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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

\* \* \* \* \*

\* In the Matter of the Petition of \*

\* OWEN-WITHEE EDUCATION ASSOCIATION \*

\* (SUPPORT STAFF) \*

\* to Initiate Mediation-Arbitration \*

\* Between Said Petitioner and \*

\* SCHOOL DISTRICT OF OWEN-WITHEE \*

\* \* \* \* \*

Case 12  
No. 33671  
MED/ARB-2888  
Decision No. 22395-A

APPEARANCES:

Dean R. Dietrich, Attorney at Law, Mulcahy & Wherry, S.C.

Mary Virginia Quarles, Executive Director - Central  
Wisconsin UniServ Council - West

I. BACKGROUND

On March 15, 1984, the Parties exchanged their initial proposals on matters to be included in their initial collective bargaining agreement. Thereafter, the Parties met on four occasions in efforts to reach an accord. On August 3, 1984, the Association filed the instant petition requesting that the Commission initiate Mediation-Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On September 26, 1984 and October 24, 1984, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations. On February 19, 1985, the Parties submitted to the Investigator their final offers, as well as a stipulation on matters agreed upon. The Investigator then notified the Parties that the investigation was closed. The Investigator then advised the Commission that the Parties remain at impasse.

The Commission then ordered the Parties to select a Mediator/Arbitrator. The undersigned was selected, and the order appointing him was dated March 19, 1985.

The Mediator/Arbitrator met with the Parties on June 3, 1985 in an attempt to mediate. All but two of the outstanding issues were resolved that day. An Arbitration hearing was then conducted on June 10, 1985 at which evidence concerning the remaining two issues was presented. Post-hearing briefs were submitted July 22. Reply briefs were submitted July 31. Based on the evidence, the arguments of the Parties and the relevant statutory criteria, the Arbitrator renders the following award.

II. ISSUES

In the original final offers six issues were present. These were: (1) just cause language; (2) subcontracting language; (3) dues deduction; (4) health insurance; (5) retirement; and (6) wages. During mediation, the Parties agreed to modify their final offers and the original stipulations of agreement to reflect that they had settled all issues except retirement and wages.

A. Wages

The Association's final offer is as follow:

	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>
Maintenance	\$15,648 (annual)	\$7.52	\$7.77
Custodian I <sup>1</sup>	6.25	6.75	7.00
Custodian II <sup>2</sup>	5.90	6.40	6.65
Secretary I	6.00	6.50	6.75
Secretary II <sup>3</sup>	5.60	6.10	6.35
Cook I <sup>4,6</sup>	4.94	5.65	5.80
Cook II <sup>5</sup>	4.74	5.35	5.60
Aide I	5.25	5.75	6.00
Aide II	4.90	5.40	5.65
Bus Driver	22.50/day	5.75	6.05

Footnotes

- <sup>1</sup> Includes employees in old Custodian I and II.
- <sup>2</sup> Includes employees in old Custodian III.
- <sup>3</sup> Includes employees in old Secretary II and III.
- <sup>4</sup> Includes employees in old Cook I and II.
- <sup>5</sup> Includes employees in old Cook III.
- <sup>6</sup> Employees Kile and Sorenson shall be blue-circled (paid off schedule) with rate increases over their previous year's rates by 0.50\$ (1984-85), and 0.25\$ (1985-86).

The District's final offer is as follows:

	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>
Maintenance	\$6.90	\$6.90	\$7.05
Custodian I	6.04	6.49	6.79
Custodian II	5.94	6.39	6.69
Custodian III	5.65	5.85	5.95
Secretary I	5.35	5.80	6.10
Secretary II	5.14	5.59	5.89
Secretary III	4.92	5.37 <sup>1</sup>	5.67
Cook I	5.02	5.47 <sup>2</sup>	5.77
Cook II	4.64	5.09 <sup>3</sup>	5.39
Cook III	4.54	5.99	5.29
Aide I	4.67	5.12	5.42
Aide II	4.28	4.73	5.03
Bus Driver	5.30 <sup>4</sup>	5.75 <sup>4</sup>	6.05 <sup>4</sup>

Footnotes

- 1 Employee in the position of Secretary III (Litta Rowe) shall move to the Secretary II rate effective July 1, 1984.
- 2 Employees in the position of Cook II shall move to the Cook I rate effective July 1, 1984.
- 3 Employees in the position of Cook III shall move to the Cook II rate effective July 1, 1984.
- 4 Bus Driver employees shall not be eligible for any fringe benefits granted under this agreement.

B. Retirement

The Association proposes that Section 9.03 - Retirement, read as follows:

"The District shall fully pay both the employee's and the employer's contribution to the Wisconsin Retirement System, effective January 1, 1986."

The Board proposes that Section 9.03 - Retirement, read as follows:

"Effective January 1, 1986, the School Board shall contribute the Employer's share required for participation in the Wisconsin Retirement system. The employee shall be responsible for the Six Percent (6%) employee contribution for participation in the retirement system."

III. ARGUMENTS BY THE PARTIES

A. Comparables

The Parties disagree sharply over the schools which they believe are appropriate for comparisons under factor (d) of the statutory criteria. Factor (d) states:

"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 other employees performing similar services and with other employees generally in public employment in the same communities and in private employment in the same community and in comparable communities."

1. The Association

The Association utilizes, for comparability purposes, only those schools within the athletic conference (the Clover-belt) which also have unionized support staffs. These are:

Altoona	Mosinee
Cadott	Thorp
Gilman	Stanley
Loyal	Cornell

They believe that only unionized staffs should be considered. Moreover, they contend that the use of athletic conference schools conforms with well established arbitral principles. The selection of the athletic conference schools is supported as well by the fact that Owen-Withee is at the median, midpoint and mean in enrollment of the unionized conference schools.

With respect to the Board's comparables, the Association does not believe that these are appropriate because they not only include non-unionized and non-Cloverbelt conference schools, but they are internally inconsistent. The Board presents two groups of contiguous schools and "small" geographically proximate athletic conference schools. In general, they believe these comparables to be selective based on purely partisan considerations.

## 2. The District

The Board, as mentioned above, presents wage data in two groups. These are:

<u>Contiguous Districts</u>	<u>Smaller Geographically Proximate Athletic Conference Districts</u>
Abbotsford	Auburndale
Colby	Cadott
Gilman	Cornell
Greenwood	Neillsville
Loyal	Stanley-Boyd
Medford	
Thorp	

The Board believes that of these districts -- Colby, Medford, Neillsville, and Stanley-Boyd deserve less weight than the others because of their larger size. Thus, the remaining districts, in their opinion, provide the Arbitrator with the best picture of the economic and social climate for reviewing the comparative wage rates -- looking at smaller, rural, farm-oriented districts in the area.

The Board believes it improper to limit the comparables to only unionized schools. They note in this regard that the statutory criteria makes no such distinction. Moreover, they argue a broader basis of comparability is appropriate.

## B. Wages

### 1. The Association

The Association analyzes the offers on the basis of the five general job classifications which are: secretarial, custodial-maintenance, cooks, aides and E.E.N. bus driver.

Regarding the Secretary I and II classification that both offers are below the average wage in the comparables. The average for Secretary I is \$6.52 per hour and the average for Secretary II is \$6.31 per hour. Their offer is more reasonable, in their opinion, because it is closer to the average than is the Board's offer.

Regarding Custodial/Maintenance employees, the Association first notes that there are six custodians and one maintenance specialist. They present a chart which shows again that the Association and the District have proposed below average wages. The average maintenance wage is \$8.10 per hour, and the average custodian wage is \$7.65 per hour. Thus, they note that the District's proposal is only 85 percent of the average. In addition, they do not believe that the Board's proposal to freeze the maintenance specialists 1982-83 wage for 1983-84 and 1984-85 is justified. In fact, they believe the proposal is punitive because this employee is on the Union bargaining team.

The next classification analyzed by the Union is the cooks. The District employs five cooks: two at the elementary school and three at the high school. As background to their argument, they note that at the time the Association became the bargaining agent in 1983, the elementary cooks were paid at the Cook I rate of \$4.72 per hour. However, the District unilaterally lowered this rate in 1984-85 when the new elementary school opened. The two employees affected are long-time employees (17 and 20 years) and may retire soon. For this reason, and the fact their responsibilities have changed little, the Association believes that the wage rates of Kile and Sorenson should not be reduced. Therefore, the Association has proposed to "blue-circle" these employees, paying them off schedule.

Regarding the other cooks, they note that both offers exceed the average for 1984-85, the Board by 0.11\$ per hour and the Association by 0.19\$ per hour.

The District also has an aide classification. In this classification the District employs six aides: three as Aide I (E.E.N. and Chapter I) and three as Aide II (clerical and playground). In their analysis, they used the highest rate available in the comparables because of the problems in differentiating responsibilities. However, if the distinction between Aide I and Aide II were made, the Association's wages would not vary as much from the average. As it is, their offer is 0.55\$ above the average in 1984-85, whereas the Board is 0.02\$ per hour above. However, they believe this is justified since these jobs carry a high level of responsibility. For instance, they note Greenwood pays \$7.75 per hour.

The last classification is bus driver. There is one person employed as such. The issue here is not wages but fringe benefits. The difference in wages over three years is only \$234.00. They did not believe the Board's proposal to offer no fringe benefits other than the Wisconsin Retirement System (WRS) coverage if over 600 hours is justified.

In general, the Association argues extensively, that their proposal is justified based on catch-up. Even then, their data shows that they are still below the mid-range rankings. In addition, they submit that even the Board's exhibits support the need for catch up in wages and benefits. In this regard, they offer a position by position analysis of the offers against the average rates in the Board's comparables.

## 2. The District

The District first analyzes the offers relative to their primary comparables (the contiguous districts). This is a position by position analysis based on rank, percentage increase, and average rates. In the course of this analysis, they also argue that the responsibility accruing to several positions is less now than in the past. For instance, they note that the maintenance position formerly had supervisory responsibilities before the advent of the bargaining unit, and the District has entered into service contracts on certain pieces of equipment. Thus, in their opinion, because of the lesser responsibilities, they believe that their offer to lower the hourly rate for 1983-84, and to freeze it in 1984-85, is justified.

With respect to the custodian classification, they draw attention to the fact that the Board's offer improves rank from four of six, to three of six; whereas, the Association's offer maintains rank at three of six. Moreover, they believe that it supports their position that the Board's percentage increase of 7.5 percent greatly exceeds the average percentage increase of 6.04 percent, compared to 8 percent for the Association.

Closer analysis of the percentage increases reveals that the average increase for the comparable pool is skewed higher due to the extremely large 10.3 percent increase for Thorp. The Association offers no support justifying its excessive percentage increase of 8 percent.

The Board makes several arguments regarding the three secretarial classifications under their offer. Regarding Secretary I, they submit that their offer is 0.25\$ above the average hourly rate of \$5.55 per hour, and that the Board's offer of 8.4 percent greatly exceeds the average percentage increase calculated from available statistics at 4.95 percent. At the Secretary II level, they note that the Board's offer improves rank from five of six, to four of six. The Board's percentage increase of 8.8 percent is greater than all other comparable increases and the average percentage increase of 5.76 percent. Last, at the Secretary III level, they assert that the Board's percentage increase of 9.1 percent exceeds all other comparable percentage increases and the average of 5.34 percent.

The Board also proposes downgrading some former Cook I employees to Cook II. This is based on what they believe to be changes in the duties of the elementary school cooks. The elementary cooks no longer have to actually defrost and cook food for students. They now receive prepared food from the high school kitchen which needs only to be served to the students. Also, in conjunction with the Cook II classification, they contend that the Board's offer increases rank from two of three to one of three, and the Board's percentage increase of 9.7 percent is above the average percentage increase of 8.6 percent. Thus, they argue that the Association offers no justification for its excessive increase of 12.9 percent. Regarding Cook I employees, they note that the Board's offer maintains rank at one of six. The Association's offer improves rank from two of six to one of six. The Board's percentage increase of 9 percent is greater than all the comparable districts and the 5.46 percent average percentage increase. The Association offers no justification for its 12.3 percent increase. The 1984-85 Board's hourly rate is 0.35\$ above the average hourly rate of \$5.12.

Aides, according to the District, also fair well under their offer. The Board's position maintains rank at four of six. The Board's percentage increase of 9.6 percent is above the average increase of 9.26 percent which has been greatly skewed by the 20.6 percent increase at Greenwood. Without considering Greenwood, the Board's percentage increase is greater than all the other contiguous districts, and it is also greater than the Association's percentage increase.

Last, the District looks at the bus driver classification. It is their position that the Board's offer in cents per hour and percentage increase is greater than the other comparable (Abbotsford) which is similarly reported in hourly rate context.

The Board also does a similar position by position analysis relative to the Board's primary comparables consisting of smaller Cloverbelt athletic conference districts. The results are similar to their other analysis. In their opinion, not only does the Board's offer repeatedly award hourly rates above the average for the comparable pool, but the Board's offer frequently improves rank over two years' time.

The District also asks that the Arbitrator pay careful attention to the footnotes on each of the Parties' schedules. Under careful scrutiny, it is their belief that selection of their offer is compelled. For the Board's part, their footnoted adjustments are based upon changing responsibilities of that position. On the Association's part, they submit that

their adjustments are unreasonable, parochial, and they ignore the changes in responsibilities. This is true for two cooks, the maintenance position and their proposal to combine the Custodian I and II positions and upgrading of Custodian III to Custodian II. The Association's proposal ignores the job duties of each position and reflects an attempt to change rates without considering the duties performed.

The District also makes a number of economic arguments in support of their position. First, they suggest that local economic conditions strongly militate in favor of acceptance of the Board's offer. This relates to the state of the farm economy, in general the occupational and age characteristics of the District's residents, and with the economics of dairy farming, specifically. Next, they contend their offer is supported by the fact that private sector and public sector settlement data support the Board's offer. In the private sector, there have been wage give backs. In the public sector, the level of wages-only increases received in the public sector in Clark County in 1984 was consistently applied throughout County units as 3.5 percent effective January 1 and 1 percent effective October 1. In 1985, Clark County increases reported as settlements at the time of the hearing reflected 3.5 percent. Similarly, Taylor County increases in 1984 were consistently applied to all units at 2.6 percent. In 1985, Taylor County settlements were 4.2 percent, with the exception of one 5 percent increase.

Last, in terms of economics, the District contends that their offer is supported by the fact that it exceeds the cost of living. The relevant index is 3.7 percent, and this compares to their wages only offer of 7.65 percent, 7.07 percent and 4.49 percent in 1983-84, 1984-85 and 1985-86 respectively, and their total package increase of 6.59 percent, 6.31 percent and 6.43 percent in the same years.

### C. Retirement

#### 1. The Association

In support of their proposal that the District receive fully paid retirement by the Employer, the Association notes that all unionized employees in the Association's comparability group receive fully paid retirement by the employer and that all comparable employees are also members of the Wisconsin Retirement System, except for Loyal. There simply is no other district in which employees pay a portion of their retirement. Moreover, they believe it is justified because of the long years of service put in by a number of employees.

Next, in support of their retirement proposal, they draw attention to the fact that the District's retirement proposal would reduce the take home wage of these employees for 1986. A review of the Board's final offer shows a wage increase of 4.5 percent. However, under the Board's offer, employees would receive a deduction of 5 percent of gross wages for WRS effective January 1, 1986. Thus, the net effect on spendable dollars is to lower them below the 1984-85 level.

Last, they argue that an analysis of total compensation of Owen-Withee employees with their comparables supports the Association's final offer. Based on their analysis, they conclude that the Board's offer has every employee below mid-ranking in 1983-84 and drops them all one rank in 1984-85 (except for custodian which already ranked last.) Under the Association's offer, the Association exceeded the District by one ranking in three positions and matched ranking in two in 1983-84. For 1984-85, the Association, maintained its ranking

for all, except cook, where the ranking dropped. The Association completes 1984-85 with all classifications, except aide, below mid-ranking.

## 2. The District

In terms of retirement it is, generally speaking, the Board's position that the bargaining history, as well as the cost impact of this new benefit, clearly supports the District's position. In terms of bargaining history, it shows that the District has offered participation in the Wisconsin Retirement System in the past, and this has been bypassed by the employees for a more substantial wage increase. Thus, they argue that the high cost attributable to the full payment of employer and employee shares of the retirement contribution should not be unilaterally forced upon the District when, in fact, participation was offered in the past and not accepted by the employees. They believe it is far more appropriate to phase in this new benefit as under the Board's offer where the employer contribution is paid by the district and the employees assume a portion of the cost of this new retirement benefit.

## IV. DISCUSSION AND FINDINGS

### A. Comparables

The basic issue here is whether non-unionized districts should be considered as comparable employers. It is true, as the District argues, that the statute does not limit comparables to the unionized employers. On the other hand, the mediation/arbitration statute is an impasse substitute to free collective bargaining in which the Parties are entitled to strike or lockout in response to a contract impasse. Therefore, generally speaking, a strong argument can be made that the Arbitrator should limit his consideration to what occurs in collective bargaining elsewhere. As an alternative to the standard strike model, it is often stated that the results of interest arbitration should, to a reasonable degree, approximate the results of the Parties' efforts if they were under the free collective bargaining system. In this sense, what similar parties agree to voluntarily in other public sector bargaining relationships should, at least, carry great weight under the comparability factor. However, even parties in free collective bargaining relationships, under certain circumstances, give weight to non-unionized settlements. When and to what extent they do depends on a variety of economic factors relating to product and labor market composition and competition.

In this case, the Board goes too far in the inclusion of non-union employers. For instance, four out of seven in the Board's primary groups of contiguous schools are non-union. The Arbitrator is of the opinion that greatest weight should be given to the unionized schools in the athletic conference. This produces a relatively good guide as to what similarly sized and regionally proximate employers in the education business and their unions believe to be appropriate wage levels. However, it is not entirely inappropriate to include Greenwood and Colby for several reasons. First, they are in the athletic conference, thus, establishing a reasonable similarity in terms of size, etc. Second, because they are geographically contiguous, thus, influencing the labor market for these positions, they should also be considered reasonably comparable. The Union argues that non-union status makes an employer, per se, non-comparable. This ignores that there is a spill-over effect of union settlements into the non-union sector, especially where employers compete in the same labor market. Moreover, in this case, the labor rates in Colby or Greenwood are not out of step with the general trend in the athletic conference to render a comparison useless or substantially limited.



Therefore, when Colby and Greenwood are included with the districts listed by the Association, they form a reasonably balanced group of employers taking into consideration a broad spectrum of comparability factors. Accordingly, the comparable districts are:

Altoona	Mosinee
Cadott	Stanley
Cornell	Thorp
Gilman	Colby
Loyal	Greenwood

#### B. Wages

It must be stated that any position by position analysis under these circumstances is very difficult. This is because different districts have different job titles, more or less classification levels than the instant district and some have no positions at all for certain jobs. Moreover, job duties for similarly titled positions can vary from district to district. This problem is present in the exhibits of both Parties. Accordingly, they will be inherent in any comparisons to be done by the Arbitrator. Thus, such comparisons leave much to be desired and are much less than "scientific". However, they are the best approximations available. In doing this analysis, the Arbitrator used the data presented by the Association for its comparables accepting it as a reasonable extrapolation of all the various variables in the various positions for comparison purposes. The Arbitrator then added the wage data for comparable positions in Greenwood and Colby from the Employer exhibits. The Arbitrator concentrated on the wage rates themselves rather than the amount of wage increases, since a catch up argument is present and as a first time contract a wage level analysis should carry greater weight.

In comparing the wage rates of the various positions, it is the Arbitrator's conclusion that over the three year period of the contract, the Association's offer is, in general, most consistent with the comparable wage rates. Attention was first directed at the custodian and aide classifications. There are six employees in each of these classifications -- more than any other classification. The next two highest are the secretary classification with three employees and cooks with five employees. Thus, these classifications deserve substantial weight.

The custodian classification under the Board's offer is dramatically low in all three years. The average custodian wage in the first two years of the contract is \$7.32 and \$7.58 per hour in the comparables. This compares to \$6.04 and \$6.49 per hour for the highest paid custodian under the Board's offer in 1983-84 and 1984-85, or -1.28 and -1.09 below the average. It is also noted that there are three settlements for 1985-86 ranging from \$7.40 to \$8.33 per hour, notably well above the Board's offer of \$7.05 per hour. The Association's offer is also below the average, thus, the Arbitrator is compelled to conclude that at this classification, the Association's offer is most reasonable.

Regarding aides, the Board's offer is again below the average substantially, but not as dramatically as at the custodian classification. The highest paid aides under the Board's offer would be in 1983-84, 0.48\$ per hour behind the average of \$5.15, and 0.43\$ per hour behind the 1984-85 average of \$5.55. On the other hand, the Association exceeds the average, but by a lesser degree. They are +0.10 and +0.20 above the average for the two years. Accordingly, their offer at this position must also be considered most reasonable.

The next most populous classification is cooks. Here the offers are very close to each other on wage rates and also are very close to the average. The offers are so close that it cannot be said that a preference for either offer exists. The average rate for cooks in 1983-84 was \$5.00, and \$5.42 in 1984-85. The Board's offer for the highest paid cook is 0.02\$ per hour above the average in 1983-84, and 0.05\$ above the average in 1984-85. The Association's offer is 0.06\$ below the average in 1983-84, and 0.13\$ above the average in 1984-85.

The next most populous classification is secretary. Attention is focused here on the highest paid position within the classification. The average in the comparables for 1983-84 was \$6.35 per hour -- a full dollar more than the Board's offer. The gap is narrowed in 1984-85 to -0.59\$ (\$6.41 versus 5.80). In comparison, the Association is 0.35\$ below the average in the first year, and +0.11\$ above the average in the second year. Since the District's offer is more divergent from the comparables, the Association's offer is more reasonable at this position as well.

The last classification for which any data is available is maintenance. Here too, the District is significantly below the average. Even assuming for the sake of argument that the duties and responsibilities of the maintenance person at the District are less than those at other districts, a wage that is \$1.21 below the average in 1984-85 is unacceptable. The Association's offer is more acceptable at 0.59\$ below the average.

The District did argue that the efforts by the Association -- in the form of footnotes -- to reclassify certain employees should compel selection of the Board's offer. However, the District is guilty of a little "game playing" just as the Association is. For instance, the District's proposal for the maintenance person is not fully justified. Even if the Association is more guilty than the District, their maneuvering does not arise to a "fatal flaw" in view of the substandard wage rates in the Board's offer.

The District also argued that local economic conditions as well as cost of living considerations dictated that their offer should be accepted. However, there is no evidence that the farm economy or the cost of living factors are any different in this District as compared to most of the other comparable districts which are also largely dependent on agriculture. Thus, there is no reason why the District employees should be paid within a reasonable range of the comparable employees.

In summary, it is the finding of the Arbitrator that the District's offer is too divergent at most of the classifications relative to the comparables to be considered more reasonable.

### C. Retirement

With respect to this issue, the comparables clearly support the Association. There is not one comparable in which the employer does not pay the full cost of the retirement contribution.

The District did argue that bargaining history and total compensation factor militated in favor of their offer. With respect to "bargaining history", little weight can be given to past discussions between employer and employees outside the context of formal collective bargaining.

Regarding total compensation in view that the District's offer on wages is substandard and that all the comparable district offers fully paid retirement, a total compensation argument actually favors the Association.

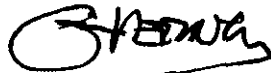
The District did argue that the cost impact of the Association's offer made the District's offer most reasonable. Certainly, this is a valid consideration. Even in a catch-up situation, the effort to raise wage rates must be balanced against the cost impact on the employer. However, the cost impact here over the three year period is not so great as to outweigh the need for catch up.

D. Summary

On both issues -- wages and retirement -- the evidence favors the Association's offer. Moreover, when the offers are considered on a total compensation basis, the Association's offer is even more reasonable. This preference tends to outweigh any negative considerations arising from cost impact or classification maneuvering.

AWARD

The Parties' 1983-84, 1984-85 and 1985-86 collective bargaining agreement shall include the final offer of the Association, as well as those items in the Parties' stipulation of agreement.



Gil Vernon, Mediator/Arbitrator

Dated this 23rd day of December, 1985, at Eau Claire, Wisconsin.