RECEIVED

NOV 16 1983

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of an Arbitration between

THE WAUTOMA AREA SCHOOL DISTRICT

and

THE WAUTOMA AREA SCHOOL TRANSPORTATION RELATED EMPLOYEES

Case XXVI
No. 30396 MED/ARB 1919
Decision No. 20338-A

Appearances:

Mr. William G. Bracken, Wisconsin Association of School Boards, Inc.; for the Board.

Mr. David W. Hanneman, Central Wisconsin UniServ Council-South; for the Union.

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The Wautoma Area School District, hereinafter referred to as the Board or the District, and Wautoma Area School Transportation Related Employees, hereinafter referred to as the Union, were unable to reach an agreement on the terms of a new collective bargaining agreement. After the parties were declared at impasse by a member of the WERC's staff, pursuant to Sec. 111.70(4)(cm)6.b. of the Municipal Employment Relations Act the undersigned was appointed mediator/arbitrator in the matter. A mediation session was held between the parties on June 1, 1983, and when the parties remained at impasse an arbitration hearing was scheduled for July 26, 1983. The arbitration hearing held as scheduled in Wautoma, Wisconsin, and the parties filed post-hearing briefs.

FINAL OFFERS OF THE PARTIES:

1. Wages

Board Final Offer: 4½% increase in each year.
Union Final Offer: 4½% increase in 1982-83
7% increase in 1983-84
Revise Assistant Mechanic wage scale

2. Health Insurance

Board Final Offer:
The Board will pay $45 and $50 in 1982-83 and 1983-84, respectively, towards the single or family premium for full-time mechanic and bus drivers with two or more routes. Part-time mechanic with no driving assignment receives same insurance as one daily route driver. One route driver will receive one-half the amount listed.

Union Final Offer:
The Board will pay $24.37 per route and $34.12 per route in 1982-83 and 1983-84, respectively, towards health insurance. Head mechanic receives full coverage. Assistant mechanic shall receive insurance based on two routes per day. Coverage shall be twelve months.

3. Route and Driving Premium Pay

Board Final Offer:
A premium will be paid for excess time over one hour a bus driver must spend to complete his/her route due to deteriorating road conditions.

Union Final Offer:
Premium will be paid if driver must wait:
(a) more than 5 minutes at dismissal;
(b) more than 10 minutes from median time due to deteriorating road conditions;
(c) more than 10 minutes from median route time because of route design.

4. Probationary Period

Board Final Offer:
Clarify that only non-probationary employees are entitled to just cause protection.

Union Final Offer: Status quo

UNION'S POSITION:

It is the Union's position that of the eight criteria established in Chapter 111.70(4)(cm)7, only two are applicable in the instant dispute. Those criteria are d. and h. Criterion d. provides:

> "d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities."

Criterion h. provides:

> "h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

As to criteria a. and b., the Union notes that neither party introduced evidence into the record regarding these criteria. Criterion c., which relates to the interest and welfare of the public and the financial ability of the unit of government to meet the cost of the proposed settlement, it is irrelevant as the Board did not raise the ability-to-pay argument.

Criterion e., which relates to the cost of living, is irrelevant as there are more issues raised by addressing this criterion than can be resolved. Those issues include what factors should be used in measuring the cost of living, the period

to be measured, and the unpredictability of the future course of the cost of living. Since the answers to these questions can produce an interminable debate, it does not pay to rely on criterion e. unless it is determined that other criteria cannot resolve the dispute.

Criterion f. is related to d. and therefore need not be considered separately. Criterion g. is irrelevant as neither party introduced evidence relating to it. Therefore, according to the Union, d. and h. are sufficient to allow the arbitrator to determine the instant dispute and he should give little or no weight to the other statutory criteria.

It is noted by the Union that the parties failed to agree on what would constitute appropriate comparison groups. The District introduced evidence relating to the athletic conference and a number of area school districts. The District also offered evidence relating to contracts reached for 1982-84 with its other organized employe groups. The Union offered evidence of comparables including the Wautoma District Employees agreement and the Iola-Scandinavia Auxiliary Association agreement. The Union also offered the board's policy statement for the School District of Hortonville.

Both parties have asked the arbitrator to compare their offers to the Wautoma District Employees and the Iola-Scandinavia Auxiliary Association agreements. Therefore, the arbitrator should use these two agreements covering a period of four years as the primary set of comparables and should assign the greatest weight to this data.

With rare exception, the data beyond the primary data referenced above that was offered by the District is hearsay at best. That data was secured as a result of a District-generated survey, and the questions were put in such a way that certain results could be anticipated. Further, the respondents in some cases did not respond in accordance with the ancillary data they provided.

The District offered some surveys which were completed by private contractors and had no attached data for reference. Since none of the respondents to the survey were available to the parties as witnesses, and since it would appear from even a cursory examination that the survey material was prone to error, the Union submits the arbitrator should ignore the surveys or, at the very best, give them little weight.

The issue of whether Wautoma teachers are comparable to the Wautoma bus drivers can be argued both ways. They do not provide similar services, however the statutory criteria also refer to "other employees generally in public employment in the same community." On balance, it should be concluded that the drivers and the teachers should be compared, since they work for the same public employer.

There are really three tiers of comparability: (1) all employes of the District; (2) the Iola-Scandinavia Auxiliary Association and the Wautoma District Employees; (3) and probably less significant, the other data offered by the parties. The Union urges the arbitrator to use the first two groups and ignore the final group for the reasons previosuly stated, i.e., the lack of supporting data for the surveys.

The most persuasive argument to choose the two groups referenced above is because the majority of the other data is not based on actual contract language which would be enforceable under law. Absent collective bargaining agreements to which direct references can be made, it is impossible to determine, with any precision, what the wages, hours and conditions of employment might be. Further, in the absence of actual testimony and the ability to cross-examine the contractors on that testimony, it would be impossible to determine what the facts are as concerns private contractors. The same is true of other school districts, since there was no opportunity to question those in decision-making capacity.

The Union submits the instant dispute was precipitated by two basic factors, both of which are equity-oriented. It is the Union's position that the District has a legal as well as moral obligation to treat individual employes and any group of employes in a fair and consistent manner. The fact is that the District's offer to the Union is significantly less than the voluntary agreements reached with other employes. Thus, the first factor, namely, equity between independent units of the same employer, was not achieved in the District's offer.

The second factor of internal unit equity was the most severe problem. Some drivers receive route pay for performing work which is only half as demanding as other drivers must perform for the same level of pay. The Board has total control of route design and can, with very little difficulty, alter the length of the routes if it chooses to do so.

Beyond the actual route design, the District has consistently refused to pay drivers on an hourly basis and has consistently refused to pay drivers waiting time when they were required to wait for students because of unforeseen circumstances. The comment of Arbitrator Flaten in <u>School District of Wausaukee</u>, Decision No. 16379-A is clearly on point:

> "Employers should be expected to pay employees for hours actually worked. If additional hours are required to clean buses, the bus drivers should be paid for it."

The final offer of the Union was calculated to try to produce parody with other employes of the District, and at the same time produce internal bargaining unit parity. The District's final offer fails to achieve either goal.

Among the specific proposals made by the Board is the removal of the just cause standard for probationary employes. While probationary employes do not have access to the grievance procedure, if a probationary employe is disciplined, suspended or discharged without just cause, he/she has the right to file a prohibitive practice. Under the District's proposal, probationary employes would be deprived of the just cause provision. The Board, as the moving party, has the burden of proof, and that burden consists of showing that a need exists for the change and that the change is supported and defensible under the criteria of Chapter 111.70. The Union contends the District has offered no proof at the hearing or in its evidence to substantiate the need for a change.

The availability of health insurance has been one of the most important, if not the most important, factor in recruiting bus drivers. Currently the District contributes to the

health insurance payment on a nine-month basis. The Union is proposing to extend this payment to a twelve-month basis. According to the Union, there is substantial support for its request: (1) The mechanic employed by the District receives twelve-month payment toward health insurance. (2) The teachers receive payment on a twelve-month basis and, like the drivers, are employed for a nine-month period. (3) The Adams-Friendship contract contains an annualized payment which can obviously be converted easily to a twelve-month payment. (4) The Iola-Scandinavia contract provides for prorated payment for insurance benefits, thus a bus driver would be eligible for a twelve-month payment on a prorated basis against the time worked by a full-time employe. Thus, it is clear that a majority of the appropriate comparable contracts provide for the level of benefits sought by the Union.

The Union concedes that there is additional cost involved with health insurance. In recognition of the increased costs of health insurance, the Union has moderated significantly its wage demands for 1982-83.

Both parties have offered a driving premium proposal, however the offers are significantly different. The District recognized that during inclement weather more time is required to transport students, and in its proposal the District attempts to deal with this issue. However the District's proposal does not address the issue of waiting time. Even though the situation occurs infrequently, there is a clear and compelling need to deal with the waiting time issue.

While teachers cannot be directly compared to the drivers on this issue, when teachers are required to perform extra duties they receive additional compensation. The most striking parallel occurs in the area of "bus chaperones," where the longer trip produces more compensation for teachers. The same problem exists when Wautoma District Employees are compared to the drivers. The District Employees are compensated on an hourly basis; therefore, if they work additional hours they are compensated for those hours. The drivers are proposing a hybrid wage rate which normally would be a per job rate, but which would have an hourly wage addition when abnormal circumstances existed.

When the District Employees are required to work overtime, (which the Union argues is equivalent to an elongated route due to road conditions, route design, or waiting time,) the District provides the employes with time and one-half compensation. Thus, it is clear the District Employees already have in place a superior method of compensation which if used as a comparison would favor the Union's position.

In the Iola-Scandinavia contract, it is clear that the concept of variation and route length is accommodated for by the payment of variables on average miles and stops. Thus, that contract favors the Union's position. In the Adams-Friendship contract, it is clear that the contract anticipates an increase in pay if additional time is added to the routes, as evidenced by the language that indicates the parties will negotiate a new rate if five or more miles are added to the route. The same basic conclusion is drawn from the Hortonville board policy for drivers. Here it is clear that the longer routes receive extra pay.

According to the Union, there can be no denying that a clear and compelling need exists to change the method of compensation for the drivers. Testimony of a District witness indicated that it is possible to change the length of a route in seven days or less if the District so chooses. It is within the power of the District to balance the driving time except for unforeseen circumstances, and these unforeseen conditions can be handled by the Union's proposal. Thus, equity, fair play and comparability all favor the Union's position, and the arbitrator should find for the Union on this most important issue.

In the area of pay there is a dispute over the rate of pay for the assistant mechanic. The Union submits that the District has offered no testimony or exhibits to support the status quo position which it has advocated. The current pay schedule for the assistant mechanic is a carry-over from the time when the former head mechanic retired, and because of social security requirements on earnings he was employed at a reduced rate as an assistant mechanic.

There is a need for balancing the pay rate for the assistant mechanic when compared to the rate of a head mechanic. It would appear from the record that the major difference between the two positions is that the head mechanic must provide his own general tools and is a full-time employe. The assistant mechanic uses the head mechanic's tools and is a part-time employe. In both instances, the mechanics do the same work. Under the District's proposal, the assistant mechanic is 76.305% of the head mechanic rate. The problem with the Board proposal is that it is not a consistent 76% rate, but varies between 65% and 76%. The District appears to have set up a sliding scale for the assistant mechanic to award him for his skill development over a period of time. However, the current assistant mechanic is a skilled mechanic. The Union has offered a 76% relationship between the head mechanic and the assistant mechanic. The Union notes that the Board employs head custodians and regular custodians, and there is a 92% relationship between the pay rates.

Regarding the total compensation for the 1982-83 contract year, the cost varies from 12% to 16% for the Union proposal, and from 6% to 9% for the District's proposal. These cost figures for the Union proposal assume that all employes will be able to use the full insurance premium as per the Union proposal. The evidence establishes that this could not occur, as one of the drivers, whose wife is also a driver, would receive health insurance payments in accord with the Union contract; and it is doubtful the entire amount of the health insurance would be available for 1982-83. Nevertheless, the Union offer has a cost of approximately a 12% increase when the total package is considered.

Since most drivers and the head mechanic are at the top of the pay schedule, and since the pay rate is increased by 4½%, the real wage increase for most of the employes for 1982-83 will be 4½%. While there is some increment cost associated with the movement of a number of drivers and assistant mechanic, the dominant difference between the parties is in the area of health insurance coverage.

The Union believes the Board's proposal is between 6.6% and 6.7%, and that its own proposal is 12.4% to 12.8%, depending upon the employe group which is used. Thus, the issue before

the arbitrator is which party, on the basis of the appropriate comparables, is the closest in its offer.

According to the Union, the Iola-Scandinavia voluntary settlement was conservatively costed by the parties at over 12%. The Wautoma Education Association and the District reached a voluntary settlement for 1982-83, which indicated that the wages were raised by 6.5%, where in reality they were raised by something less than that because of the absence of retro-activity for one month. Since there is a 4% increment, and since more than half the teachers would receive the increment, the cost for wages only of that settlement was something in the neighborhood of 8%. Additionally, there is over a 20% increase in the contribution by the District toward health insurance, and a 28% increase in the contribution by the Board for dental insurance. Thus, the total package for teachers for the 1982-83 year would have to be calculated to be over 9%. That offer significantly exceeds the offer made by the District. Since the District Employees are comparable to the Union, and since the comparison of the District Employees package favors the Union, the arbitrator should choose the Union's position in this matter.

The District offered a variety of other groups for comparison purposes. However, the data base for the District's exhibit is so incomplete that the exhibits cannot be relied upon. The Board has mixed private contractors and school districts in its exhibits. The arbitrator is reminded that there is a 22% premium that drivers working for private contractors can earn when they are laid off, due to the fact that they are able to collect unemployment compensation.

The Union emphasizes that the wages and benefits of the Union must be discounted by the fact that those wages and bene-fits will be received seventeen, and more likely eighteen, months after they first become available. Thus, for that period of time, the District has been able to accumulate and draw interest on the funds they should have been paying to members of the Union. The interest rate over the term in question was approximately 9%. When all of the numbers are considered, the Union offer and the Board offer both can be discounted by more than ½%. Thus, the offer of the Union is even more reasonable than it would appear on surface examination.

It is important to examine the timing of comparable settlements and the economic conditions which were in effect when those settlements occurred. The Wautoma District Employees, the Wautoma Education Association and the Iola-Scandinavia Auxiliary Association all have two-year contracts covering the same term as is covered in the instant dispute. Thus, on the basis of the primary comparables, we are examining contracts which are for the same time period and which were bargained in the same or worse economic conditions.

Settlement of the Iola-Scandinavia contract occurred early in the fall of 1982 during the period when the economy was in a recession and classified by some observers as being in a depression. A cursory examination shows that for bus drivers the salary increase for 1982-83 over the preceding year was 8%. The total package cost for 1982-83 of that contract was conservatively estimated to be about 12%. A careful examination shows that for the two-year period that contract provides at least 15% in wages only, and in all likelihood provides more than 15% as a number of members were able to move vertically on the pay schedule. Additionally, there were increased premiums

paid for the routes. A comparison of the 1981-82 agreement between Iola and Wautoma establishes that there was a relationship between those contracts, and no argument can be made that the Iola contract was a catch-up contract.

The Union asserts that if the arbitration community can use the logic of poor economic times to compress awards, then it must follow that the flip side of that logic is equally applicable; namely, in better economic times, settlements and awards must be better if other factors are equal. The Union submits the other factors are equal in the instant case, and it has primary comparables with coterminous terms. The Union argues its proposal is comparable to the value of other comparable contracts settled in poor economic times, and the value of the District's proposal is less than the other contracts which were settled in poor economic times. A review of the agreement with the Wautoma District Employees establishes that they were granted a 7% increase per cell, and with the additional categories their wage settlement approximates 8% for 1982-83. Additionally, the health insurance premium was increased from $75 per month to $95 per month for 1982-83. Thus, the 1982-83 portion of the Wautoma District Employees settlement had a cost which approaches 11%. The Union emphasized that this settlement was with the very same employer that is now resisting the Union's reasonable offer.

For 1983-84, the Union's offer is a per cell adjustment of 7%, and the Board's offer is 4½%. The total cost of the Union's package can be costed at either 11.1% or 9.24%, and the District's offer costed at 5.95%. As concerns 1983-84, it must be remembered that the Iola per cell adjustment for wages was only 7%. The Wautoma District Employees have a per cell adjustment for wages only of 7% for 1983-84. The Wautoma teachers have a per cell adjustment of 5.1%, but the real adjustment for teachers on a per cell basis approaches 6%.

The two most comparable contracts in the record, the Iola contract and the Wautoma District Employees contract, both of which were bargained in more difficult economic times, carry a wage rate lift of exactly the same percentage as the wage rate lift offered by the Union, and a full 2½% more than that which is offered by the District. Additionally, it is noted by the Union that the increase in insurance offered to the Wautoma District Employees is in excess of the percentage increase offered to the drivers.

For the foregoing reasons, the Union respectfully requests that the arbitrator award its final offer.

DISTRICT'S POSITION:

The District notes that it submitted evidence on thirteen other school districts which can be used to compare Wautoma bus drivers' wages, hours and conditions of employment, while the Union submitted only one other comparable district--Iola-Scandinavia.

Iola-Scandinavia is not in the same athletic conference, nor is it geographically proximate to Wautoma. Presumably, the Union selected Iola-Scandinavia because its bus drivers are represented by a union. The District argues this fact is not

relevant in selecting comparables, and in fact, other factors are more important.

Arbitrators have consistently recognized that a comparison between union and non-union employes meets the statutory criteria. Thus, Arbitrator Kerkman, in Kenosha Unified School District (Teacher Substitutes), and Arbitrator Briggs in Montello School District (Support Staff) both concluded that it is not reasonable to make selections based only on union representation.

A major drawback to the Union's reliance on only one comparable is that it does not give the arbitrator sufficient information to make an informed decision. Arbitrator Haferbecker rejected the Union's reliance on only three unionized employers and accepted the District's list of athletic conference schools in School District of Bruce (Support Staff). The District submits the Union has failed to justify its selection of only one comparable, and therefore the arbitrator should reject this limited view of comparability.

In contrast to the Union's selection of a single comparable, the District notes that it has applied a two-tier approach to comparables which is more reasonable. Arbitrator Yaffe enunciated, in School District of Mishicot, Decision No. 19849-A:

> ". . . the most objective criteria to utilize in selecting comparable employer-employee relations are:
>
> 1. similarity in the level of responsibility, the services provided by, and the training and/or education required of such employees
> 2. geographic proximity
> 3. similarity in size of the employer."

The District's list of comparables takes into account the criteria above and may be further subdivided into two categories: primary and secondary. Primary comparables are based on a labor-market approach in defining comparables. The seven primary districts are all within close geographic proximity of Wautoma. Five of the seven are contiguous. These seven districts should receive the greatest weight as that is the labor market Wautoma must compete with for bus drivers.

It is emphasized by the District that drivers are part-time employes and must be available early in the morning and late in the afternoon to transport children. Because of the unique characteristics inherent in the bus driver position, a smaller labor market exists from which to draw meaningful comparisons. Evidence of the smaller labor market can be observed from the fact that all bus drivers within the bargaining unit reside within the District's boundaries.

The secondary grouping of districts is too geographically removed from Wautoma to exert controlling influence on the bus drivers' economic conditions. Because of the part-time, interrupted work schedule of bus drivers, a smaller, more geographically proximate set of comparables provides the best foundation from which accurate and reliable comparisons can be made.

In a recent mediation-arbitration award involving the Montello School District and its support staff, Arbitrator Briggs held that Montello was comparable to Wautoma and several other geographically proximate school districts. Thus, the District

has applied the rationale of Arbitrator Briggs in selecting comparable schools. It is emphasized by the District that Wautoma falls within the middle range of the thirteen schools advanced by the District as being comparable. In general, Wautoma is slightly larger than the size of the primary comparables and slightly smaller than the size of the secondary comparables. The District believes a fair and representative sample of school districts has been selected from which comparisons may be made.

The Union undoubtedly will argue the District has already agreed to a two-year agreement with the Wautoma District Employees for 1982-84 on the order of a 7% wage increase in each of the two years. While this is true, the Wautoma salaries for support staff have lagged behind the average by approximately 50¢ to 75¢ per hour. The bus drivers are among the highest paid and receive the best fringe benefit package among comparable schools. Thus, there is no reason for the District to match the high settlement offered other support staffs. Additionally, the Union's final offer exceeds the total package increase received by other District employes.

The best, most relevant and direct comparison is between bus drivers in Wautoma and those bus drivers in other comparable schools. Arbitrator Yaffe concurred with comparison among like employes when he stated:

> "That is not to say that the increases the district has granted to other employees are not relevant--in fact, they are; however, the most useful comparisons which can be made in proceedings such as this are made between employees with similar levels of responsibility who perform similar duties, requiring similar skills and training, in similar employment settings. Clearly, in this matter, the most comparable employees to those present herein are those in similar classifications in comparable districts . . ." Freedom Area School District (Support Staff), Decision No. 20142-A.

The District argues that the arbitrator must take into consideration the statutory criteria, especially considering the issue of wages and insurance. The first criterion contained in Chapter 111.70 is the interest and welfare of the public. It is noted by the District that the economic conditions confronting the country at the present time are still grave indeed. Under such circumstances an arbitrator should not award a 30% two-year package as the Union has proposed.

Arbitrators have consistently recognized the significance of the current recession and its impact on the interest and welfare of the public as the most important statutory criterion on which to base awards. The District believes the arbitrator should join the overwhelming majority of arbitrators in realizing that the District's single-digit offer for each of the two years (9.6% and 6.1%) is more reasonable given the current state of the economy.

Regarding the issue of comparability, the District submits it is a wage leader. The District surveyed comparable districts so that an analysis of wages and fringe benefits could be made, tabulated the results, and distributed the results to the survey participants requesting corrections. Attempts were

made to acquire written documentation of bus driver wages, hours and conditions of employment through board policy, employe handbooks, individual contracts, or labor agreements. The District believes the data to be the best available and properly placed before the arbitrator.

A major conclusion one reaches after analyzing the wage and fringe benefit data is that Wautoma provides its bus drivers with a substantially above average wage with superior fringe benefits. The District's 1982-83 final offer is approximately 20% higher than the average regular route pay. Additionally, in comparison to the thirteen other comparable schools, the District's 1982-83 final offer exceeds the average low extra-duty pay hourly rate by $1.01, or 27%; and it exceeds the average high rate by 15¢, or 3.3%.

In looking at mechanics' pay, Wautoma exceeds the average high rate by $1.15 or 17%. The evidence establishes that Wautoma ranks near the top in compensating bus drivers for regular routes, extra-duty runs, and mechanics' pay.

It is argued by the Union that the impact of unemployment compensation on private sector wage rates must be considered. The District submits that such argument is without merit, as any private sector bus driver who has other employment during the summer months will probably be ineligible for benefits. Considering the numerous criteria affecting eligibility for benefits, it is more reasonable to believe that most bus drivers would not be eligible for summer unemployment compensation benefits.

While precise costing information was not supplied by survey respondents, it appears that most total package settlements have been below double digits. It is important to note that in two cases no increases were granted. Iola-Scandinavia's increase for two years is slightly below the estimates submitted by the Union. The District's total package increase of 9.6% for 1982-83 is on the upper end of the settlements in comparable districts. The Union's 1982-83 total package of 16.2% or 17.8% (depending upon whether or not route pay is taken into account) is clearly excessive. The Union demand exceeds every other comparable settlement and in some cases by three times as much. The Union cannot prove a need for a bus driver to receive a larger than normal increase given the fact that Wautoma ranks near the top in pay.

According to the District, not only does Wautoma have a superior wage package, it has a superior package of fringes as well. By way of example, the Board submits it provides the highest accumulation of sick leave, leads in personal emergency leave, is tied with the lead for funeral leave, provides full retirement with the District paying both the employe's and employer's share, pays a portion of the State Life Insurance plan, and has health insurance which is going to increase by $5 per month for each year of the contract under its proposal. Nine comparable school districts out of thirteen do not provide any of the above-listed benefits.

The cost of living for the relevant contract period shows that from August 1981 to August 1982 the CPI increased by 5.8%. The District's 1982-83 final offer exceeds the CPI increase by 3.8%. The Union's final offer exceeds the CPI increase by three times the relevant rate or by almost 12%.

In a second relevant contract period, 1983-84, the most recent CPI figures show that from July of 1982 to July of 1983 the CPI increased by an almost negligible 2.2%. The District's offer for this period is 6.1% and exceeds this rate by nearly 4%. The Union's offer of 10.8% is clearly excessive.

Given the low CPI increases, the District's final offer guarantees that employes will not lose ground to inflation and will actually gain ground in real terms. Most economists expect inflation to remain in the 4% to 5% range the next few years. The Union cannot justify a 30% increase over two years given these extremely low inflation rates.

While both parties have proposed a 4½% increase in the first year, the total package of the Union catapults itself to 17.8% when all of the new proposals are properly costed into the package. In Athens School District, Decision No. 20025-B, Arbitrator Yaffee concluded:

> "Thus, the undersigned believes it is fair and appropriate to compare the total economic value of the two final offers in determining their reasonableness under the cost of living criterion."

In comparing the overall compensation and other benefits the evidence establishes the Wautoma drivers already receive a long list of fringe benefits, job and Union security provisions, and other benefits not afforded other employes similarly situated. When all of these benefits are costed out and added to the already high wage rates, Wautoma emerges as an employer offering top dollar to its bus drivers.

A most significant issue in this dispute is the route and premium pay proposals. The Union seeks to achieve through arbitration a completely new and radical procedure that departs from the current practice and methods by which bus drivers are compensated. The Union proposal involves paying premium pay for late dismissals, road conditions, and routes which deviate by more than ten minutes from the median route time. The District has introduced a new proposal which would pay a driver a premium for excess time beyond one hour due to poor road conditions caused by weather.

It is a well-known principle of interest arbitration that an arbitrator ought not to impose on the parties a proposal that radically changes the status quo unless an extremely persuasive case can be made to do so. The Board submits the Union has failed to prove the need for changing the current method of compensating drivers. Drivers are paid on a flat-rate "per route" basis. To the extent the Union's proposal seeks to embellish the existing pay structure through an hourly premium over and above the flat-rate system the proposal marks a radical departure from the status quo. The Union wants a guaranteed minimum route pay and a premium if the route is extended for whatever reason. The District submits there is no quid pro quo. The District does not save any money or pay bus drivers less if the route is shorter than normal or below the median time.

According to the District, the Union has not met its burden of proving a compelling need to change. According to the testimony of the Union witness there have been only three incidents over the past six years where bus drivers had to wait some twenty minutes before loading students. The Board does not

believe that three separate incidents over a six-year time period justify a wholesale revision of the compensation system. The Union proposal affects the District on a day-to-day basis and does not limit itself to the instances described by the Union.

The District does its best to equalize the routes but equalization is done by balancing many factors; the length of the route is not the only factor considered. Some drivers have longer routes in terms of time but fewer students. In one instance a driver complained that the route had been elongated due to the addition of another student. The route was changed and the situation rectified within seven working days showing the District's good faith effort to alleviate a problem in a fair and expeditious manner.

It is argued by the District that the comparables do not support the Union's final offer on premium pay. Comparable employers compensate drivers in a variety of ways, however when reviewing the comparables not one district has language similar to what the Union is proposing. For this reason alone the arbitrator should reject the Union's final offer.

It is asserted by the Board that the Union's proposal is open-ended, restrictive and will lead to future administrative problems that are not in the public or the parties' interest. There is no way for the District to budget its impact. Furthermore, the Union's proposal includes the catch-all phrase "including but not limited to." The proposal is restrictive because it limits the District's right to schedule routes on a permanent or even temporary basis without incurring additional costs. The District would also have no way of policing the provision. There is no way the District can verify if a driver takes 65 minutes or 75 minutes to complete his route on any particular day, or if the driver waited six minutes instead of five for children to board the bus. Management's challenges to employe requests for premium pay would only lead to grievances.

Another major problem with the Union's proposal concerns retroactivity, and since the Union's premium pay is fully retroactive the District has no protection against any claims made by employes.

The District argues that its final offer on premium pay is more reasonable as it has made a proposal that would entitle a bus driver to extra compensation when a route was extended due to weather conditions. The District's offer is based on a 60-minute threshold. It is also linked to the driver's own individual route time and not the median time. Thus it guarantees a driver extra pay when the route is lengthened above and beyond the normal variations that occur on a day-to-day basis. The District's offer strikes a "middle ground" between the drivers' demand for extra time and the District's desire to have a simple and efficient means of compensating drivers.

The Union's proposal to increase health insurance from nine to twelve months is not supported by the comparables. Only three of thirteen comparables provide bus drivers with any insurance at all. Two of the three pay 30% of the single or family premium for nine months. One district pays $500 per year for regular routes, and $250 per year for late runs and kindergarten routes. Thus the comparables do not justify expanding health insurance coverage.

The full-time mechanic currently receives insurance on the basis as a bus driver with two routes except since the mechanic works twelve months, the insurance coverage is for twelve months. The part-time mechanic currently drives one route and performs assistant mechanic duties the remainder of the time. Thus the part-time mechanic gets paid insurance the same as a driver with two routes. The District's proposal merely clarifies the existing factors by making it clear that a distinction exists between full-time mechanic and part-time mechanic. The Union's proposal requires full health insurance coverage for the head mechanic, and equates the part-time mechanic to the two regular route drivers.

The current agreement limits the maximum health insurance contribution of the District for drivers assigned "two or more daily routes." The Union's offer seeks to require the District to contribute insurance on a "per route" basis. Since so few other districts even provide insurance and since the Union is substantially altering and revising the current procedure to determine health insurance benefits, the District's offer is more reasonable.

The District has increased its contribution by $5 in each year of the agreement. The Union has increased the District's contribution on a per route basis. Under the District's offer insurance will increase by 12½% in 1982-83 and 14.8% in 1983-84. Under the Union's offer, the District's contribution to insurance would more than double. This is excessive by any standards.

The Board has proposed that the existing just cause standard be applicable only to employes who have completed the nine-week probationary period. The District's proposal restores the necessary flexibility it needs to deal with probationary employes while at the same time offers the ultimate in job protection to employes who have successfully completed the probationary period. Bus drivers have a nine-week probationary period which is already the shortest among other District employes. Teachers have a three-year probationary period and other District employes have an eighteen-week probationary period. Furthermore, discharge, suspension and disciplinary actions during the probationary period are exempt from the grievance procedure for District employes. The District's proposal will not harm anyone currently employed. It is geared solely toward future employes. The District's proposal merely clarifies the rationale for having the probationary period in the first place. The District submits its offer is more consistent with the practices found in other labor agreements.

For all of the above reasons the District respectfully requests that the arbitrator award the District's final offer.

DISCUSSION:

The threshold issue in this case is the determination of which groups of employes should be considered under factor d. Factor d. states the following:

> "d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with

"other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities."

Although the parties offered evidence concerning what is commonly referred to as "comparables," they are in disagreement as to what the comparables are in this case. Essentially the Union argues the comparables include other employe organizations with whom the District has a bargaining relationship and other organized bus drivers. While the District recognizes that the other employe groups with whom it has a bargaining relationship may be considered, the District argues that the most comparable groups are other bus drivers working for districts that are contiguous to the District or in close geographic proximity.

In Mishicot, Arbitrator Yaffee listed three criteria for determining comparability:

"1. similarity in the level of responsibility, services provided by, and the training and/or education required of such employees
2. geographic proximity
3. similarity in size of the employer."

The application of these criteria to the instant dispute results in the adoption of the comparables urged by the District, as those comparables include other employes providing the identical service in geographic proximity to the District, and include districts of similar size.

The Union argues there is not sufficient evidence for the arbitrator to reach a conclusion as to the wages, hours and conditions of employment of the bus drivers employed by the comparables used by the District. The Union notes the information was obtained through the use of a questionnaire prepared by the District, and argues that even a cursory review of the responses indicates inconsistencies which raise serious doubts as to the accuracy of the information. More significantly, according to the Union, there is no opportunity to cross-examine a response to a survey. The Union further notes the collective bargaining agreements were entered in evidence as supporting data for its comparables.

The Union raises a valid issue. Certainly a collective bargaining agreement which clearly states the wages, hours and conditions of employment is preferred to a questionnaire prepared by the respondents. However, where there is no collective bargaining agreement, individual contract, or written policy, the questionnaire may be the only source by which such information is available. If the only evidence relied upon was collective bargaining agreements, the evidence being considered would be limited to organized employes. It is well settled in arbitral precedent that the wages, hours and conditions of unrepresented employes must also be considered by the arbitrator.

For the purposes of this case, the appropriate comparables are those used by the District and the other employe groups with whom the District has a bargaining relationship. The more comparable group is bus drivers working for other districts, as they meet the criterion of performing similar, if not identical duties.

The parties are in agreement as to the wage increase for the first year of the agreement, 4½%. The Union is seeking a 7% increase the second year of the agreement, while the District is offering 4½%. Neither party's final offer can be considered unreasonable. While the evidence indicates the employes are among the highest paid of the comparables, it is frequently recognized in multi-year agreements that a larger increase is granted in one of the years as an inducement for fixing the wages, hours and conditions of employment for a longer period of time. Considering the increases granted by the District to other groups of employes, it is the opinion of the undersigned that the Union's final offer regarding wages in the second year is the more reasonable of the offers.

A second issue regarding wages is the schedule for the assistant mechanic. The evidence establishes that the assistant mechanic is an experienced mechanic. Considering this fact it appears that the difference in pay between the assistant mechanic and the mechanic is excessive under the District's proposal. The Union's proposal narrows the gap and is preferred in this case.

In the area of insurance the District has offered to pay $45 per month the first year and $50 per month the second year toward single or family health insurance for drivers with two routes and for the full-time mechanic. Drivers with one route would receive $22.50 and $25 in the respective years. The part-time mechanic with no route would receive the same insurance benefit as a driver with one route. The Union is proposing the insurance be based on a per-route basis with the payment being $24.37 per route the first year, and $34.12 per route the second year. The Union is also proposing the head mechanic receive fully paid insurance coverage and the assistant mechanic receive insurance payments based on two routes rather than one. The major change the Union is proposing is that benefits be extended from nine months to twelve months.

A review of the data establishes that few of the comparables provide health insurance. The District is among the leaders in providing this benefit. The District does provide health insurance to teachers on a twelve-month basis, however only those support personnel who work twelve months a year receive insurance benefits paid by the District for twelve months. It must be noted that unlike the bus drivers, teachers are full-time employes during the school year. This reflects a distinction between the teachers and bus drivers and is the basis for the difference in the health insurance benefit. Neither the comparables nor the District's agreement with the other non-teaching employe group supports the Union's position that health insurance benefits should be paid on a twelve-month basis.

There is one exception to the twelve-month payment which should be made. The mechanic, who is employed for twelve months, should receive the same treatment that is extended to other support personnel who work twelve months.

A major issue in this dispute is the Union's proposal relating to premium pay for drivers. Previously the parties negotiated a rate to be paid for driving routes. The Union, noting that different routes require different amounts of time to be completed, has proposed premium pay to deal with both differing times needed to complete routes as well as time spent by drivers waiting for students. The District has proposed additional payment if a route takes an hour or more beyond the normal time due to deteriorating road conditions.

The Union's proposal states the following:

"The route and driving premium is defined as the premium which is paid to a driver because of circumstances which elongate the time needed to complete the driving or route. Those circumstances include but are not limited to the following:

1. The excess time beyond the normal five (5) minutes that a driver is required to wait for students to board the bus because of late dismissal or related circumstances.
2. The excess time beyond ten (10) minutes from the median route time for all regularly scheduled routes that a driver must spend in order to complete the route because of deteriorating road conditions due to bad weather and the like.
3. The excess time beyond ten (10) minutes from the median route time for all regularly scheduled routes that result from a temporary or permanent route design or schedule.

Route and driving premiums shall be calculated in one-half (½) hour blocks with zero-twenty-nine (0-29) minutes constituting the first half hour and thirty-fifty-nine (30-59) minutes the next half hour, and so forth. The route and driving premium rate of pay shall be fixed by the parties and shall be contained in APPENDIX (A)."

The evidence establishes that the Union has had some difficulty with waiting time, albeit neither frequent nor excessive in nature. The Union's proposal regarding premium pay would address the issue and is not unreasonable in this regard. However, the impact of the Union's proposal in other areas raises serious questions.

By calculating premium pay from the median time of all routes, the Union's proposal practically guarantees premium pay for some drivers, as the District would be required to have all routes completed within ten minutes of the median route time or pay premium time. It is doubtful that the routes could be arranged in such a balanced manner as to guarantee no route would exceed the median route time by more than ten minutes.

A more fundamental problem exists: Those routes which take less time than the median route time would continue to receive the regular route pay. Consequently, even if the District had no routes that exceeded the median route time by ten minutes, there may be drivers having shorter routes receiving the same pay as drivers with longer routes. If the Union is seeking equity in terms of the amount of pay received for amount of time worked, this could be better accomplished by some other method of compensation such as an hourly rate. That would enable the drivers to be compensated for the time worked and would also address the issue of road conditions.

Under the Union's proposal all drivers would have a minimum guarantee in the form of route pay, regardless of time required, and some drivers would receive premium pay. There is really no balancing of interests in the Union's proposal, as the District does not benefit from drivers having shorter routes requiring less time. There is also really no precedent for the method of compensating bus drivers proposed by the Union, although there are numerous ways in which drivers are compensated. While the Union's proposal seeks to address certain problems, based on the evidence it is the opinion of the undersigned that those problems could be more equitably addressed by some other method of compensation.

The undersigned is of the opinion that the District offer of additional payment for time in excess of one hour due to deteriorating road conditions is certainly not generous. Limiting the time to deteriorating road conditions ignores other conditions which could extend a route such as detours or construction. However, on balance, the District's position appears to be the more reasonable position.

In its final offer the District is seeking to change the status quo by removing the just cause standard for probationary employes. Under the existing language a probationary employe does not have access to the grievance and arbitration procedure but may file a prohibitive practice alleging the absence of just cause if suspended or discharged.

The District does not have a just cause standard for probationary employes in its agreements with the Association and the District Employees. To this extent the District is simply seeking that which it has in the other agreements.

It is argued by the Union that the party seeking to change the status quo has the burden of proving a need for the change and in this case the District has failed to meet its burden of proof. It is noted by the Union that no probationary employe has filed a prohibitive practice. However, there is no evidence that any probationary employe has ever been suspended or discharged. While the District may be seeking to change the status quo as it relates to this agreement, the other two agreements the District has with its employes support the District's position. The change would not apply to any current employe and would make this agreement conform to the other agreements. For the above reasons the undersigned is of the opinion the District proposal regarding this issue is not unreasonable.

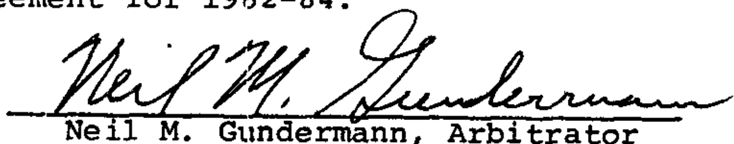
In interest arbitration the arbitrator must consider the entire final offer of each party and then make a judgment as to which final offer is the more reasonable. That judgment is more difficult in this case due to the reasonableness of the respective final offers and the expertise demonstrated by the parties in supporting their respective positions. On balance it is the judgment of the undersigned that the District's final offer is the more reasonable.

The undersigned, after giving due consideration to the evidence and the statutory guidelines, renders the following

<u>AWARD</u>

That the District's final offer be incorporated into the collective bargaining agreement for 1982-84.

November 15, 1983



Neil M. Gundermann, Arbitrator