variety of rates and the red-circling, some employees get more of an increase than others. Naturally, the rate of increase must be slower for some than others while the negotiated rate catches up with the out-of-range rates. By the end of the contract, some individual employee rates under either offer will still exceed the negotiated rates.

The difference in the parties' offers besides starting rates and number of steps is the fact the Employer gives less of an increase (particularly to the red-circled employees) during the term of the contract (in the second year of the contract) than the Union. As a result, there is more equalization of the rate differentials under the Employer offer than the Union's offer. The negotiated rates will catch-up to the red-circled employees faster under the Employer's offer than the Union's offer.

The precise red-circling for each individual employee is too varied and complex to detail here. It is sufficient to say however, that the Employer's wage bill, and thus the average employee increase, is greater under the Union offer over the term of the contract than under the Employer offer. The difference shows up in the second year of the contract. Of course, there is no difference in the first year because the offers are identical. The average wage increase under the offers is as follows:

Year	District	Union

1999-00	2.90% (.26/hr)	2.90% (.26/hr)
2000-01	8.78% (.84/hr)	11.64% (1.09/hr)
2001-02	3.19% (.33/hr)	3.03% (.32/hr)
Cumulative non-compounded increase	14.87% (\$1.43/hr)	17.57% (\$1.67/hr)

Concentrating on the crucial year of 2000-01, it is noted that the wage settlements in the unionized schools in the Marawood Conference (the only group for which there is organized settlement data presented), the increases were as follows:

Abbotsford	22 cents/hour plus 10 cents increase to longevity rates
Athens	50 cents/hour
Granton	Not settled
Pittsville	Not settled
Prentice	28 cents/hour

It is noted that the average wage increase under the Employer offer for 2000-01 at 8.78% or .84 cents/hour far exceeds any settlement in unionized support units.

The question raised is “What’s wrong with an average .84 cents/hour increase when other districts negotiated increases from .28 cents to .50 cents per hour?” Additionally, why is a \$1.09 increase necessary? The Union says it is because of the lower-than-average pension contribution. It may be that the Employer’s pension contribution is lower under the self-directed IRA plan than the typical WRS plan but the solution to this lies in a pension proposal.

The higher wage increase also can’t be justified on the basis of wage rates or salary structure. The maximum rate (the most important) at the benchmark positions of custodian, secretary, teacher aid and cook remain in the middle-to-upper rankings among the Marawood Conference comparables, while the wage rates of the red-circled employees rank even more favorably. In terms of schedule structure, among the six union and non-union districts in the Marawood Conference with wage schedules, two take longer to reach the maximum than does the District’s proposed wage schedule, one takes the same number of years as the Union’s proposed wage schedule, and three take fewer years than both parties’ proposed schedules. These are not compelling differences. The starting rates under the District’s offer aren’t particularly disadvantaged either.

Also, as part of the Schedule ‘B’ proposal, the Union proposes a five cent/mile payment for miles driven over 75 miles/day for bus drivers. The evidence does not support this demand. The District’s drivers already rank quite high in their basic rates. Moreover, there is no evidence excess miles is a problem in this district.

The District's more modest but still greater-than-average wage increase package is more consistent with the District's relative economic and financial standing under the "greater weight" factor. The "greatest weight" factor is not applicable in this case.

OVERALL EVALUATION OF THE OFFERS

The Employer's offer is more reasonable on the following issues: (1) Article XX-Retirement, (2) Article XXV - Weekend Checks, (3) Article XXVII Section D - Health Insurance For Bus Drivers, (4) Article XXVII Section E - Uniforms, (5) Article XXVII Section G - Extra Trips, (6) Schedule B - Wage Levels. The Union's offer is more reasonable on the following issues: (1) Article IX - Fair Share, (2) Article XXVII Section H -Overlap Trips. The offers are neutral in preference on the following issues: (1) Article II - Management Rights/Subcontracting, (2) Article XIV - Holidays, Section F.

The negative preference for the District's fair share proposal is quite strong. However, it does not outweigh the cumulative unreasonableness of the Union's offer on health insurance and retirement for bus drivers and its less reasonable Schedule B proposal. The Arbitrator has no choice but to pick one Final Offer in total. Neither offer is perfect. The selection of either offer is going to require some 'undoing' or correction in the next round of negotiation to bring the contract more in line with the typical support service contract. The Union's offer would require more adjustments because it has more proposals that are simply out of line with the terms of employment for similar employees in similar districts. Most noteworthy are their proposals to provide health insurance and retirement to bus drivers. These proposals are internally inequitable and not supported in the external comparables.

In selecting the Final Offer of the Employer, the employees still end up with very competitive wage rates, higher than average wage increase, a better uniform allowance, grandfathered health benefits, grandfathered wage rates that exceed the negotiated scale, along with all the benefits of a first time contract set forth in the tentative agreements. These include sick leave, a grievance procedure, arbitration, emergency and personal leave, jury duty, holidays, vacation, a layoff procedure, a posting procedure, and just cause protection. The Union did very well for a first contract. All things considered, the Employer's Final Offer along with the stipulations of the parties is more reasonable in light of all the statutory criteria.

AWARD

The Final Offer of the District is selected.

Gil Vernon, Arbitrator

Dated this 26th day of January, 2001.