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BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ROSE MARIE BARON

In the Matter of the Petition of

BENTON SCHOOL DISTRICT

CASE 6

To Initiate Arbitration Between
Said Petitioner and

No. 38715 ARB-4407

Decision No. 24812-A

BENTON COUNCIL OF AUXILIARY PERSONNEL

APPEARANCES

Barry Forbes, Esq., Wisconsin Association of School Boards, representing
the Benton School Board

Paul R. Bierbrauer, Executive Director, South West Teachers United,
representing the Benton Council of Auxiliary Personnel

I. BACKGROUND

The Benton School District, a municipal employer, (hereinafter referred to as the "Board" or the "District"), and the Benton Council of Auxiliary Personnel (the "Council" or the "Union"), representing full-time and part-time education support staff, have not previously been parties to a collective bargaining agreement. The parties exchanged their initial proposals on matters to be included in their first collective bargaining agreement on March 30, 1987 and met on one occasion thereafter. On April 28, 1987 the District filed a petition requesting arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act with the Wisconsin Employment Relations Commission. An investigation was conducted and final offers and stipulations of the parties were submitted, resulting in a report to the Commission that the parties were at impasse. An order initiating arbitration was issued by the Commission on September 3, 1987. The parties selected the undersigned from a panel of arbitrators; an order of appointment was issued by the Commission on September 22, 1987. Hearing in this matter was held on November 23, 1987 at the Benton High School. No transcript of the proceedings was made. At the hearing the parties had opportunity to present evidence and testimony. Briefs were submitted by the parties according to an agreed-upon schedule.

II. ISSUES

The parties have resolved all but seven issues through collective bargaining. The remaining issues on which the the parties disagree are as follows:

A. Comparability

The parties are in dispute as to the appropriate governmental units to be selected by the arbitrator pursuant to Wis. Stats. Sec. 111.70(4)(cm)(7)(d) for purposes of comparing wages, hours and conditions of employment with those of the employees of the Benton School District represented by the Council.

B. Wages

The Board has proposed a \$.25 per hour increase in 1986-87 and a \$.30 increase in 1987-88 in most cases. The Union has proposed a \$.30 increase in the first year and a \$.35 increase in the second. Both parties have agreed that there is a need for a catch-up for the secretarial position; the District has offered \$1.25 per hour over two years while the Union has asked for \$1.45 over the two-year duration of the contract.

C. Personal Leave

The Union has proposed permitted bargaining unit members to receive one personal leave day to be deducted from sick leave while the Board proposed to continue its practice of not permitting personal leave days.

D. Paid Holidays for School Year Employees (Cooks)

The Union proposes three paid holidays; the Board proposed to continue its practice of not allowing paid holidays to school year employees.

E. Vacation

The parties agree that year-round employees should receive one week of paid vacation after one year. They disagree as to the amount of vacation to be granted after additional years of employment.

<u>Union</u>	<u>District</u>	<u>Paid Vacation</u>
2 to 7 years	2 years	2 weeks
8 to 14 years	10 years	3 weeks
15 years or more	20 years	4 weeks

F. Insurance

The parties agree as to the dollar amount which shall be paid by the District for hospitalization, dental and vision insurance for the two years of the contract or a payment of \$50 per month if employees elect not to take insurance coverage. The Union proposes additional language which will require

that insurance benefit levels be maintained at a level equal to or better than those in effect during the 1986-87 school year.

G. Discipline and Discharge

The Union has proposed that a just cause standard be applied in cases of discipline or discharge while the District proposed that no such restriction be placed in the contract.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.70(4)(cm)7:

7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall 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 other 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.

1. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- J. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or private employment.

IV. POSITION OF THE PARTIES AND DISCUSSION

In this section the positions of the Board and the Union on each of the issues in dispute will be summarized and discussed by the arbitrator. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, it will be addressed first.

A. COMPARABLES

1. The Position of the Board

a. Comparison to school districts in the athletic conference: The Board has proposed the use of Belmont, Bloomington, Cassville, Highland Potosi, Shullsburg and West Grant school districts as comparables because they form the Blackhawk Athletic Conference and are similar in size and geographically proximate. In addition, the Board agrees to accept as comparable the school districts of Platteville and Southwestern Wisconsin because they are also geographically proximate to the Benton School District.

There is no history of bargaining between the parties and thus no traditional school districts to be looked to for comparison purposes. The Board believes that schools in the Blackhawk Athletic Conference are an appropriate group for comparison purposes. The Union's argument that comparisons should only be made to unionized employees is self-serving. The Board cites extensively to arbitral authority which holds, in summary, that the selection of a comparables by advocates is self-serving, and is in effect, a strategy relied upon by the parties to rationalize their positions after they have developed their proposals.

The Board emphasizes the need to use objective criteria to select comparable school districts such as size, geographic proximity, similar economic conditions in contrast to the Union's insistence upon one factor, i.e., comparison with only unionized employees. Several noted arbitrators are relied upon in support of the position that the Board espouses, namely that Section 111.70(4)(cm)7.d., Wis. Stats. does not specify the the exclusion of unrepresented employees in comparisons. The Board cautions against the Union's proposed limitation of comparables to unionized employers since certification of

new units or decertification of existing units would destroy the sought for stability in comparison groups. Finally, since school districts are already wage leaders in the positions at question, to restrict comparisons to unionized school districts would further distort the labor market.

b. Similarity in size and geographic proximity: The Board argues, and cites arbitral authority to support its position, that geographic proximity and size are the criteria to be afforded great weight in the determination of a labor market in cases involving school district support staffs. Shullsburg and Southwestern Wisconsin school districts are contiguous to the Benton School District and Belmont, Platteville and Potosi while not contiguous, are closer than any of the other proposed comparables. The Board concludes that the criterion of geographic proximity suggests that these five school districts are comparable to Benton.

The Board proposes that size be measured by the full-time equivalent (FTE) student population and compares Benton's FTE of 357 with that of the districts proposed by the Union and the Board. The Board's figures indicate a range of 83% to 466% of the Benton student FTE, with those in the athletic conference falling in the 83% to 123% range. The Board concludes that the appropriate comparable school districts based on size are Belmont, Bloomington, Cassville, Highland, Pecatonica, Shullsburg, and West Grant.

In addition to size and geographic proximity, the Board considers local economic conditions, as measured by the local levy rates. That figure is derived by the school tax levy (the school district budget less state aids) divided by the total equalized valuation of property in the District. Benton has the fourth highest tax levy (16.18) of any of the school districts proposed by the parties. After ranking the districts, the Board elects 90% of the Benton figure as the cutoff point for comparability. This results in Bloomington, Potosi, West Grant, Southwestern, Cassville, Platteville, Mineral Point, and Highland as comparables.

For purposes of analysis the Board combined the data described above into a table (Brief, page 22) in order to make a final determination as to comparability based upon the objective criteria of geographic proximity, similar size, and similar tax levy. If a district meets at least two of the three tests of comparability, the Board concludes that is appropriate for comparison purposes. The districts meeting that test and proposed by the Board to be the comparable communities are:

Belmont	Highland	Shullsburg
Bloomington	Platteville	Southwestern
Cassville	Potosi	West Grant

2. Position of the Union

The Union proposes that comparability be determined in two ways, first, by external comparison with similar employee groups in which wages, hours and conditions of employment are established through the collective bargaining

process, and second, by internal comparison with the District's other organized employee group, the teachers.

a. External comparability: The Union has provided comparative data for eight school districts which are either contiguous or in reasonable proximity to Benton and which are represented by labor organization and have reached voluntary settlement of their respective collective bargaining agreements. Although the District proposes that the athletic conference school districts be used as comparables, the Union argues that while these may be appropriate for teacher cases where all the teacher units are organized and bargain under MEPA, they are not appropriate for education support staff units since the only support staff in the athletic conference which is organized under MEPA is Potosi. The Union cites arbitral authority for the proposition that the proper comparison for education support staff bargaining units is with units of similar employees who have reached agreement through collective bargaining rather than by the unilateral imposition of wages and benefits by the employer. The proposed comparable units are:

Escobal	Pecatonica	Riverdale
Iowa-Grant	Platteville	Southwestern
Mineral Point	Potosi	

b. Internal comparability: The union proposes that internal settlements reached between the employer and other bargaining units on a voluntary basis may be relied upon as evidence of fair and reasonable benefits. The other bargaining unit in Benton is the teacher bargaining unit which reached voluntary agreement with the District in each of the years at issue in the instant matter. Evidence regarding the terms of that settlement was introduced through the testimony of a member of the teacher association bargaining team.

2. Discussion and Findings

a. Selection of comparable communities.

The parties argue forcefully for the adoption by the arbitrator of their proposed comparable communities for purposes of comparing the wages, hours and conditions of employment contained in their final offers. It would be redundant to repeat these arguments as well as the citations to arbitral decisions in support of each side. The Association's primary position is that only school districts whose support service staffs are represented by labor organizations are appropriate for comparison; the Board argues for communities within the Blackhawk Athletic Conference since these are both geographically proximate and similar in size.

The arbitrator agrees that geographic proximity, size (based on full-time student equivalency), and economic conditions are factors which are important in determining appropriate comparisons. Statutory guidelines also provide for weight to be given to all factors normally taken into account in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, as well as otherwise, in both public and private

employment. For those reasons, the arbitrator has determined that neither the Association's nor the Board's proposed communities can be accepted in toto. Since both parties agreed on Platteville, Potosi, and Southwestern, they will be included. Sufficient relevant information has been introduced into the record to permit the arbitrator to determine that comparable communities within a radius of approximately 30 to 35 miles from Benton, both organized and unorganized, comprise an appropriate labor market.

Therefore, for purposes of comparing the data provided in the parties' final offers, the arbitrator has selected the following communities:

Belmont	Potosi
Iowa-Grant	Shullsburg
Mineral Point	Southwestern
Platteville	

b. Internal comparability:

The Union asserts that the voluntary settlement reached by the District with its teachers offers guidance as to which of the parties' final offers is the more reasonable. The evidence of record shows that the teachers received a 10% wage increase and 9.7% total package increase in 1986-87 and a 7.9% wage increase and 10.1% total package increase in 1987-88. The Union's final offer figures are lower than the teachers' settlement, but closer than that of the District. The District points to the testimony of the teacher representative, Jim Clayton, who stated that the settlement was an attempt to keep up with comparable school district teacher salary settlements. Thus the District argues that while the extraordinarily large pay increases were necessary to reverse a trend of falling behind in teacher salaries, the same circumstances do not exist for the the support staff, with the exception of the secretarial position which has been remedied. The Board concludes that the evidence regarding the teachers is not relevant and does not support either party's final offer.

The arbitrator is mindful of the statutory provision that weight is to be given to a comparison of the wages, hours and conditions of employment of the employees in the arbitration proceeding, i.e., the support staff, with other employees generally in public employment in the same community and in comparable communities. In the instant case comparable data has been provided for one category of public employee, i.e., teachers. It is the arbitrator's opinion that a comparison of the benefits gained by the teachers with those offered the support staff would have greater influence on the selection of a final offer if the District was asserting an inability to pay, however, this is not the case. The disparate nature of the two occupational groups, i.e., teachers versus non-teaching support staff (cooks, custodians, and secretaries) leads the arbitrator to conclude that this factor is not sufficiently relevant to be accorded weight in determining which of the parties' final offers is the more reasonable.

c. Comparison to private sector employees:

The Board cites with approval a recommendation of the Compensation

Study Committee (Brief, p. 36) that government employers should base their compensation packages on the private, competitive market and exercise the same cost controls in setting salary and fringe benefit levels for their employees as those in the private sector. In comparing the final offers of the parties with the mean and median wages of cooks, custodians, and secretaries in Southwestern Wisconsin (data derived from Board Ex. 28), the Board concludes that its wage offer, while lower than that of the Union, exceeds private sector wages for cooks and janitors. Although the Board's secretarial wage rate is less than the private sector rate, the Board believes that by offering a \$1.25 per hour increase, it is attempting to catch up to the average rate. The Union has presented no data or argument regarding private sector wages.

The Board also presents comparative data regarding wages paid in manufacturing jobs (Board Ex. 27) pursuant to Section 111.70(4)(cm)7.f. It concludes that its wage offer is closer to the percentage increases in Wisconsin private manufacturing and thus more reasonable than the Union. Although the statute directs the arbitrator to consider wages and benefits "of other employees in private employment in the same community and in comparable communities," such a comparison in the instant case with manufacturing jobs on a state-wide basis is misplaced. Cooks, custodians and secretaries are more properly classified as service occupations (See, Board Ex. 28, p. 111). Although the data in this exhibit are not complete, i.e., "Graph 6A, Services and Miscellaneous, except Health" referred to on p. vi, is missing, a summary states: "Graph 6A...depicts this industry as having generally lower paying occupations. It also shows most of the SDA's are in the pay range of \$5.20 to \$6.82 per hour..." Hourly wage rates in all manufacturing jobs in Wisconsin range rose from an average of \$9.83 per hour in 1986 to \$10.00 per hour in 1987 (Board Brief, p. 43). The arbitrator believes that a comparison of a group of service employees in a predominantly rural community with a more highly-skilled, highly-paid urban labor market would not facilitate a decision as to which party's final offer to accept. Therefore, no weight will be given to this factor.

Section 111.70(4)(cm)7.d. directs the arbitrator to give weight to the wages, hours and conditions of employment of "other employees performing similar services." There is no question that the wage rates of custodians and cooks employed by the District exceed those supplied for comparison, however, it is less clear that the positions of Head Cook, Head Custodian, Cook, and Custodian in the Benton School District are equivalent to those cited by the Board. The arbitrator is unconvinced by the Board's assertion that the job descriptions cited are clearly comparable. While the arbitrator accepts the need to consider private sector data, it is the arbitrator's holding that the degree of weight to be given to this information is of a lesser magnitude than the more specifically comparable positions in other school districts.

In the recommendation referred to above, the Committee also states, "Government employers must address the practices which allowed government salaries to rise above the market." The arbitrator does not believe that this proceeding can resolve the complex economic issues raised by the Committee. Thus, although wages paid to employees in private industry are to be considered in the decision-making process, the arbitrator concludes that the better

comparison for the purposes of this arbitration proceeding is with public sector employees in similar positions.

V. ISSUES IN DISPUTE

A. WAGES

It is the arbitrator's opinion, and one supported by extensive precedent, that the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding are best compared with those of other employees performing similar services [Sec. 111.70(4)(cm)7.d.] Thus in this section the wage offers of the parties will be compared to the wages paid to head cooks, cooks, head custodians, custodians, and secretaries in the seven comparable communities selected by the arbitrator. Because the 1985-86 base rate is unavailable for some of the communities, no reliance will be placed on the cents per hour/dollar increase as a measure of comparability. It is the arbitrator's intent to utilize the actual hourly wage rate to determine which of the parties' final offer more closely approximates the mean of the hourly wage rates paid by the comparables. The material is presented below in tabular form followed by a brief discussion.

TABLE I

Position: Head Cook*					
Hourly Wage Rates					
Comparable Community	1985-1986	1986-1987	Dollar Increase	1987-1988	Dollar Increase
Belmont	-----No Position-----				
Iowa-Grant	-----No Position-----				
Mineral Point	6.72	7.05	.33	7.30	.25
Platteville	---	5.68	---	6.03	.35
Potosi	5.92	6.24	.32	6.69	.45
Shullsburg	6.15	6.40	.25	6.65	.25
Southwestern	-----No Position-----				
BENTON	5.70	-----			
Others: Mean	---	6.34	.30	6.67	.33
District Offer	---	5.95	.25	6.25	.30
Union Offer	---	6.10	.40	6.45	.35

*Comparable hourly wage figures represent top rates for the classification.

Inspection of the data above shows that the final offer of the Union for the position of Head Cook more closely approximates the mean of the comparable communities. It is, therefore, determined to be the more reasonable of the parties' offers.

TABLE II

Position: Cooks (Food Service)*
Hourly Wage Rates

Comparable Community	1985- 1986	1986- 1987	Dollar Increase	1987- 1988	Dollar Increase
Belmont	5.17	5.38	.21	5.60	.22
Iowa-Grant	---	6.30	---	6.49	.19
Mineral Point	5.71	6.05	.34	6.30	.20
Platteville	---	5.55	---	5.86	.31
Potos	5.80	6.14	.32	6.44	.30
Shullsburg	5.19	5.29	.10	5.49	.20
Southwestern	---	5.25	---	5.60	.35
BENTON	5.25	-----			
Others: Mean	---	5.71	.24	5.97	.25
District Offer	---	5.50	.25	5.75	.30
Union Offer	---	5.65	.40	6.00	.35

*Comparable hourly rate figures represent top rates for the classification.

For the position of Cooks (Food Service), the final offer of the Union reflects an hourly wage closer to that of the mean of the comparable communities and is, therefore, selected as the more appropriate of the final offers.

TABLE III

Position: Head Custodian*
Hourly Wage Rates

Comparable Community	1985-1986	1986-1987	Dollar Increase	1987-1988	Dollar Increase
Felmont	6.36	6.74	.38	7.01	.27
Grant	---	7.05	---	7.24	.19
North Front	6.81	7.15	.34	7.40	.25
Plattsburgh	---	7.36	---	7.65	.29
Potter	---	6.84	.30	7.14	.30
Stillsburg	6.71	7.01	.30	6.66	.20
Southwestern	---	---	---	7.25	.35
BENTON:					
Spillane	6.95	-----	-----	-----	-----
Blaine	6.79	-----	-----	-----	-----
Others: Mean					
	---	6.93	.29	7.19	.26
District Offer:					
S.	---	7.20	.25	7.50	.30
B.	---	7.04	.25	7.34	.30
Union Offer:					
S.	---	7.25	.30	7.55	.30
B.	---	7.09	.30	7.39	.30

*Comparable hourly wage figures represent top rates for the classification

The data indicate that for both Head Custodians Spillane and Blaine, the final offer of the District is closer to the mean and is determined, therefore, to be the more reasonable offer.

TABLE IV

Comparable Community	Position: Custodian* Hourly Wage Rates				
	1985- 1986	1986- 1987	Dollar Increase	1987- 1988	Dollar Increase
Belmont	5.28	5.60	.32	5.42**	.28**
Iowa-Grant	---	6.35	---	6.54	.19
Mineral Point	5.61	5.95	.34	6.30	.35
Platteville	---	6.91	---	7.20	.29
Potosi	6.07	6.39	.32	6.69	.30
Shullsburg	5.52	5.62	.10	5.77	.15
Southwestern	---	5.40	---	5.75	.35
BENTON	5.25	-----	-----	-----	-----
Others: Mean	---	6.03	.27	6.24	.27
District Offer	---	5.50	.25	5.80	.30
Union Offer	---	5.65	.40	6.00	.35

*Comparable hourly rates are the average of all steps of custodian ranges, excluding probationary rate and top rate (used in Table III for Head Custodian computations).

**Decrease from 1986-87 reflects replacement of a custodian earning \$6.11 per hour with one paid \$5.00 per hour.

Based upon the data for the position of Custodian, the offer of the Union is the more reasonable as it more nearly approaches the mean than does the offer of the District.

TABLE V

Comparable Community	Position: Secretary* Hourly Wage Rates				
	1985- 1986	1986- 1987	Dollar Increase	1987- 1988	Dollar Increase
Belmont	5.41	5.73	.32	5.96	.23
Iowa-Grant	---	7.12	---	7.31	.19
Mineral Point	6.81	7.15	.34	7.40	.25
Platteville	---	6.18	---	6.52	.34
Potosi	6.22	6.54	.32	6.94	.30
Shullsburg	5.03	5.13	.10	5.28	.15
Southwestern	---	6.00	---	6.35	.35
BENTON	4.55	-----	-----	-----	-----
Others: Mean	---	6.26	.27	6.52	.26
District Offer	---	5.20	.65	5.80	.60
Union Offer	---	5.30	.75	6.00	.70

*Comparable hourly wage figures represent top rates of the classification.

Both parties concur in the need for catch-up for the position of Secretary in the Benton School District and this understanding is reflected in their final offers. An inspection of the summary above indicates how far from the mean in the two years of the contract both offers remain even taking the catch-up increment into consideration. Based upon the data above, the arbitrator concludes that the offer of the Union for the position of Secretary is the more reasonable one.

In reviewing the final offers of the parties, the arbitrator has also considered the cost of living variable set forth in Section 111.70(4)(cm)7.g. The District urges the arbitrator to give weight to the fact that the Non-metropolitan Urban Areas Index increased 1.1% in 1985-86, 0.8% in 1986-87, and 3.5% in 1987-88. Both parties agree that their offers exceed the CPI increase; the Board submits that as its offer is less excessive, it is the more reasonable one. The Union urges the arbitrator to consider the voluntary settlement pattern among the comparables as a better measure of the cost of living and cites arbitral precedent in support of its position. There is nothing in the record to indicate that inflationary pressures have had a significantly different impact upon the Benton School District than the other comparable

school districts herein. Therefore, the conclusions reached by the arbitrator are based upon comparability of settlements and not on the degree to which the consumer price index is exceeded by the final offers.

The Union's final offer for the positions of Head Cook, Cook, Custodian, and Secretary has been determined to more nearly approximate the hourly rates paid by the comparable communities to their employees while the District's offer for Head Custodian is favored. Based upon the greater weight of the evidence, the arbitrator concludes that, on the matter of wages, the final offer of the Union is the more reasonable and is, therefore, accepted.

B. NON-WAGE ISSUES

The District contends that the Union is attempting to use the arbitration proceeding to gain changes in working conditions that it was unable to obtain in bargaining. The standard for a change in the status quo, therefore, is that the Union must meet the burden of proving that there is a compelling reason, i.e., unfairness, unreasonableness, or contrary to accepted standards and a uniform practice among the comparables, etc. (citations omitted).

The arbitrator agrees that interest arbitration should not be used as a vehicle to gain or limit a broad range of benefits which have eluded the grasp of the either party during bargaining. However, the standard referred to above is more properly applied to a desired change in contract language which, after application during the term of the contract, has proven unsatisfactory to one of the parties. This is not the situation in the instant case which is one of a first contract between the parties. There is no status quo because there are no collectively bargained conditions of employment; any benefit previously received by the employees in the newly-created and represented bargaining unit is the result of unilateral employer largesse or goodwill. No guarantee exists that an employer will continue to maintain the level of benefits or that discipline, for example which was previously meted out in a fair and equitable manner by Supervisor X, will be continued in the same manner when Supervisor Y takes over. This issue was addressed in a somewhat different context by Arbitrator Mueller:

The arbitrator simply is unable to accept the District's argument that the Association has not shown a need for impact language on class load or prep time. Class load and prep time is a significant and important subject matter to teachers. It directly involves their working conditions. If one were to accept the District's argument on this subject matter, one could apply the same argument to a Union's first request to incorporate a layoff and recall provision in the contract to be based on seniority. Under the District's argument, if there were no contractual provisions dealing with such subject matter in the contract, the argument would be that to add such language would alter the status quo without their being a showing of need. The argument further would say that because we always

unilaterally followed seniority in layoffs and recall, there is no need for incorporating it into the contract. Such argument begs the question because based on such argument, where employees first organize and seek to enter into a first contract, the argument would be made that they do not need a contract dealing with anything because it would change the status quo. That is carrying it to the point of being ridiculous, but in the judgment of the arbitrator, the subject matter of class load and prep time is an important area that should be dealt with in a labor contract. (Wrightstown Community School District, Decision No. 23649-A, September 1980, emphasis added)

The arbitrator, therefore, declines to apply the standard proposed by the District. Each of the proposed non-wage benefits will be considered on the same basis as that of wages, i.e., compared with the level of benefits received by similar employees in the selected comparable communities.

1. Paid holidays for school-year employees

The Union has proposed three paid holidays for school year employees; the District proposes to continue its present practice of allowing no paid holidays for these employees. The number of paid holidays in each of the comparable communities are:

Belmont	3	Potosi	6
Iowa-Grant	3	Shullsburg	3
Mineral Point	3	Southwestern	2
Platteville	3		

The parties agree that the only employees affected by this proposal are the food service staff, i.e., one head cook and two cooks. Based upon the comparative data presented, the arbitrator concludes that the Union's final offer is the more reasonable.

2. Vacations

The Union has proposed that year-round employees should receive 3 weeks of paid vacation after 8 years of employment and 4 weeks after 15 years while the Board wishes to continue the present schedule of 3 weeks after 10 years and 4 weeks after 20 years. The following table represents the vacation provisions of the comparable communities.

<u>School District</u>	<u>3 Weeks Vacation</u>	<u>4 Weeks Vacation</u>
Belmont	9 years	20 years
Iowa-Grant	8 years	---
Mineral Point	9 years	15 years
Platteville	5 years	---
Potosi	8 years	---
Shullsburg	10 years	15 years
Southwestern	---	---
Mean	8.2 years	16.7 years
Median	8.5 years	15 years
District offer	10 years	20 years
Union offer	8 years	15 years

An inspection of both the mean and median of the data above shows that the Union's final offer more closely approximates that of the comparable communities and is, therefore, deemed the more reasonable offer.

3. Personal Leave

The Union proposes that all support staff receive a personal leave day which will be deducted from sick leave. The Board rejects this proposal. While this issue is not considered of particular importance in this proceeding by the Board, it maintains that the Union has not justified the need for a change from the status quo. Since the arbitrator has rejected that argument, *supra*, a comparison with comparable communities will determine whether the Union's offer is reasonable as to this particular benefit. Data is available for five of the seven comparables: Iowa-Grant, Mineral Point, and Southwestern permit two personal leave days and Potosi grants one day, to be deducted from accumulated sick leave. Platteville grants two days to regular staff and one day to school year personnel; no accounting method is specified. The Union's position is that this is a no-cost benefit which employees would use in personal or family emergencies and is commonly in effect. Since no contradictory evidence or persuasive rationale has been introduced by the District, the arbitrator accepts the final offer of the Union regarding personal leave days.

4. Discipline and Discharge

The Union proposes inclusion of language in the first collective bargaining agreement at issue which would establish a "cause" or "just cause" standard in discipline or discharge cases. In the five comparable school districts which have collective bargaining agreements, i.e., Iowa-Grant, Mineral Point, Platteville, Potosi, and Southwestern, "just cause" or "good and sufficient reason" provisions exist.

The Board contends that there is no need for inclusion of such a provision because, for at least 14 years, no support staff employee has ever been subject to discipline. Further, the Board points to the fact that the Benton teachers'

contract does not contain a just cause provision. The Board supports its argument by reliance on Arbitrator Miller's award in Greenwood School District where the Union failed to show a need to change layoff language where no layoffs had ever occurred. The arbitrator believes that this reliance is misplaced since the Miller award states:

It is axiomatic in interest arbitration that the party proposing to change existing language must demonstrate a need for modification. In the instant case, the current language regarding Staff Reduction was voluntarily agreed by the Parties approximately three or four years ago. (Emphasis added; citation omitted)

It is clear that in the case of the Benton support staff, there is no existing language since this is the first time a collective bargaining agreement is being negotiated by the parties. As discussed earlier, a party attempting to *change unilaterally imposed terms and conditions of employment* does not have the same burden of proving need as it would have if the parties voluntarily agreed to those same conditions in prior bargaining. The arbitrator also finds that the lack of a just cause provision in the Benton teachers' contract is not compelling in this deliberation. The absence of such a provision might be explained by a history of the quid pro quo of teacher bargaining, information that is not in this record. However, since the arbitrator earlier determined not to utilize the teachers' contract for wage comparisons because of the disparate nature of the positions involved, it would be improper to now use it for consideration of non-wage matters:

Based upon the discussion above, it is the arbitrator's holding that the final offer of the Union is preferable to that of the District in the matter of contract language relating to discipline and discharge.

5. Insurance: Contract language

The parties are in agreement that the District will provide group health insurance for its employees and will pay the premium costs. The disputed issue is that the Union has proposed specific contract language which will guarantee the level of benefits, i.e., "The insurance benefit levels shall be equal to or better than the plans in effect in the 1986-87 years." The Union's purpose is to insure that the District cannot unilaterally decrease benefit and coverage levels. In support of its position, the Union cites similar protective language in contracts of two of the comparable districts, i.e., Iowa-Grant and Platteville. The District's arguments are similar to that discussed in Section 4 above, i.e., the Union has not justified need since the employer has not made any attempt to reduce benefit levels and two, the absence of such a provision in the Benton teachers' contract.

Neither party's argument on this issue is particularly compelling. The Union admits that this is more a matter a propriety than comparability; the purpose of including this language is to prevent management from changing insurance benefit and coverage levels on a unilateral basis. The District believes that since both teachers and support staff have the same insurance

coverage, such a restriction in the support staff contract alone would not make sense. Since the evidence of record is inconclusive and a decision on this issue will not have an effect upon the arbitrator's final determination, no finding will be made as to which offer is preferable.

In summary, the final offer of the Union has been found to be the more reasonable of the parties on the non-wage issues of paid holidays for school-year employees, personal leave days, vacation, and just cause standard for discharge and discipline.

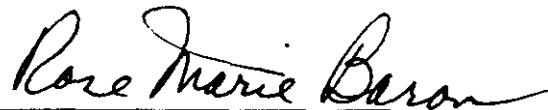
VI. CONCLUSION

In view of the fact that the arbitrator has determined that the Union's proposals regarding wages and non-wage issues are more reasonable than the District's, it is hereby concluded that the total final offer of the Union is selected.

VII. AWARD

The final offer of the Union, along with the stipulations of the parties, are to be incorporated into the written Collective Bargaining Agreement of the parties.

Dated this 16th day of February, 1988 at Milwaukee, Wisconsin.



Rose Marie Baron, Arbitrator