

BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

D. C. EVEREST SCHOOL BOARD

And

EVEREST PARA-PROFESSIONAL
UNION, LOCAL 1908, AFSCME, AFL-CIO

Case 55 No. 58998

Int/Arb-9047

Dec. No. 30059-A

INTEREST ARBITRATION AWARD

Appearances:

Mr. Ronald Rutlin, Ruder, Ware & Michler, S.C., on behalf of the District.

Mr. Phil Salamone, Staff Representative AFSCME Council 40, on behalf of Everest Para-Professionals Union Local 1908.

The above-captioned parties, hereinafter referred to as the District and the Union respectively, have been parties to a series of collective bargaining agreement throughout the years. The parties were able to resolve most issues for the 2001-2002 successor agreement except for the issues of wages, longevity, exclusion of certain positions from the unit and educational improvement. The Union filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the District, and requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Schofield, Wisconsin on May 17, 2001. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on September 21, 2001. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

ISSUE AND FINAL OFFERS:

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement.

UNION' FINAL OFFER

EFFECTIVE 7/1/2000

1. Exhibit A – “Starting Rates” – increase by thirty-four cents (\$.34) per hour across the board
2. Exhibit A (1) Longevity – Amend as follows:

“Longevity pay is provided at the rate of six cents (\$.06) per hour for each year completed beginning with the third (3d) year of service to a maximum of one dollar and two cents (\$1.02) per hour after completion of the nineteenth (19th) year of service.”

EFFECTIVE 7/1/2001

Exhibit A - “Starting Rates” – increase by forty-four cents (\$.44) per hour across the Board.

Plus all tentatively agreed to items

DISTRICT’S FINAL OFFER

1. Except as modified by Tentative Agreements and this proposal, no change in expired contract.
2. ARTICLE 21 – EDUCATIONAL IMPROVEMENT: Revise to read as follows:

Employees who wish to attend inservices/courses of study that they believe will upgrade their current job performance may submit a written request to have the district pay the cost of tuition/registration, books and materials, and other reasonable expenses related to the inservice/course. The request must be submitted prior to attendance to the employee’s building principal and is subject to final approval by the supervisor of personnel. If attendance is approved by the supervisor of personnel, the district shall either reimburse the employee for the approved fees, costs and expenses upon successful completion of the inservice/course, or the employee may request that the district pay the approved fees, costs and expenses in advance of attendance. However, if the district pays in advance and the employee does not successfully complete the inservice/course, the district may deduct any payments advanced to the employee on a payroll deduction basis. The decision to approve or deny employee requests under this provision is not subject to the grievance/arbitration procedure of this contract.

(Note: Employees currently receiving per credit hour compensation shall continue to receive the compensation they were receiving as of 06/30/2000.)

3. ARTICLE 30 – DURATION AND NEGOTIATING PROCEDURE: Adjust all dates to reflect a two (2) year contract commencing July 1, 2000 and expiring on June 30, 2002.

4. Exhibit A:

CLASS	Effective 7/1/2000	Effective 7/1/2001
I	10.30	10.65
II	9.40	9.75
III	8.94	9.29
IV	8.87	9.22
V	8.71	9.06

*External substitutes will be paid at the Class V start rate.

1. Longevity pay is provided at the rate of five cents (\$.05) per hour for each year of service completed based on the current hire date within the union beginning with the third (3rd) year to a maximum of seventy (\$.70) per hour.
 2. Effective July 1, 2000 employees with base hourly rates above those listed above shall receive a thirty cent (\$.30) increase in their current hourly rate.
 3. Effective July 1, 20001 employees with base hourly rates above those listed above shall receive a thirty cent (\$.30) increase in their current hourly rate.
5. Exhibit B:

Eliminate the following Listings of Positions by Classifications

Secretary to Director of Curriculum & Instruction from Class I
 Secretary to Director of Pupil Services from Class I
 Administrative Clerk from Class II
 Pupil Services Clerk from Class IV
 Print Shop Assistant from Class V
 Teacher Aide Bilingual from Class VI - Add to Class V

Add Secretary at the Central Office to Class II

APPLICABLE LANGUAGE IN THE EXPIRED AGREEMENT:

ARTICLE 21 – EDUCATIONAL IMPROVEMENT

An employee, with prior approval of their building principal, and upon final approval of the Supervisor of Administrative Services, who pursues a course of study that will upgrade the employee's job performance will receive, upon successful completion of the

course, an additional three dollars and seventy-five cents (\$3.75) per credit hour per month increase in wages, beginning the month following completion of the course.

Credit Schedule

- 1 credit = 15-25 hours
- 2 credits = 26-40 hours
- 3 credits = 41-60 hours
- 4 credits = 81- hours

The employee must present written documentation to the Supervisor of Administrative Services verifying successful completion of the course of District inservice hours prior to the resulting wage increase. District offered inservice hours are accumulative.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., as follows:

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 legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.
- 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 under subd. 7r.
- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
 - a. The lawful authority of the municipal employer.
 - b. Stipulations of the parties.
 - 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.
 - d. Comparison 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 employees performing similar services.
 - e. Comparison of the 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. Comparison of the 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.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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 PARTIES:

District

According to the District, the issues in dispute are: 1) the amount and distribution of wage adjustments to be granted to District support staff for 2000 and 2001; 2) the amount and distribution of longevity to be paid to employees; 3) the classification of Bilingual Teacher Aide; and 4) the manner in which the educational benefit is to be provided to District employees.

The parties are in agreement with respect to the primary comparable pool to be utilized by the parties. It consists of the following districts: Antigo, Marshfield, Merrill, Mosinee, Rhinelander, Stevens Point, Wausau, Wisconsin Rapids and Wittenberg-Birnawood. The District asks the arbitrator to reject the Village of Rothschild, City of Schofield, and Marathon County as a secondary comparable pool arguing that prior arbitrators have already established the appropriate external comparables in prior arbitrations.

The District insists that the arbitrator should give the greatest weight to the state law that limits the school district's ability to increase taxes, that is 1993 Wisconsin Act 16, which enacted revenue limits severely limiting the ability of school districts to raise taxes to pay for increased wages, fringe benefits, etc. Here, the Union is asking for an expensive unwarranted wage lift of 9.61% and expanded longevity benefits that cater to the most senior members of the bargaining team. In contrast, the District's final offer improves the longevity benefit but provides a competitive wage lift of 7.68% over the two-year period. The revenue limits were meant to help districts control costs and be more fiscally responsible operating under tighter budgetary constraints. For these reasons the "greatest weight factor" supports selection of the District's final offer.

The District claims that it has provided a total package increase consistent with the internal settlements which should be considered as part of criteria “d” and “j” of Section 11.70(4)(cm)7r. To support this argument, it notes that the general rule as to whether external or internal comparables should prevail is that the internal settlement pattern should control unless it can be demonstrated that adherence to that pattern would cause unreasonable and unacceptable wage relationships relative to the external comparables. The District’s offer to the paraprofessional bargaining unit is consistent with the other internal settlements in the District, while the Union’s offer does not maintain that internal consistency. The Union’s offer will exceed the 3.8% each year allowed to the teacher’s bargaining unit under the QEO law. The Union is asking for nearly 2% more than that received by other District employees and has received the highest package increase of all the units in 1996-1997, 1997-1998, and 1999-2000.

The external comparables also support the District’s proposal. It claims that the District’s offer proposing various equity bumps is reasonable in light of the disparities created by the Union’s bargaining goals over the past five years. For the 1994-1997 contract, the Union’s proposal, in effect, distributed a large portion of the monies available for salary increases to the most senior member of the unit. For the 1997-2000 agreement, the Union proposal once again distributed a large portion of the monies available to the salaries of the most senior member of the bargaining unit. The final agreement between the parties eliminated steps two through five of the salary schedule and all employees received an across-the-board general wage increase for each year with the across-the-board increases being applied to the start rates as well. These two bargains created a situation where the starting rates are low as compared to the external comparables. Moreover, new employees do not receive the benefit of moving through a salary schedule that existed prior to 1997.

In the District’s view, the Union is unconcerned about the rates for new employees or the District’s ability to attract new employees. The need for higher start rates is real in order to recruit qualified candidates for these positions. The District’s wage offer addresses the disparities at the starting rates and provides a generous wage increase to all employees. While increasing the starting rates, the offer also provides that employees with base hourly rates lower than the start rates will be moved up to the start rate or receive a minimum of \$.30 an hour increase. Those with base hourly rates above the proposed start rates will receive a \$.30 increase. Effective July 1, 2001, all start rates increase by \$.35 and employees above the start rates receive \$.30 per hour wage increases. The District’s proposal better addresses the need to bring start rates closer to the average in the Class I and II classifications. At the conclusions of the 2001-2002 school year, under the District’s final offer, the start rates are near the average of the external comparables.

With respect to Class III through V positions, long-term employees in the District are currently paid at or near the maximum wage rates in comparable districts. The Union’s offer with respect to all of these positions widens the gap considerably. The senior employees in this bargaining unit already earn a competitive or above average

wage rate, but the District's offer moves employees who have experienced the impact of frozen wages as a result of the freeze of the salary schedule to a more competitive wage rate. Moreover the increase in the start rates will improve the District's ability to attract employees in the future. The District's offer attempts to address rates for employees who did not experience movement through the schedule which was eliminated in 1997. For the higher skilled wage rates, the District's offer brings the wage rate up to a competitive rate plus provides an enhanced longevity benefit retroactive to the beginning of the third year of employment. For employees in the lower skilled classifications, the District's offer provides a \$.35 increase in addition to the enhanced longevity benefit. Furthermore, the District is offering a fair and equitable \$.30 minimum wage increase to all other employees in the unit who are already paid comparably to similar employees in other districts.

In contract, the District suggests that the Union's 4.94% average wage lift for 2000-2001 and 4.67% for 2001-2002 is extreme and not supported by the external comparables. The District's offer more closely matches the external settlement data because, although many districts remain unsettled for 2001-2002, the District's wage offer is closer to the settlements in Marshfield, Rhinelander and Wausau than the Union's. The Union's excessive longevity proposal is not supported by the external comparables either and the Union offers no *quid pro quo* for this proposed change.

The Union's longevity offer would allow thirteen members of the bargaining unit to receive an automatic \$.32 increase in longevity benefits in 2001 in addition to the general wage increase of \$.34 for the first year and \$.44 for the second year of the contract. Obviously, this proposal is favorable to the more senior members of the bargaining unit, although a majority of the members of the unit are in the middle to the low end with respect to tenure. Thus, the Union's longevity offer gives 49% of the wage increase to the top senior one-third of the bargaining unit while splitting up the remaining 51% of the monies with the middle and least senior employees. The District's offer, in contrast, more evenly distributes the money throughout the unit. It distributes 36% to the top one-third, 36% to the middle one-third and 28% to the bottom least senior one-third of the employees. Given that the newer employees in the unit no longer have a salary schedule from which to benefit, the Union's wage offer will continue to widen the gap between wage rates for District employees performing the same job duties based upon seniority.

The comparables do not support the Union's longevity proposal. Six of the nine comparables do not have a longevity benefit and, when the remaining districts that do have such a benefit are compared to the District, the District's current benefit including the enhancement to begin at the third year of employment is quite competitive. Pointing out that both parties have agreed to the enhancement to begin at the third year, the District alleges that the Union asks for still more without demonstrating by clear and convincing evidence, the need for increasing the longevity benefit. There is no justification for granting a select group of employees a costly improvement while the least senior member receive less money. Moreover, the Union has not offered anything in return for this expanded benefit.

With respect to the District's educational improvement proposal, the District submits that its offer best represents the intent of the benefit. It has shown a need to modify the benefit and has offered an adequate more reasonable method of providing a continuing education incentive. While the District encourages employees to improve their knowledge, skills and abilities, it was not the District's intent to compensate bargaining unit members for classes provided at the high school level that are not accredited courses. The District has provided an adequate *quid pro quo* in response to modifying the benefit by proposing a tuition reimbursement system. Employees who take the initiative to pursue accredited courses related to improving their job knowledge will be rewarded through payment of their educational costs. An educational improvement is rarely provided to support staff units in school districts. Only one other district of the comparables, Marshfield, provides some form of educational improvement benefits. Therefore, any form of educational improvement benefit is greater than that enjoyed by employees in comparable school districts.

With respect to the Bilingual Teacher Aides, the District's offer places them in the classification consistent with the teacher aide-elementary, teacher aide-clerk typist, IMC aide and health aide. Noting that the only Class VI aides are the Hmong Bilingual Teacher Aides, the District proposes to move the Bilingual Teacher Aides to Class V, where all the remaining teacher aides are classified. In the District's view, the Bilingual Teacher Aides possess more knowledge, skills and abilities than do the regular Class V teacher aides because the regular aides are not required to speak the Hmong language.

Equity dictates that the Bilingual Teacher Aides should receive the same rights as the other teacher aides, especially with regard to layoff and recall rights. Unless they are reclassified into the Class V classification, they will have bumping rights among the four employees currently classified as Bilingual Aides. This inability to properly utilize seniority rights with respect to layoff cannot be justified on any reasonable basis and there is no explanation as to why Bilingual Teacher Aides should not be included in the same classification as the other district teacher aides. The Union simply cannot justify its objection to classifying them with the other teacher aides and fails to address this point in its reply brief.

Finally, the District maintains that its offer is more in line with the Consumer Price Index noting that the CPI for April 2001 was at 3.3%. The total package increase under the Union's final offer is 4.92% for 2000-2001 and 5.6% for 2001-2002. The District's offer stands at 4.27% and 4.52% respectively. It should be chosen over the Union's offer.

The District, in its reply brief, responds to several arguments made by the Union. First, it argues that no credible evidence was submitted to support the Union's argument that the District has experienced high turnover in the bargaining unit. Even if the Union's assertion is true, it is likely that some turnover can be attributed to the frozen salary schedule which likely frustrated less senior or new employees, because employees with one or two years of experience are being paid the same as new employees. The District

submits that the Union cannot have it both ways. It cannot argue that there is a high turnover rate while continuing to propose increases that benefit the more senior bargaining unit members. It cannot continue to submit proposals year after year that distribute large portions of the available dollars to the more senior employees and expect the District to attract and retain newer employees who are paid significantly less.

The District disputes that its offer is subject to different interpretations. Referring to six employees who in the base year were above the contractual starting rate but below the District's proposed start rate, the District claims that its offer provides that employees with base rates above the start rates contained in its offer would receive \$.30 per hour increases in their hourly rate. The District notes that it clarified the intent of the wage proposal in a letter to the arbitrator with an enclosed chart summarizing the increases to be received by the affected employees. The Employer's intent is clear. Furthermore, the Union's offer suffers from the same "problem" because the express language of the Union's offer would only increase the starting rates and would provide no across-the-board increase for employees who are not at the starting rate. According to the District, it would be an equally reasonable interpretation, given the prior contract language, that the Union's offer provides that only those employees at the starting rate are to receive a wage increase and all other employees are only benefiting from the increase in longevity pay. The intent of each party's offer has been made clear to the arbitrator.

The District asserts that the "cast forward" method is not flawed. This is the system which both parties have utilized since the beginning of the bargaining relationship and the system traditionally employed by most parties in negotiation in both the public and private sector providing a common method of universal costing. Citing arbitral approval of this method, the District notes that the Union has not provided specifics as to how they would suggest the offers alternatively be costed other than to compare actual cost in each year of the contract to costs incurred for the previous year. The District argues that the cast forward system provides consistency from year to year and does not give one side an unfair advantage that expansion or reduction of the number of employees in the bargaining unit would.

The District makes the same arguments vis-à-vis the total package costing system utilized noting that the "problem" identified by the Union exists for all similarly situated support staffs. Disputing Union contentions that arbitrators have found it inappropriate to utilize total package comparisons for non-teacher units, the District points out that what the arbitrators were really objecting to was the practice of costing step movement on the salary schedules. Here there is no salary schedule and therefore the costing of "steps" is moot.

With respect to the Union's contention that the District's offer to grand-father credits earned by employees up to June 30, 2000 is unfair, the District alleges that the Union has failed to point out any credible evidence to support this argument. The Union misstates the eligibility requirements. Under the current system an employee does not have to take fifteen credits to be eligible, but only has to complete fifteen hours of inservice to get a credit. The District is simply proposing to go back to a system more

consistent with educational reimbursement programs provided by employers generally. This does not create a “dual pay structure” as suggested by the Union, but simply replaces one method of compensating employees for taking the courses with another method. The aspect of the proposal to exclude such requests from the grievance arbitration procedure simply ensures that the District will not be required to arbitrate these requests where an employee would have everything to gain by grieving every denial. The District does not see this as a significant issue or significant change in the *status quo*.

The District urges the arbitrator to reject the Union’s attempt to relitigate the issues presented to Arbitrator Gunderman in 1991. Noting that that the same argument was made in 1991 regarding the low bargaining unit wages as contrasted to the District’s custodians, the District points out that there is no evidence that the custodians are paid disproportionately higher than custodians in other districts. If the Union is unhappy with the long-term consequences of the voluntary agreements in which it has entered, it should not look to arbitration to fix the problems that the Union believes exist.

In the District’s view, stable economic conditions do not automatically mean that the most expensive offer should be selected. A conclusion that the employer’s economic condition is strong does not automatically mean that the higher of the two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer. Moreover, in this case because a majority of school financing is received through state aid with the imposition of substantial revenue limits imposed upon school districts, the District’s ability to raise taxes to pay for increased labor costs is limited. Thus, the Union’s offer should not simply be selected based upon the local economic conditions.

Union

According to the Union, the District is a relatively large prosperous suburban district, encompassing an area of Marathon County located just south of Wausau. On three occasions since the late 1970’s, the parties have had to resort to interest arbitration to settle their collective bargaining agreements. By 1987, the bargaining unit began to realize that there was a substantial and growing disparity between its members’ wage rate and those enjoyed by members of the District’s custodial unit. The Unit commissioned an independent study to review the rates in both units. The consultant’s study found that there was nothing in the job duties and responsibilities of positions in either unit that would warrant the wage disparity that then existed.

The Union presented the completed study to the District in the subsequent negotiations, but the District declined to adopt it. The Union then proceeded to interest arbitration where the arbitrator found the study’s methodology to be appropriate but noted that the study results were affected by impediments such as cost constraints and the unwillingness of the District to participate in the study. He adopted the District’s final offer based largely upon the traditional considerations such as external comparability and the cost of living.

The Union cites problems with the District's cast forward costing system alleging that its well-known shortcoming is that it can be problematic when a high degree of employee turnover exists. The Union believes that there are several serious problems with the District's final offer, some intended and others, purportedly, unintended.

One such problem is the "grand-fathering" of the future accrual and payment for educational credits with an effective date of June 30, 2000, proposed by the District. The first problem is that the current benefit's payment schedule does not become effective until employees reach a 15-credit threshold. A considerable number of the employees hired prior to June 30, 2000 have been working toward, but have not reached, that threshold or were between thresholds. An equitable feature which could easily have been included is pro-rationing for those who had not reached the 15-credit threshold or were between thresholds. Without such a feature, the District is "moving the goal posts during the game." Furthermore, the District's offer creates one more dual pay structure resulting in employees who do not reach the 15-credit threshold before June 30, 2000, forever receiving less pay for the same or similar work as those who did reach it.

Another pitfall of the District's offer with respect to educational credits is that the approval or denial of course requests is not subject to the grievance/arbitration procedure. There is no benefit to having any item included within a collective bargaining agreement unless it can be effectively enforced. Under the District's proposal, the Union could not even challenge arbitrary, capricious, or discriminatory applications of the selection of individual employees eligible for such training. The District's application of its proposal also impacts upon the seniority language with respect to transfer and promotion in that the District could obtain unfettered control of decisions relating to the training of bargaining unit members (and thus qualifications) if its proposal is accepted.

Contrary to District representations, the modifications that it proposes are simply a take-away with little or nothing offered in exchange. The District has always controlled the approval process for the courses taken and may continue to exercise this authority to reject any particular study course which it deems not relevant provided it does so in a manner which is not arbitrary, capricious, or discriminatory. This is a significant departure from the current *status quo* and requires the party requesting the departure to demonstrate a need for the change. This, the District has failed to do. There is no evidence that the District's *quid pro quo* is an appropriate exchange.

With respect to the wage offer, the District's offer is deficient because six employees will not obtain the rates indicated in District Exhibit 7, but will receive significantly less. This is because they were "grand-fathered" under the previous step system and are currently receiving less than the rates set forth in the District's proposed rate schedule. The District's stated intent as set forth in the June 22 letter is not what the offer expressly provides. This ambiguity and internal confusion between the now stated intent and precise language of the District's offer could lead to contract administration problems. In making this argument, the Union suggests that it could be placed in the uncomfortable position of seeking a wage reduction for employees in order to enforce

what it understandably believed to be the original intent of the District's offer. It also asks how the Union was to know during the final offer exchange that the intent of the District's offer was at odds with the seemingly clear terms contained with the offer. Should it be able to understand that the term "above" also meant "below". Citing arbitral precedent, the Union argues that the arbitrator must rely upon the precise language of the parties' offers.

The Union stresses that it is the District's wage proposal which is inequitable and provides varying increases which tend to be far more generous to certain clerical employees, i.e. employees in the Class I and II classifications. Conceding that its longevity proposal does provide more for senior employees, the Union notes that this advantage can, however, be achieved by any employee through continued service and applies to all classes equally.

With respect to costing, the Union contends that the "cast forward" method exaggerates the cost of any proposal and disregards any savings achieved through turnover. This method is flawed, particularly where there is a high rate of turnover. Three out of four bargaining unit employees have been hired within the past ten years. Two positions which are currently not filled and which may never be filled are costed against the package using the "cast forward" method. Moreover, employees who no longer work for the District are portrayed as employed and costed against the package. These are more senior employees who will be replaced with employees paid far less until they can attain inclusion on the "longevity" schedule. Adjusting for this modification alone results in a reduction from the alleged 4.94% cited by the District as the Union's first year offer to 4.25% wages.

Because these employees are among the lowest paid in the District, increase in the cost for the fringe benefits such as health insurance has a much greater impact on the calculation of total costs for this unit than it does on higher paid groups. The Union claims that a number of arbitrators have held it to be inappropriate to include the cost of step movement and similar automatic wage progression for non-teacher units. It cites Arbitrator Gundermann's urging of the parties to review the total package costing method in future bargaining. The effect of combining the inherent problems with "total package" costing and the "cast forward" methodology in a group with high turnover causes the unit to fall further behind its internal and external comparables. The Union suggests that this double-barreled methodology has been a major factor in the considerable rates of employee turnover in recent years.

The Union does not believe the "greatest weight" criterion applies to the instant situation. The "greater weight" criterion supports its offer although the Union's offer will cost slightly more to implement than that of the District. Marathon County, in particular the suburban areas around Wausau, enjoys a prosperous economy and the District can well afford the costs associated with the modest improvements sought by the Union. Unemployment in recent years has been below the state and national averages. The strength of the Marathon County economy can be attributed to its diversification. Student enrollment has increased markedly in recent years resulting in the approval of a

referendum to build a new middle school. Revenues have more than kept up with expenditures. Where the economic conditions are highly favorable, “greater weight” means that factor must be given greater weight.

The Union alleges that wages and benefit levels compare unfavorably to the custodial bargaining unit, the only other organized support staff bargaining unit. Custodial start rates are substantially higher than those currently realized by the most senior members of the bargaining unit. In the current contract, the custodians will move yet further ahead irrespective of which offer is selected, although more so under the District’s offer. Total custodial increases for the two-year contract will be \$.83 and \$1.07 per hour, while paraprofessionals receive only \$.35 in additional hourly compensation per contract year. Custodians also enjoy better contributions by the District to health insurance (95%) while paraprofessionals pay twice as much of their total health insurance premiums. The Union offer does not markedly ameliorate this continuing problem.

With respect to external comparables, the Union has no dispute with the comparable group utilized, but notes that the total package format makes it nearly impossible to effectively make comparisons. Looking at benchmark comparisons, preferred by other arbitrators over total package systems for the purpose of external comparability, the Union submits that general 2000-2001 wage increases vary with some districts being more comparable to the District’s offer, while others are comparable to the Union’s. Two of the nine are not settled and just three districts are settled for 2001-2002, with mixed results, some exceeding and others trailing the offers in the instant dispute.

Wage rates for educational aides and special education aides in the vast majority of the external comparable districts exceed those of the District and will remain the case irrespective of which offer is selected. This will probably continue to be the case when Antigo, Merrill and Wittenberg are settled. The paraprofessionals in these two classifications trailed in 1991 and continue to trail now. The Union offer will give some modest catch-up, while the District’s will let this group stagnate or fall further behind. With respect to the secretarial employees, the comparables are more mixed. With the exception of Wittenberg-Birnamwood, the comparables all fare better than the secretaries in the District. Looking at clerical municipal settlements for the Village of Rothschild, City of Schofield, and Marathon County, the two former entities have agreed to generous wage increases, while the majority of positions in the latter received in excess of \$.35 per hour for 2000 and 2001.

The Union acknowledges that in eliminating the former step system without adjusting the longevity provision to encompass less senior employees, an inequitable situation was inadvertently created where employees employed five and six years were earning as much as those beginning their employment. While both offers amend the longevity formula, they do so in different ways. The District’s offer eliminates longevity increases after the 16th year of service while the Union’s offer adjusts the maximum to \$1.02 per hour by increasing the rate by \$.01 per year, thereby allowing more senior employees to benefit from the one cent increase and continue to advance through the

completion of the 19th year of service. The Union notes that its longevity adjustment proposal is long overdue because, in 1980, the rate was five cents per hour.

Since the last interest arbitration, the parties have been unable to eliminate or rectify some of the disparities which gave rise to that case and bargaining unit members find themselves in a similar or slightly worse position vis-à-vis the District's custodians than they were in 1991. Although longevity has been expanded to the 19th year, there have been no increases in the five-cent multiplier since the first contract. The Union offer effectively and modestly addresses these problems. It should be selected.

In its reply brief, the Union addresses a number of arguments advanced by the District. In response to the contention that the District's offer provides for varying increases from \$.35 to \$.91 per hour for classes from I through V, this tends to exaggerate the majority of the increases provided. Only one of four current Class I employees will receive a \$.91 increase, while just three of fourteen Class II employees will receive \$.53.

As to the longevity proposals in the two offers, the Union claims that the District was mistaken in its assertion that the current contract language provides for five cents beginning with the sixth year of employment when the current language provides for the five cents longevity at the completion of the sixth year of employment. While it is true that the District offer permits employees to begin receiving longevity pay earlier than under the current contract, it also terminates acceleration of these payments three years sooner. Both offers begin the longevity earlier, but only the Union offer provides a long overdue one-cent cost of living adjustment and adjusts maximum rates accordingly for the more senior employees.

The District has utilized two different numbers for how many employees are in the bargaining unit, 123 and 127. It is unclear which of the figures the District utilizes for segmenting the unit into thirds by seniority and is also unclear what the impact of this segmentation is upon the middle third of the unit at the start rates. Two errors with respect to the comparables regarding longevity are repeated in the District's brief. Both amounts for Marshfield's secretaries and aides are well in excess of the \$1.02 per hour longevity proposed by the Union. Wisconsin Rapids has longevity of \$.10 per hour after 10 years and \$.15 per hour after 15 years. Insofar as the District's offer of an alleged *quid pro quo* argument is concerned, this argument is without merit because longevity is in reality more of an integral part of the salary issue rather than a separate issue to be discussed apart from salaries and salary cost compensation. The parties share the burden of proof equally.

District arguments that the settlements from other local government clerical units should be disregarded are contrary to the statutory mandate and should be rejected. Furthermore prior awards support consideration of these other comparables.

With regard to the reclassification of the Bilingual Teacher Aides, the Union alleges that it did not pay significant notice to this aspect of the District offer because of its *de minimus* impact. It asserts that this is a "cheap shot" because public employment is

stable, with layoffs being extremely rare. This is especially true given that this is a prosperous and growing district. If the District were honestly concerned with the plight of the minority bilingual aides, it would accept the Union's offer because these employees will benefit far more from higher wages and preserved educational incentive benefits.

In addressing the District's argument that the greatest weight criterion should be applied, the Union asserts that there is no evidence to suggest that the selection of the Union's final offer will result in the District's exceeding these or any other administrative limits of this sort. Over voter rejection, the District spent \$88,325 to fund lighting for a baseball diamond. It will only cost an extra \$50,317 over the two years of the contract to pay the added costs of the Union's offer. Cost controls did not prevent the expenditure for the lighting. They should not prevent the selection of the Union's offer. The District's Fund 10 balance has increased every year since June 1995 based upon an on-going increase in enrollment. The difference between the two offers utilizing the cast-forward methodology is miniscule in light of the District's total budget.

As far as internal comparables are concerned, the District's own chart demonstrates that a pattern of internal comparables does not exist for 2000-01 or 2001-2002. The only group settled for both years is the custodial unit and its agreement supports the Union's wage offer when viewed in terms of cents per hour increase. The external comparables upon which the district relies are based upon only three settlements of secretarial classifications and four for aide classifications. Two-thirds of the comparables are not settled for 2001-2002 and those rates are speculative at the present. The comparable data submitted by the Union, including the wage rates for all comparable units and the number of employees in the unit receiving a specific rate, provides a better representation of the status of the unit's wages than the methodology employed by the District. Using the cast-forward method with the inclusion of "ghost" employees who no longer work for the District, weighs against the District's argument that total package costing should be employed.

The District's concern with the equity bumps voluntarily agreed to in the past with respect to the Class I and II employees is misplaced inasmuch as the District voluntarily agreed to such bumps. Furthermore the record is devoid of any evidence of recruiting problems for Class I or Class II employees. The District is unconcerned about retention of its employees and the turnover resulting from employees leaving to find better compensation in a thriving economy. Most employees expect to begin a job at a relatively low rate of pay and accept this fact with the expectation of increases to be received later on. The Union disputes the equity in offering senior employees only \$.30 per hour while offering potential employees who have not yet provided any service markedly higher rates. Conceding that start rates lag behind the external comparables from previous years for Class I and II employees, the maximum rates for these positions also lag far behind those of the comparables.

The Union's wage lifts of 4.94% in 2000-2001 and 4.67% in 2001-2002 are not immoderate as the District claims. The District's chart portrays comparable settlements

in benchmark terms and the value of the parties' final offers in wage package terms. Figures for the comparables exclude length of service increases whether through advancing through the salary schedule or considering longevity provisions. Furthermore, the table provided by the District is skewed in that it compares total package increases for Everest with wage only increases for the comparables.

The Union contests the District assertion that the District's final offer is more in line with the Consumer Price Index (CPI) although it does acknowledge that the District relies upon the national CPI for April of 2001. First, arbitrators have frequently found the CPI at the time the contract expires to have the most relevance. Additionally, the most relevant index is the Midwest - Size B/C index which measures increases in the cost of living in areas with 50,000 to 1,500,000. Moreover, it is inappropriate to compare the CPI measure to the package cost value of the offers. It should be compared to the percentage wage increases because it is the wage increase which insulates employees against the erosion of the dollar caused by inflation. The Union notes that the July 2000 Midwest Size B/C indexes showed increase of 4.4% (CPI-U) and 5% (CPI-W) and that the District costed the wage proposals to be 4.94% and 4.22% in the first year and 4.67% and 3.46% for the 2001-2002 school years respectively. Thus the CPI favors the Union's offer.

DISCUSSION:

Any evaluation of the offers submitted by the parties must begin within the statutory framework set forth above. The parties' proposals on all items will be evaluated with these criteria in mind. The proposals with respect to educational improvement and the reclassification of bilingual aides are not economic proposals per se, although there will be substantial economic impact for bargaining unit employees should the District's educational improvement language be adopted.

Educational Improvement

There is no question that the current language entitles employees to gain credit through District inservice programs and improve their wages by accumulation of various credits. Although the District's proposal grand-fathers employees who have currently reached various thresholds so that they do not lose the wage improvements based upon educational incentive, it affects and effectively bars employees from progressing further or achieving the first threshold by abolishing the provision relating to wage increases based upon accumulations of credits. This is a "take-away" without a sufficient *quid pro quo*. The District's proposal cannot be seriously construed as a *quid pro quo* as its proposal does not offer anything of equal value for its proposal. Also problematic is the aspect of the District's proposal which prohibits resort to the grievance procedure for refusals to approve courses. The District has not met its burden in showing that there is any real need to change the current contract language. Accordingly, the Union's proposal with respect to this issue is preferred.

Re-classification of Bilingual Teacher Aides

The opposite situation exists with respect to this issue. The current language appears discriminatory on its face. There is no good reason why Bilingual Teacher Aides should have their own classification. The District has advanced very good reasons for why they should be re-classified into the same classification as all of the other district aides. Because all of the Bilingual Aides are Hmong and the collective bargaining agreement provides for lay-off by classification, there are serious equal rights implications in keeping the classifications separate. The Union's argument that this issue is unimportant is disingenuous. The District's proposal on this issue is preferred.

Wages and Longevity

Of all the contested issues presented by the parties, the issue with respect to wages and longevity is controlling. These two proposals are inextricably linked as part of both parties' economic proposals. The longevity issue is in reality more of an integral part of the salary issue than it is a separate issue that can be discussed on its own apart from salaries and salary cost comparison. Because this is the case, wages and longevity will be considered together given that the same rationale for selection or rejection of one offer over another exists with respect to these related issues.

The parties disagree as to the method of costing to be utilized and the impact of the method of costing with respect to how each offer is portrayed. The undersigned finds nothing wrong with the District's "cast forward" method as it is a common method utilized in interest arbitration cases and does not favor either party or the vagaries of staff increases or reductions over the long run. The Union's utilizing the methodology wherein it considers and computes the actual costs for current bargaining employees for each year of the contract does not enjoy the same universal acceptance by arbitrators and has not been used by the parties in previous bargains. The undersigned declines to accept it for comparative purposes here.

With respect to the comparables, clearly the support staffs of the school districts in the athletic conference along with the Mosinee and Wittenberg-Birnamwood School Districts are the primary comparables, but the statute itself requires consideration of other similarly situated private and public sector employees in the geographical area so that wages paid by Marathon County, the Village of Rothschild, and the City of Schofield are relevant, although not controlling.

The undersigned finds that the District's offer is slightly favored in applying the "greatest weight" criterion. Specified limitations on expenditures or revenues must be present to trigger the application of this criterion. Here, the District does have limitations placed upon it by the revenue caps imposed by the legislature. These limitations require it to be as conservative as possible while still keeping and/or moving its employees close to the average wage paid by the comparables. Because the District has attempted to behave in as conservative a manner as possible while bringing its start rates closer to the

comparable average and keeping its maximum rates near to the average, the greatest weight criterion slightly favors the District.

The “greater weight” criteria, can be applied in various ways, first by insuring that an employer’s economic conditions are fully considered in the context of the primary comparables, but also by insuring that the costs of the proposal are considered in relation to the comparable economic conditions in the jurisdiction of the municipal employer. This is the case because municipal employers, if shown to have the same or similar economic conditions, usually provide similar compensation to their employees.

D.C. Everest is, as the Union observes, a thriving suburban district located in Marathon County, a county with a prosperous growing economy. There is no question that the District has the ability to pay the Union’s wage and longevity offers. However, simply because the District has the ability to pay either offer because its economic condition is strong does not mean that it is obliged to accept the higher offer. The interests of the tax-paying public and a preponderance of other factors may lead to the conclusion that the more fiscally conservative final offer should be selected.

Comparison of the two final offers with comparable districts is more challenging because the District does not have a schedule upon which to make sound comparisons. On their face, both appear to be reasonable given settlements among the primary comparables for 2000-01 and the paucity of settlements for 2001-02. What turns this case is the need for the District to improve its starting rates and the manner in which the parties have allocated the wage increase through both salary and longevity proposals. The District has made a convincing case that it is imperative to improve its start rates. These rates are well below the average for almost every classification. Both parties point to the problem of employee turnover to support their respective positions. Without a salary schedule wherein new employees see progression through a series of step increases early on in their tenure with the District, they are apt to leave to seek newer better paying jobs where such step increases come at regular intervals. This problem is exacerbated by a distribution of the available wage monies which favors and primarily benefits only the most senior employees. The District’s offer which attempts to spread the wage increase more equitably among all of the employees is preferred. Considering external comparable settlements with respect to wages only, it does not appear that the paraprofessionals will lose ground under the District’s wage offer for 2000-01. Because most of the comparables are unsettled for 2001-2002, it is more difficult to project exactly where the D.C. Everest paraprofessionals will end up for 2001-2002. However, based upon the settlements that are known at this time, the Board offer is equal to or higher than all but one settled district.

The same problem which exists with respect to the Union’s wage proposals also exists with respect Union’s longevity proposal. Here again it distributes a large portion of the available longevity dollars to the more senior members of the bargaining unit. Furthermore, the Union’s proposed change is not supported by the external comparables. Six of the nine do not have a longevity benefit and the current longevity benefit is comparable to that enjoyed by the remaining three comparables. The payment of \$1.02

per hour in longevity after 19 years far exceeds that of Wausau School District where employees must have worked 23 years to reach \$1.00 per hour. With the exception of the Marshfield District's longevity maximum payments to aides and secretaries, the Union's proposal to expand the benefit by \$.32 is simply not supported by the remainder of the comparables. For this reason, the greater weight factor favors the District's offer.

The Union points to the custodial unit and argues that its offer will limit the extent to which the paraprofessionals fall further behind the custodians in wages. The District points to the total package cost of settlement with the custodians and the QEO offer that it intends to make to the teachers in arguing that its total package offer to the paraprofessionals will exceed both. Because the Union is asking for a total package of almost 2% more than the other two unionized units will receive, the internal comparables also favor the District. The undersigned has noted that focus upon the total package costs does, as the Union points out, somewhat inflate the comparisons because the cost of the fringe benefits offered is a much higher portion of the package for this particular bargaining unit with its lower wages than those currently earned by either the custodians or the teachers. For this reason, the external comparables that compare wages and wage rates with employees performing the same duties, weigh more heavily in the determination than the internal comparables.

One other point needs to be made about the internal comparisons with the custodial unit. Interest arbitration with its dual pronged analysis of both external and internal comparables is a poor vehicle to address the discrepancy in wages between the two groups. Rather, a joint study as suggested by Arbitrator Gunderman, and negotiation to address specific inequities through voluntary means should be pursued first. Arbitrators are loathe to give a party in interest arbitration that which it could not achieve at the bargaining table.

The undersigned agrees that the CPI most relevant to D.C. Everest is the Midwest - Size B/C index which measures increases in the cost of living in areas with 50,000 to 1,500 population. The CPI-U for this index in June 2000 was 4.4% and the CPI-W was 5%. Noting that the value of the wage proposals is 4.94% and 4.22% for the first year and 4.67% and 3.46% for the second year, the cost of living figures lend more support to the Union's offer.

The undersigned finds that both offers are subject to criticism for vagueness but that both have been clarified, at and after the hearing. Neither offer is legally deficient because of vagueness and neither is preferred over the other on this basis.

Although the CPI slightly favors the Union's wage and longevity offer, it is concluded that the greatest weight, greater weight and other factors measurements favor the District's wage and longevity offers. The District offer addresses a real need to raise starting rates and better distributes the wage increase between the groups of employees with little, moderate, and most seniority. Furthermore, the Union's longevity proposals are in excess of the majority of the comparables and not necessary to maintain its current position with respect to wages.

CONCLUSION:

The Union's offer with respect to the educational incentive is preferred. The District's offer with respect to reclassification of the Bilingual Teacher Aides is preferred. The issue of wages and longevity is the controlling issue in the instant dispute and the District's offer is preferred with respect to that issue.

AWARD

The District's offer is selected and incorporated into the parties' July 1, 2000 - June 30, 2002 collective bargaining agreement.

Dated this 25th day of October, 2001, in Madison, Wisconsin.

Mary Jo Schiavoni, Arbitrator