STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

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In the matter of the petition of

NORTHEAST WISCONSIN TECHNICAL COLLEGE EMPLOYEES UNION, LOCAL 3055, AFSCME, AFL-CIO

to initiate Arbitration between
said Petitioner and

NORTHEAST WISCONSIN VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT

Daniel Nielsen, Arbitrator
Decision No. 25689-A
Case 68, No. 40848, INT/ARB-4979
Date of Appointment: 10/31/88
Date of Hearing. 01/20/89
Record Closed: 04/17/89
Date of Award 05/28/89

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Appearances:

Wisconsin Council 40, AFSCME, AFL-CIO, by **Mr. James W. Miller**, Staff Representative, 2785 Whippoorwill Court, Green Bay, WI 54304 appearing on behalf of Local 3055.

Mulcahy & Wherry, S.C., Attorneys at Law, Post Office Box 1103, Green Bay, WI 54305, by **Mr.Robert Burns**, appearing on behalf of the Northeast Wisconsin Vocational, Technical and Adult Education District.

AWARD

On October 31, 1988, the undersigned was appointed to arbitrate a dispute under Section 111.70, stats., the Municipal Employment Relations Act, between Northeast Wisconsin Technical College Employees Union, Local 3055, AFSCME, AFL-CIO (hereinafter referred to as either "AFSCME" or the "Union") and Northeast Wisconsin Vocational, Technical and Adult Education District (hereinafter referred to as either the "District" or the "Employer") concerning the terms of the collective bargaining agreement between the parties for the years 1988-89 and 1989-90. A meeting was held at the District's Sturgeon Bay, Wisconsin campus on January 20, 1989, at which time mediation was unsuccessfully attempted. Immediately after the mediation, a hearing was held, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to

the dispute. The parties submitted post-hearing briefs and reply briefs, and the record was closed on April 17, 1989.

Now, having considered the evidence, the arguments of the parties, the record as a whole and the statutory criteria of Sec. 111.70 (4)(cm), the undersigned makes the following Award.

I. Background

The District provides vocational education to citizens in the area of northeastern Wisconsin through a main campus in Green Bay and smaller campuses in Sturgeon Bay and Marinette. In maintaining these facilities, the District employs twelve non-supervisory custodial and maintenance employees, who are represented by the Union for the purposes of collective bargaining and contract administration. The District and the Union have been parties to a series of collective bargaining agreements covering this unit.

In March of 1988, the parties exchanged proposals for a successor to the agreement which would expire on June 30, 1988 Thereafter they met on three occasions, but were unable to reach agreement. An investigator from the Wisconsin Employment Relations Commission determined that an impasse existed on September 13, 1988, and the instant proceeding was ordered.

The Union submitted a final offer proposing a wage increase of 50¢ per hour effective July 1, 1988 and 52¢ per hour effective July 1, 1989. The Union also proposed that, effective July 1, 1988, overtime hours be included in calculating contributions to the Wisconsin Retirement Fund and that a 15¢ per hour shift differential be added for shifts starting after noon. Finally, the Union asked that a floating holiday be added in the second year of the contract, bringing the total to nine specified holidays and two floating holidays.

The District proposed an increase in hourly rates of 65¢ in the first year, and another 65¢ in the second year. The District further sought to change the work day, excluding the half-hour lunch period from the eight hour day, and making it duty free. Finally, the District proposes a payment of $50 for building checks at the Green Bay campus, and $25 for the smaller outlying campuses. The current contract sets the rate at $50 for all campuses.

Copies of the Final Offers of the parties are appended to this Award as Appendices "A" and "B".

II. STATUTORY CRITERIA

This dispute is governed by the terms of Section 111.70(4)(cm)7. the Municipal Employment Relations Act. MERA dictates that arbitration awards be rendered after a consideration of certain criteria:

> "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 fo 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. 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 generally in public employment in the same community and in comparable communities.
>
> f. 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 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity of employment, and all other benefits received.

i. Changes in any of the foregoing 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 in private employment."

While each of the foregoing criteria has not been discussed to the same degree in arriving at the Award, each has been fully considered in the process of choosing between the final offers.

III. THE POSITIONS OF THE PARTIES

A. THE BRIEF OF THE UNION

1. Wages

The Union takes the position that its wage offer is the more reasonable of the two. The wage increase proposed for both years is 4.5%. This compares with cost of living increases of 4.5% and 5.0% for 1988 and 1989, respectively. Thus the offer is supported by cost of living considerations.

The Union's wage offer is also the more reasonable when compared to the settlement in the Green Bay Schools, a traditional and reliable comparable. The wage settlement at the School District was precisely the same as the Union's final offer here -- 50¢ and 52¢, an increase of 4.5% in each year. While the District introduced evidence concerning scattered settlements in the Sturgeon Bay and Marinette areas, the Union notes that the bulk of the unit members -- eight out of twelve -- live and work in Green Bay. The most appropriate comparables then are the Green Bay area settlements. If the prevailing wage rates in Sturgeon Bay and Marinette are lower than those in Green Bay, the Employer was always free to suggest a wage differential. Its failure to do so recognizes the fact that the workers in Sturgeon Bay and Marinette do the same work as those on the Green Bay campus, and perform it without supervision. The Union's Staff Representative testified to the similarity of the jobs at NWTC and the Green Bay School District. No such evidence exists for the District's proposed comparables.

2. Fringe Benefits

The Union's proposal on a night shift differential of 15¢ for shifts starting at 12 noon or later is well within the bounds of the comparables, as is the

proposal to extend WRS contributions to all hours worked. The Union concedes that its proposed floating holiday in the second year is a "soft" proposal, but asserts that criticism of it is entirely speculative since there is no pattern of settlements for 1989.

3. Wage Schedule

The Union proposes status quo on wage structure, compensation for building checks and hours of work, while the District is seeking changes in all three areas. The Union asserts that the employer has attempted to remove the statement of weekly, monthly and yearly earnings from the salary schedule, leaving only the hourly rate. No reason is offered for such a change, and the Union asserts that it is wholly unjustified.

4. Building Checks

The District's proposal to take away half of the pay for building checks at the Sturgeon Bay and Marinette campuses is, the Union claims, a major change in the status quo. The flat $50 per building check was negotiated in the last contract as an alternative to the previous system of paying two hours at double time. The change was requested by the employer, and the Union agreed. Now, only one negotiation after the change, the District seeks to reduce the rate to $25 per check at the outlying campuses. It is no less inconvenient to disrupt a Saturday, Sunday or holiday in Marinette or Sturgeon Bay than it is in Green Bay, and the Union cautions that the Arbitrator should not substitute his judgment for that of the bargainers in awarding this concession which could not be obtained at the bargaining table.

5. Work Day - Lunch Period

The core of this dispute is the District's desire to change the work day. Since the opening of the Green Bay campus some twenty years ago, employees in this unit have worked an eight hour day which included a half hour paid lunch period. Employees may be called away from lunch to perform work, and return afterwards to finish eating. The District proposes to change the work day to eight hours, exclusive of the half hour lunch period. No convincing evidence has been put forward to justify this change. While the District makes reference to changed circumstances, very little evidence of what the changes might be was introduced. The District's focus instead was on allegations that the employees made themselves unavailable during the lunch hour by leaving the campus or failing to perform work when requested. The District was forced to acknowledge, however, that no disciplinary steps were taken in response to this situation. Failure to even attempt to administer the contract does not justify a change in the work day.

The Union asserts that the Employer's final offer on work day is seriously flawed, in that it gives no indication of how it is to be implemented. The contract is retroactive to July 1, 1988. Is there to be a deduction from employee earnings to reflect the unpaid lunch hour? Are employees going to be forced to work additional half hour periods to make up the time? What will the normal work day hours consist of under the new system? When will the work day start, and when will the lunch period fall within the day? These unanswered questions invite chaos if the District offer is adopted.

Beyond the lack of justification, and the administrative problems posed by the District's offer of work day, the Union notes that the proposal has a major impact on compensation. By adding a half hour per day to the work day and offering 65¢ per hour increase in pay, the District's offer results in a net loss of $104 per year per employee in pay for hours worked. If the District wants to extend the work day, the Union argues, it should offer to pay for the additional time rather than raising a smokescreen by pretending to offer an increase in compensation while more than offsetting that increase with a boost in work hours. The paid lunch period was a bargained benefit, for which a quid pro quo was at one time exchanged. The employer should not be allowed to obtain this major concession without bargaining the change. The status quo should be maintained on work hours.

For all of the foregoing reasons, the Union asks that its offer be selected.

B. THE BRIEF OF THE DISTRICT

1. Appropriate Comparables

The District asserts that the most appropriate comparables for this dispute are those which it has proposed: Brown, Door and Marinette Counties, the Fox Valley Technical College, the cities of Sturgeon Bay, Green Bay and Marinette, and the school districts of Green Bay, Marinette, Sturgeon Bay, Peshtigo, Sevastopol and Southern Door. All except Fox Valley Technical College fall within the boundaries of the District and reflect the prevailing wage rates for similar employees in the areas of and adjacent to the three campuses. By contrast, the Union's use of comparables drawn almost exclusively from Brown County reflects only wage rates in the vicinity of the main campus at Green Bay. This ignores the fact that a very significant portion of the work force is employed at the two outlying campuses, and constitutes "comparability shopping," emphasizing the higher metropolitan wage rates to the exclusion of the lower prevailing wage rates in Door and Marinette Counties. On the basis of geographical proximity to the work sites, the District asserts that its comparable grouping must be favored.

2. Wages

The District argues that the custodial employees are exceptionally well compensated, and that its two year wage offer of 11.37% will only enhance their position. The District's offer would yield a wage rate $2.55 above the average at the minimum, and $2.32 above the average at the maximum for 1988. In 1989, this increases to $3.29 and $2.74 above the averages at the minimum and maximum, respectively. This advantage carries over into the area of total compensation as well. When a dollar value is assigned to various fringe benefits, the average 1988 compensation for unit employees is $16.70 per hour under the District offer, and $16.73 under the Union offer. The average for all comparables is only $13.54. Either offer would maintain the number one ranking of the District's compensation package among the comparables.

The Board has proposed a wage package that is well in excess of the cost of living for the term of the contract. Over the period from 1980 through 1987, the CPI has increased by 34.7%. Under the Board's offer, the custodians will have realized an increase in wages for the 1981-88 period of 58.31%, compared with 56.97% under the Union's offer. Plainly, the Board's wage offer is reasonable under the cost of living criterion of the statute.

The District asserts that internal comparisons are a critical factor in judging the reasonableness of a wage offer, and points to the fact that the other units of District employees received wage increases totaling between 7.5% and 8.4% for 1988-90, while the offer to the custodial unit is 11.29%. This same pattern is presented by a comparison of settlements among external public sector comparables. By any measure, the District's offer of 5.8% for 1988 and 5.49% for 1989 is superior to other public employees' settlements.

A comparison of these employees with private sector maintenance employees shows that they enjoyed an average wage rate 62% higher than their private sector counterparts in the Green Bay area, and 70% higher than the state average for private sector maintenance employees in 1986. The advantage at the starting rates in 49% over the average for Green Bay and 53% above the average for the state. Again, these workers are very well compensated for their efforts, and the District's offer maintains their status.

The issue of wages plainly favors the District's offer. These employees are paid above the average in terms of wages, and in terms of total compensation. The District offer extends their advantage over their peers, and must be deemed the most reasonable.

3. Building Checks

The District maintains that its offer to change the compensation system for building checks is completely justified by the nature of the work, and by bargaining history. A differential between pay for building checks at the Green Bay campus and the outlying campuses sensibly reflects the fact that the two outlying campuses are less than one-tenth the size of the Green Bay facility, with far fewer doors to be checked. Thus there is far less time and effort required for a building check at Marinette or Sturgeon Bay than at the main campus. This logically suggests a lesser rate of compensation.

The District notes that the parties had discussed a differential between the campuses in their negotiations over the predecessor agreement, and the District's representative believed that agreement had been reached on a $25 rate. The fact that the rate was set at $50 for all campuses was a mistake in the District's view, which, in light of the obvious difference in efforts required, should be corrected in this round of bargaining.

4. Fringe Benefits

The District characterizes the Union's proposal to add a holiday, expand WRS contributions and implement a shift premium as being wholly unwarranted in view of the already exceptional compensation package enjoyed by unit employees. The burden falls on the Union to justify these changes in the status quo by showing both a need for the change, and the provision of a quid pro quo for the new benefit. Even where such a showing is made, the District argues that the arbitrator must consider not only the cost impact on this unit, but also the ripple effect of these changes on other internal units.

On the proposal for a shift differential, the Union has shown no evidence of a need for this benefit, nor any offer of a quid pro quo. The comparables are not uniform in offering a shift differential, and these employees already receive an average compensation far in excess of even those comparable workers who do receive shift differentials. Were this new benefit added, the potential cost to the District could total $5,000 since other units would likely seek the same differential. Absent any showing of need, such a completely new benefit should be left to bargaining, and should not be imposed by an arbitrator.

Likewise, the floating holiday sought in 1989 is unjustified. No other unit at the College receives a floating holiday, and only two other employee groups among the comparables have this benefit. The custodial unit already has more holidays than all but one comparable. The expansion of this already unique benefit would disrupt the internal pattern of benefits to an even greater degree than has already occurred through bargaining. The District

notes that internal patterns are generally controlling on benefits issues, and again points to the potential cost impact should other internal units seek to match the floating holiday benefits of this unit.

On the issue of expanding the District's WRS contribution to include pay outside of normally scheduled hours, the District asserts that the proposal is "outrageously excessive" in light of the current compensation package.

5. Work Day - Lunch Period

The District proposes to update the contract to reflect current circumstances and practices at the campuses, by adding a one half hour, duty free lunch period. The original practice of including the lunch period in the eight hour paid work day reflected the smaller staff and greater demands on staff time in the early days of the Green Bay campus. At current staff levels, there is no need to call custodians away from their lunch. Thus, the District proposes to make the lunch period duty free.

The District argues that employees have treated the lunch period as a duty free period in any event. They have left the campus and made themselves unavailable for work. Thus they have been accepting eight hours of pay, but only making themselves available for 7.5 hours of work. As a matter of fairness to the District and its taxpayers, the employees should be required to give eight hours work for eight hours of pay. Under the District's proposal, this is accomplished without any loss of earnings to the employees. Workers in fact receive 15¢ per hour above the Union's offer. This quid pro quo is retroactive to July of 1988, while the change in hours cannot be implemented until after receipt of the arbitrator's award. Thus the value of the trade-off is enhanced with the passage of time.

The District avers that the change in the workday language is in the interests of the public. As a public institution, the Technical College has a responsibility to ensure that tax monies are expended in a responsible manner, and bring its employment practices up to date, making them consistent with prevailing trends and patterns among comparable institutions. No other District employees receive a paid lunch period, and this benefit is not common among public or private sector employers in the area. The comparables plainly justify an offer of eight hours of pay for eight hours of work.

The District admits its burden to prove a need for change in the status quo. Here the need for a change is shown by the changed circumstances, which have eliminated the original rationale for a paid lunch period. There is no longer any reason for requiring custodians to remain on call at the campus during lunch. The quid pro quo for the change is an additional 15¢ per hour

in each year of the contract, or 2.37% in wages over the life of the agreement. Thus the burden is met, and the District's offer should be selected.

For all of the foregoing reasons, the District urges that its final offer be selected.

C. THE REPLY BRIEF OF THE UNION

The Union strongly disputes the District's selection of comparables, noting that these employees are not directly comparable to the custodians cited by the District. The District's own supervisor testified that the job content of these employees would make them comparable to the low or middle range of millwrights in the trades. No evidence is offered by the District to show that these skill levels are required in the small school districts it relies upon. The Union did offer evidence that the custodial unit at the Green Bay Schools demanded such skill levels, and it is therefore the most appropriate comparable.

The Union rejects the Employer's attempt to cost the impact of its benefit proposals as if they were extended to all other bargaining units, rather than only this bargaining unit. The Union notes that the other bargaining units are not represented by AFSCME and are not parties to this proceeding. If the Employer sees fit to grant these benefits to other employees, it should cost them as part of those negotiations, rather than attempting to impute that cost to this set of negotiations.

The District's arguments on the building check proposal are characterized as being "as far from the truth as one can possibly get" in that they suggest some previous agreement by the Union to this concept. The evidence was clear that the Union had never agreed to this proposal, and that the parties agreed to what is reflected in the current contract -- a flat $50 per check, no matter where the check was conducted.

The Union points to the Employer's brief as a reasonably good statement of why the Union's offer should be selected. In costing total compensation, the District offer would increase the work day by one-half hour, reduce the existing building check benefit, deny any improvement in retirement, holidays or shift differential, and yield an total compensation rate of $16.70 per hour. The Union offer would avoid takeaways on work day and building checks, add a shift differential and a floating holiday, and extend retirement contributions to 100% of pay, and result in a total hourly compensation of only 3¢ more than the Employer's concessionary proposal.

The Union dismisses the Employer's arguments over internal comparability as being deceptive. Certainly the other units may have received increases below that offered by the District in this case. The difference, of course, is that there was no increase in their work day. The wage boosts in those units were real increases. In this unit, the concessions demanded by the District more than offset the proposed wage increase.

Finally, the Union notes that the District claims in its brief that the change in the work day would not be retroactive, but that this fact is not reflected anywhere in its final offer. The Union objects to this attempt to modify the District offer through a simple assertion in a post-hearing brief.

D. THE REPLY BRIEF OF THE DISTRICT

The District notes that, while the Union is correct in asserting the comparability of the Green Bay School District, there has never before been an arbitration between these two parties, and thus there is no established set of comparables. The Union uses only a narrow set of municipal employers focused on Green Bay, ignoring the employees at the Sturgeon Bay and Marinette campuses. The wages paid to these unit members should reflect conditions in those communities, rather than being pegged solely to the Green Bay labor market.

The District defends its comparability grouping as reasonable on the basis of geographical proximity to all three of the campuses. Further, the custodial positions in dispute here are standard positions across all of the cited municipal employers. Contrary to the Union's claim that these workers are more comparable to millwrights, the record is devoid of any substantial evidence to distinguish these custodians from other custodians. The lack of job descriptions for the District's comparables is unimportant, given the standard nature of the custodian classification.

The District disputes the Union's claim that it seeks to change the wage structure by not computing the weekly, monthly and yearly rates in its final offer. The citation of only an hourly rate was done as a matter of convenience. Displaying the weekly, monthly and yearly rates in its reply brief, the District again notes the superior rate of pay and total compensation received by these custodians.

The Union's claim that the District should discipline employees who refuse work during the lunch period, rather than changing the work day language, is absurd. The District has no need to have these employees work through lunch, and the use of discipline in this circumstance would merely create an

uncomfortable atmosphere. Changing the unnecessary language is the far more reasonable course of action.

The District denies that it is seeking additional work from its employees. The current contract calls for an eight hour work day, and the final offer simply creates a duty free lunch period. The District agrees that it should pay for an extra half an hour, if it were seeking more work. Again, however, the District seeks to pay for eight hours of work, just as it does in the current contract. The change is simply the addition of the duty free lunch period. Work hours will remain constant, and the pay for those hours will increase as a result of the across the board wage increase in the District's offer. Contrary to the Union's claims, the workers cannot lose under this arrangement.

Turning to the Union's argument that the paid lunch period was a bargained benefit, the District points to the extremely high rate of compensation received by these employees, and asserts that whatever concession might have been made to obtain the lunch period has long since been recouped. The District stresses that these employees stand virtually alone among the comparables in having a paid lunch period.

The District reiterates its arguments concerning the Union's fringe benefit proposals, noting that they are unjustified, given the already superb economic package available to these employees, and the lack of strong support among the comparables for these demands. The District defends its citation of ripple effect costs related to fringe benefits, noting that the addition of these benefits would pave the way for their extension to other internal bargaining units.

Finally, the District asks for equity in the addition of its building check language. The $25 rate for building checks at Marinette and Sturgeon Bay was negotiated in the 1986-87 bargain, and was left out of the contract through a mistake. It is unjust to deny the District the benefit of the bargain, and further makes no sense to pay as much at the two smaller campuses for building checks that require less time and effort than those at the much larger Green Bay campus.

IV. DISCUSSION

A. Weight of the Comparables

There is an initial question of comparability, with the Union relying primarily upon the settlement in the Green Bay Schools and the District citing a

more diverse grouping focused upon the three cities which are campus sites -- Green Bay, Sturgeon Bay and Marinette.

The undersigned, as well as other arbitrators, has had occasion to discuss the effect of the recent amendments to Section 111.70(4)(cm)7,d, which removed the limitation of consideration of wages, hours and conditions of employ-ment of employees performing similar services to employees in "comparable communities."[1] By eliminating the term "comparable communities" from that criterion while retaining it for comparisons with public employees generally and private sector employees, the legislature evinced an intent to expand the pool of permissible comparables under criterion "d". Taken to its extreme, this allows consideration of even statewide averages. Balanced against this expansive language, however, is the legislature's intent to have the factors considered as they would be "normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment"[2] This suggests that different weights be assigned to comparables based upon the extent to which their characteristics indicate that they would actually be relied upon in bargaining between the parties.

The most important factor in weighting a comparable is evidence that it has been used by the parties in past negotiations. If the parties themselves have held another set of negotiations to be a reliable point of reference for bargaining, an arbitrator should defer to that judgment . The foundations of a bargaining relationship should not change simply because the statutory arbitration process is invoked.

Absent agreement, past or present, on the use of a particular comparable, consideration will be given to the extent to which similarities in such factors as geographic proximity, size, sources of funding, political structure, bargaining history and economic base all indicate that a proposed comparable reliably reflects current conditions in the same labor market as the unit involved in the dispute. The bargains struck by similarly situated employers

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[1] See Port Washington-Saukville Schools, Dec No 25016-B (9/19/88) at pps 18-20, Village of Greendale, Dec. No. 25579-B (3/14/89) at pps. 13-14

[2] Sec. 111.70(4)(cm)7, 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 in private employment." [Emphasis added] The language indicates that the listed factors are intended to be considered as they "normally or traditionally" would be applied to the process of collective bargaining or impasse resolution

and employees are generally a reliable indicator of what voluntary collective bargaining might have yielded had it been successful. The stronger the evidence of a shared labor market and common economic conditions, the greater the weight assigned to the comparable. [3]

In the instant dispute, the Union and the District agree that the Green Bay Schools and Fox Valley Technical College, the neighboring VTAE District, are appropriate and traditional comparables. The primary disagreement is in the weight to be assigned to the comparables reflecting conditions in Sturgeon Bay and Marinette. Both parties concede the differences between the more expensive labor market in Green Bay and the market in the smaller communities. The District asserts that Marinette and Sturgeon Bay should be given equal standing since a portion of the work force is stationed there, while the Union would have Green Bay control because the bulk of the work force is employed at that campus.

As the discussion above makes clear, the undersigned is of the opinion that the statute requires some consideration of all similar employees cited by the parties. All are relevant in any event, because they are located within the District boundaries, and bear on the overall economic and political climate in which the contract is bargained. As to labor market considerations, however, the fact that two-thirds of the employees work in the distinct Green Bay labor market, with only one-sixth of the work force at each of the two outlying campuses, dictates that a proportionately greater weight be given to the Green Bay area comparables.

B. Wages

Unlike most interest arbitration cases, the instant dispute does not turn on the issue of how great an increase in wages might be justified by general economic and political conditions. The District's lengthy discussion of comparative wage rates and overall compensation illustrates the truth of its contention that these workers are very well compensated in comparison with their peers in other municipalities. However, the District here is offering a larger wage increase than is requested by the Union.

The District's brief makes it clear that its wage offer has two components. It contains a general wage increase such as would normally be put forward in negotiations, and an additional amount specifically intended to offset the

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[3] Conversely, differences in purely local economic or political conditions can always, of course, serve to distinguish even geographically proximate communities.

change in the work day sought by the District. This second component -- the quid pro quo for eliminating the paid lunch period -- is identified by the District as amounting to 15¢ in each year of the contract, leaving an increase of 50¢ in each year as the general wage adjustment. As the Union's demand is 50¢ and 52¢, the overall argument over a general wage increase is limited to 2¢ per hour in the second year. Given the other issues in dispute, this difference is of minor importance.

B. Wage Schedule

The District proposal to eliminate the statement of weekly, monthly and annual earnings from the wage appendix, leaving only a statement of hourly wages, is purely a matter of form. Neither party has assigned any significance to this change, and none is apparent. While the Union is correct in its assertion that the District is proposing and bears the burden of justifying a change in the status quo, the fact that no reason is advanced for this minor change has no bearing on the outcome of the case. Were this the only issue before the arbitrator, the Union would prevail simply because it proposes the status quo, and the District offers no rationale for the change.

C. Floating Holiday

The Union proposes to add a second floating holiday to the contract, starting with the second year of the agreement. It is commonly accepted that the proponent of a change in the status quo bears the burden of showing both that the change is necessary, and that some quid pro quo has been offered to the other party for the change. Necessity may spring from some particular problem within the District requiring change, or from evidence that the employer is, without justification, out of step with the clear pattern of comparables.[4] Neither necessity nor any trade-off is evident on the issue of holidays.

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[4] As detailed in a previous Award, the term "necessary" goes somewhat beyond its plain meaning in this context:

> "The undersigned agrees with the general proposition that the party seeking a change must establish both a need for the change and that a quid pro quo has been offered, or that the party resisting the change has granted it in the past without receiving any quid pro quo from other groups ...
> "With respect to the question of "need", the undersigned notes that this is much easier to show in the area of language changes than benefits . In the case of most benefits, it is more a question of "want" together with a willingness to deal. Where a union is seeking a unique benefit or one that is new to the employer's operation, there is indeed a duty to prove the appropriateness of the benefit. Where .. all other represented groups enjoy the benefit, the "need" for the benefit is pretty much established by its uniform availability. The employer is

The Union's proposal for an additional floating holiday in the second year of the contract is unjustified. There is no evidence that this is an area in which the current benefits have fallen below the norm for the comparables. Indeed, the current holiday provision of the collective bargaining agreement appears to be among the best in the area. As to the Union's argument that no valid criticism can be directed at the holiday proposal because a settlement pattern has not developed for the second year of the agreement, the undersigned would note that the Union's burden of justifying additional benefits must be borne in the present day, based upon actual and existing conditions. Arbitration is not, nor is it intended to be, an innovative process. If and when the pattern of benefits internally or in the area establish two floating holidays or eleven and one-half total holidays as the standard, the Union may argue that fact. The mere potential for such a development is not sufficient.

The District has provided data on the financial impact of extending the floating holidays benefit, among others, to other bargaining units within the work force. The undersigned generally agrees that fringe benefit questions are more strongly dependent upon internal comparisons than external comparisons. Unlike wage rates, which tend to reflect the market for a particular set of skills and can be expected to vary a good deal across the work force, the level of benefits across the work force tends to be far more individualized to the particular employer, and a uniform pattern promotes stability of labor relations and ease of administration. There is no evidence that this unit is the pacesetter in establishing fringe benefits for represented groups within the District, and introduction of an entirely new benefit through arbitration will demand a heavy showing of necessity. Part of the reason for this is the conservative nature of the arbitration process generally, and part is the ripple effect cited by the District. Once a benefit is introduced in one unit, it will inevitably create pressure for the extension of the benefit to other units. [5] Contrary to the position of the District, however, this does not allow the costing of the ripple effect against this bargain.

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free to rebut this assumption, by showing that the particular benefit is somehow inappropriate for this particular class of employees."
Cudahy School District, Dec. No 25125-B (6/21/88) at pps. 22-23

[5] This assumes that the benefit is not uniquely suited to the particular unit. For example, a contract provision requiring employer payment for Bar Association dues in an attorneys unit is not likely to ripple outward. See the discussion in City of Marshfield, Dec. No. 25298-B (12/31/88) at page 16.

Attempting to assign the ripple effect cost to a particular bargaining unit requires that the likelihood of the benefit's being extended be raised to the level of a certainty. Such precision is unrealistic, and somewhat deceptive. It allows an employer to assign benefit costs to an offer, particularly in a small unit, which might well be in excess of the entire package cost. While these figures might legitimately be cited to dramatize the potential impact of a proposal, it is wholly inappropriate to cite them as actual costs. The policy concerns that these figures represent is adequately expressed in the hesitation of arbitrators to introduce new benefits, without attempting to quantify them as precisely as the District has done in this case.

The Union's proposal on holidays is not justified by any showing of need. Thus, the status quo offer of the District on holidays is the more reasonable.

D. Retirement Contribution

The Union's proposal to extend retirement contributions to earnings for hours and work beyond the normal work schedule has a cost impact of slightly more than 0.55% on the package. The evidence shows that the limit on retirement contributions in the present contract ("Employer agrees to contribute up to a maximum of six percent (6%) of the base salary per month excluding overtime pay" - Appendix "A") is an atypical provision among the external comparables, but is consistent with the other hourly units at the College. Again, considerations of internal comparability are more important in the area of fringe benefits than is the pattern of external settlements. While the Union has established some showing of need through the uniform external comparables, new fringe benefits should flow from voluntary bargaining rather than arbitration. Additionally, the Union cites no evidence of a quid pro quo for this proposal

While there is stronger justification for the Union's proposal to extend the retirement contribution beyond the base pay than for the holidays proposal, the status quo position of the District is the more reasonable under the statute, and is preferred in this proceeding.

E. Night Shift Differential

The proposed 15¢ differential for shifts beginning after twelve o'clock noon is more a matter of wages than of fringe benefits. Being a discreet form of compensation, it is, however, likely to create a demand for such a differential in other internal units, where such a differential is not now paid. The internal comparables do not favor the addition of this differential, while the

external comparables show a relatively strong pattern of night shift differentials, averaging 23¢ per hour.

While the comparison criteria yield split results, the undersigned is persuaded that the final offer of the Union is supported by a showing of need. in the form of the external comparables. There is no quid pro quo shown for this new component of the compensation package, but to the extent that it is a wage proposal, the reasonableness of the differential depends to a large extent on the overall wage package. In this case, the base wage increase is not seriously disputed. This component adds 0.33% to the package. There is no independent basis for a settlement on wages at three-tenths of a percent above the going rate. The amount, though small, does require some justification, particularly in light of the leadership position enjoyed by unit members in total compensation. Absent any showing of such justification, the status quo position of the District is favored.

F. Building Checks

The District proposes to change the system of compensation for weekend and holiday building checks, by differentiating between checks of the larger main campus in Green Bay, which would be paid at $50 per check, and the smaller campuses at Sturgeon Bay and Marinette, which would be paid at $25 per check. Currently, the rate is a flat $50 per check. The District offers two reasons for this change. First, the difference in effort dictates a difference in compensation. Second, the different rate was sought by the District in the last set of negotiations and was accepted by the Union, but was inadvertently left out of the contract.

Certainly there is a rational basis for distinguishing between building checks at the Green Bay campus and those at the smaller campuses if one assumes that the amount paid relates to effort. The amount clearly goes beyond merely compensating effort, however. It also reflects the inconvenience of interrupting a weekend or a holiday, and, as the Union notes, there is little difference from the worker's standpoint between a weekend in Sturgeon Bay and a weekend in Green Bay. Before the $50 rate was negotiated, the parties paid two hours of double time for the checks, no matter where they were performed. As the size difference of the campuses has been constant, the prior practice of the parties certainly appears to have embraced the concept of payment for inconvenience, rather than the time required for the checks. Thus the fact that it is more time-consuming to conduct building checks at Green Bay does not automatically lead to the conclusion that the compensation must be greater.

It is, of course, possible for the parties to negotiate a differential in compensation based upon the time and effort required to conduct the checks. The District asserts that this is just what occurred in the last set of negotiations, and asks the undersigned to grant them the benefit of their bargain, which had been lost to a proof-reading error.

The Union disputes the notion that any agreement was reached on different rate for the building checks at the outlying campuses. While conceding that the matter has been discussed, the Union's steward contends that the flat $50 rate reflects the ultimate agreement of the parties.

The undersigned does not discredit the testimony of the District's personnel manager concerning his understanding of the prior agreement. The fact, however, is that the $50 rate was included in the contract, was apparently ratified by the parties, and was implemented by the District without any attempt obtain reformation of the contract via the grievance procedure. While there may not have been a meeting of the minds in the 1986-88 negotiations, the objective evidence of the contract and the subsequent conduct of the parties supports the conclusion that the status quo for this round of negotiations is a flat $50 rate for building checks. Thus the District bears the burden of justifying its offer as a change in the contract. As the foregoing discussion makes clear, the proposal has a rational basis, but does not present a compelling reason for amending the contract.

The status quo position of the Union on building checks is more preferable under the statute, and is preferred.

G. Lunch Period

The central issue in this dispute is the District's proposal to change the work day, eliminating the paid lunch period. While the District protests that the current language makes no explicit reference to a paid lunch, there is absolutely no question that the parties have interpreted the contract as providing a half hour paid lunch over the past seventeen years.[6] While it is true that employees could be called away from their meals to perform work during lunch, they then returned to finish out the half hour period. The District's arguments that they are not seeking a change in the amount of work required of employees, or the actual work day, are somewhat disingenuous in the face of this practice, and the "Maintenance of Benefits" language of

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[6] The testimony established that the practice was initiated at the time the Green Bay campus was first opened in approximately 1972.

Article XXII.[7] The practical effect of adding a duty free, unpaid lunch period outside of the paid eight hour work day is to increase the work day by one half hour.

Addressing the substance of the change, the District justifies the change on the basis of changed circumstances. The work force was smaller when the campus was first opened, and there was a greater need to have employees on call during the lunch period. Since that need has been eliminated with the addition of staff in the intervening years, the paid lunch period should also be eliminated. This argument would justify converting the lunch period to a duty free period, but given that the entire half-hour has been taken even when interrupted, does not justify the extension of the work day by one half hour. The record does not show that the tasks required of these employees cannot be performed or are not being performed in the de facto seven and one-half hour work day, or that the public employer's mission is hampered by the limited work day.

That the half-hour extension of the work day is the true focus of the District proposal is shown by the second argument raised to justify the change. The District strongly asserts that District taxpayers have the right to expect eight hours of work for eight hours of pay, consistent with the norms of most work places. This proposition is true, so long as that is the arrangement that has been negotiated. The moral implication of "eight hours' work for eight hours' pay" is that the employees are somehow drawing their pay without in return delivering the degree of effort that was bargained. In this case, however, the District has known for years that the half hour lunch period was included in the eight hour work day. Indeed, they assert that it was in response to their own operational needs at the time the Green Bay campus opened. While "seven and one-half hours' work for eight hours' pay" can be made to sound unreasonable, that is the arrangement that was freely and knowingly entered into by the District.[8] The suggestion that these employees are in any way deceiving the District, or violating the public trust, by enjoying a seven and one half hour work day and a half hour paid lunch is wholly unwarranted under the facts of the case.

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[7] Joint Exhibit #1, page 13, folios 47-48: "The Employer agrees to maintain existing benefits and conditions not specifically referred to in this Agreement."

[8] To the extent that the District's "eight hours' work" argument goes to describing the norms for such units, it is true that the bulk of the units in the area do not receive a paid lunch period. The arrangement is not unique, however, as the School Districts of Marinette and Green Bay provide paid lunch periods to at least some custodial employees, as does Brown County

Finally, the District asserts that the change in the language is a justifiable response to the misconduct of unit members, who have made themselves unavailable for work during the paid lunch period by leaving the campus or demonstrating a reluctance to leave their lunches when summoned to perform jobs that arise during the meal period. The District has not, however, resorted to the less drastic measure of enforcing the current contract by disciplining employees who engage in such behavior. Leaving the work site while on duty and failure to follow orders are generally considered appropriate bases for the imposition of discipline. While the failure to insist upon contractual rights is attributed by the District to a desire to use the more positive step of changing the contract language, it leaves open the question of whether the change in the work day language is actually necessary in order to address this problem.[9]

As the foregoing discussion makes clear, the District's showing of "necessity" for its proposal to extend the work day is weak. The fact that an eight hour work day is a very standard schedule, however, might suffice to justify the proposal if the second element of a quid pro quo was proven. Here, the District has identified its quid pro quo as two 15¢ per hour lifts in the wage rate, amounting to 2.37% in wages over the contract. The adequacy of this amount must be measured against the increase in the de facto work day. The additional half-hour would increase the work day by 6.67%. It is generally difficult to precisely measure one contract proposal against another when it offered as a buyout. Here, however, the proposed change is in hours, for which a value has been negotiated. As the District notes in its reply brief, "if the employer wants a half hour longer per day .. they should pay a half hour in additional wages." [District Reply Brief, at pg. 8]. The proposed buyout, even accounting for a delayed implementation of the change in hours, amounts to just over one-third of the value of the additional time at the effective hourly rate. While the parties might well negotiate a different trade-off in a voluntary bargain, the only guidance available to the undersigned is the value which the parties themselves have placed on time in their contract. By that measure, the quid pro quo proposed by the District is inadequate.

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[9] Although not extensively discussed, the undersigned agrees with the Union's concerns regarding the implementation of this change in the work day. Accepting the District's claim that the proposal is not intended to be retroactive, there remain questions concerning the timing of the lunch period and its effect on starting and quitting times These concerns are not sufficient to defeat the proposal, but do indicate that acceptance would create additional bargaining issues.

On the issue of Work Day, the District has made only a very weak showing of necessity, and the quid pro quo offered to the Union is not in proportion to the concession sought. The status quo position of the Union is favored on the work day issue.

V. CONCLUSION

An analysis of the disputed portions of the final offers shows that neither is reasonable. The Union's attempt to introduce new fringe benefits is inappropriate given the leadership position it already occupies in total compensation, and the lack of any evidence that the benefits are in some way justified by an internal pattern of benefits or a specific need of these workers. The District's offer seeks two concessions without providing any persuasive rationale for the changes, nor an adequate quid pro quo.

As is often the case under the "whole offer" system, the choice does not come down to the more reasonable of two offers. Rather the less unreasonable of the offers must be selected. Although the Union's unjustified fringe benefit proposals will potentially disrupt the internal relationships between units at the College, as well as adding approximately 1% to the economic package, the lunch period proposal of the Employer represents a far more significant change in the status quo. It fundamentally alters, with little justification, a work day which has been established over seventeen years, and proposes an economic trade-off which is exceptionally one-sided when measured by the historic value placed on working time in the parties' negotiations. Given the choice between the two unpalatable proposals, the undersigned concludes that the final offer of the Union is less inconsistent with the statutory criteria than the final offer of the district, and directs that it be included in the 1988-90 collective bargaining agreement.

On the basis of the foregoing, and the record as a whole, the undersigned issues the following

AWARD

THE FINAL OFFER OF THE UNION, TOGETHER WITH THE TERMS OF THE PREDECCESSOR AGREEMENT AS MODIFIED BY THE STIPULATIONS REACHED IN BARGAINING SHALL CONSTITUTE THE 1988-90 COLLECTIVE BARGAINING AGREEMENT.

Signed and dated this 28th day of May, 1989 at Racine, Wisconsin:

_____

Daniel Nielsen, Arbitrator

Union Final Offer September 13, 1988

1) Two (2) year agreement

2) Wages:

50 Cents per hour across the board increase effective July 1, 1988.

52 Cents per hour across the board increase effective July 1, 1989.

3) Amend Wisconsin Retirement Fund to include payment for overtime hours. effective July 1, 1988

4) Amend Agreement to allow for 15 Cent per hour Shift Premium pay for all shifts starting at 12:00 P.M (noon) or later. effective July 1, 1988

5) One additional paid floating holiday. effective July 1, 1989.

All Other provisions of the agreement by reason as presently drafted shall for date which are amended for the Contract Term July 1, 1988 TO June 30, 1989

B. Miller

For the Union

FINAL OFFER OF THE EMPLOYER IN THE MATTER OF NEGOTIATIONS
Between the Northeast Wisconsin Technical College and the
Green Bay Municpal Employees Union Local 3055 AFSCME

1. The agreement shall be for a two year period July 1, 1988 to June 30, 1990.

2. The Wage Display Exhibit "A" shall show only hourly rates. Said hourly rates shall be adjusted as follows:

CUSTODIAN III	HOURLY
July 1, 1988	$ 11.85
July 1, 1989	$ 12.50

3. Page 7, line 44 shall be changed to read as follows:

   The normal work day shall consist of eight (8) consecutive hours per day excluding a one half hour duty free meal period.

4. Page 7, line 54-55 shall be changed to read as follows:

   ...undertaking building checks shall be reimbursed at the flat rate of $50 each on the Green Bay campus and $25 each on all other campuses.

All dates and contract references/language to be changed to reflect a successor agreement covering 7/1/88 - 6/30/90.

William C. Evans, Staff
Admin. Personnel Services
for the Employer NWTC

9/13/88
Date