STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

NORTHWEST UNITED EDUCATORS

To Initiate Arbitration
Between Said Petitioner and

AMERY SCHOOL DISTRICT

Case 24
No. 40636
INT/ARB-4922
Decision No. 25919-A

APPEARANCES:

Richard J. Ricci, Esq. on behalf of the District
Alan D. Manson on behalf of the Association

On March 20, 1989 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned conducted an arbitration hearing on May 1, 1989 in Amery, Wisconsin during the course of which the parties presented evidence and arguments in support of their respective positions. Post hearing exhibits and briefs were filed by the parties by June 2, 1989. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

ISSUES:

This dispute involves the terms of the parties' first collective bargaining agreement covering educational support personnel, effective January 1, 1988. The bargaining unit covers aides, bus drivers, cooks, custodians, and secretaries. A significant number of issues remain in dispute, however, the undersigned will address only those which the parties have identified as being significant to them. Said issues include, but are not limited to, wages, including compensation for bus driver extra trips, health insurance coverage and language, subcontracting, holidays, vacancies and job postings, the assignment of routes to bus drivers, duration, absences and leaves, just cause, and retirement contributions. The parties also disagree as to what comparables should be utilized in assessing the comparability of their offers in this proceeding. Other disagreements exist regarding the relevance of the state of the local economy to this proceeding and over cost of living considerations.

COMPARABILITY:

District Position:

The District asserts that the Middle Border Athletic Conference provides a reasonable foundation for the comparison of final offers. This position is supported by arbitral dicta and because said comparables have been used as the basis of comparison in prior Amery School District arbitrations. (Citations omitted) Further support for this position can be found in the comparability of enrollments, FTEs, and income per capita.

In contrast, the Union includes five non-Conference entities in its comparable pool, and it also limits its proposed comparables to unionized units, which undermines meaningful comparisons and is contrary to statutory mandate and arbitral dicta. (Citations omitted) In addition, a comprehensive comparative analysis based upon the Union's proposed comparables would be difficult at best because of the lack of uniformity that exists in the Union's data.

Union Position:

The appropriate comparables consist of those districts within the Middle Border Athletic Conference which have represented support staff bargaining units, plus the nearby districts of Unity and Cumberland, the Indianhead Vocational Technical District, and CESA #11, all of which have represented support personnel bargaining units, some of which are wall to wall, and some of which are not.

This comparability group is similar based upon levy rates and cost per member. In the latter regard the District spends less per pupil on support services than the average established by the comparison group.

LOCAL ECONOMIC CONDITIONS:

District Position:

The arbitrator is required to give weight to the interest and welfare of the public in evaluating the reasonableness of the parties positions. In that regard the record demonstrates that the local economy is intertwined with that of the farm economy. Therefore, the state of the farm economy should be given consideration in assessing the relative merits of the final offers. The state of that economy, which has suffered notable setbacks in recent years, supports moderation in wage increases.

Union Position:

There is no evidence in the record which indicates that the District has an agricultural economy which is significantly different than that which is found among the comparables suggested

by both sides.

COST OF LIVING CONSIDERATIONS:

District Position:

The District's offer guarantees wage and benefit increases that exceed the increase in the cost of living. In that regard, a valid measure of the cost of living in the District is the CPI for non metropolitan urban areas, i.e., areas with a population of less than 50,000.

Since the CPI measures the increases of all goods and services, the total package costs of the parties' offers is the most appropriate measure to use in a comparison with inflation indices. Utilizing the above measures, it is apparent that the District offer comfortably exceeds cost of living increases for 1988-89, and, so far as can be determined, for 1989-90.

Even if the national CPI is utilized, the District's offer still provides a fair increase.

In contrast, the Union's total package far exceeds either CPI measure.

WAGES:

District Position:

The District's wage offer provides reasonable salary increases and maintains the District's position among the comparables.

The major time period in dispute is the 1988-89 school year, with wage increases going into effect on 7/1/88. The Union's offer institutes a 4% wage increase across the board in that year, while the District's offer implements slightly variant wage increases according to employee classification--with aides receiving a 3.5% increase, food service employees a 4% increase, and secretaries and custodians a 3% increase. This variant wage increase structure is attributable to varying benefits each class of employees has traditionally received in the past. Thus, because secretaries and custodians have generally received health insurance benefits, while aides and food service employees have not, the latter groups are offered larger wage increases under the District's proposal.

The District's wage offer compares favorably with the comparable pool when wage based WRS contributions are added into the total package. The District had not paid the support staff employees' share of the WRS prior to this proceeding. The District's final offer now includes the first 2% of the employees' share to be paid by the District in the first year of the contract with another 2% to follow for the second year.

Because the District's proposed hourly wages are well above the average comparable wage rates, even slightly lower increases would favorably maintain Amery's rank among its comparables while providing a reasonable increase for the employees.
In essence, the wage issue is not the predominant issue in this proceeding. The difference between the parties' offers as to percentage wage increases is actually quite minor. It is precisely because of this minor difference that the District contends that its final offer provides a reasonable level of increase over the term of the contract.

Union Position:

The fact that the Employer's final offer contains at least four identifiable cases of questionable individual wage rate increases heightens the perception that the Employer has played and continues to play favorites.

Comparables on this issue are difficult to analyze. In this regard, it must be noted that unrepresented groups generally do not have established wage schedules, so that figures (maximum and minimum rates) may be obtained for only a few individuals in the unorganized groups, which in turn raises serious problems about the reliability of data.

It is noteworthy that the Employer's comparables for bus drivers, albeit largely unrepresented, easily surpasses the Union's proposed 4% 1988-89 offer. The District's offer of 3% is even more out of line.

In fact, though wage comparisons are somewhat difficult to make, even using the Employer's proposed comparables, the record supports the selection of NUE's wage offer.

Perhaps more importantly, if the District's wage offer is awarded, inconsistencies and unfairnesses will be fixed in place and exacerbated under the Employer's 1989-90 offer.

HEALTH INSURANCE FOR PART TIME EMPLOYEES:

District Position:

The Union's health insurance proposal is a radical departure from the status quo, under which the District currently provides no health insurance for part time employees.

The introduction of such a major benefit should be addressed in the give and take ofnegotiaions--it should not be gained through an arbitration award. (Citations omitted)

In response the the Union's reference to Section 89 of the Tax Code to support its position on this issue, it is important to note that

Section 89 in no way mandates the provision of benefits to any employees. In addition, the controversy surrounding Section 89 makes its future very uncertain.

It is also noteworthy that there are key inconsistencies in the Union's own comparable group on this issue, the cumulation of which do not support the Union's proposal.

Even if the arbitrator were to rule that the comparables support a change in this benefit, some semblance of a quid pro quo should be provided by the Union, and in this instance, the Union has failed to offer one.

In addition, the Union's health insurance proposal introduces an open enrollment provision over which the District has no control.

Most importantly, the Union's health insuranace proposal would result in unreasonably dramatic and spiraling cost increases for the District, amounting to a minimal total package increase in excess of 12% in 1989-90.

Since the Union offers no cost containment measures such as the District's proposal to cap its contribution to any increase at 10%, the Union's health insurance proposal clearly imposes an unreasonable financial burden on the District.

Union Position:

The Employer's health insurance proposal fails to closely define the term "full-time employee", which could cause serious disagreements about eligibility. Similarly, neither is there an appropriate specific demarcation between what constitutes a 12 month employee and what makes a person a school year employee under the Employer's offer.

The Union's offer, by contrast, is very exact. It operates on a formula requiring each employee who is eligible and chooses to participate to proportionately pay a significantly larger protion of the premium as their work hours decrease from full-time to half-time.

The Union's offer is based on 20 hours per week, which is very close to the 17.5 hour staandard established in the Federal IRS Code 89, which encourages employers to extend health insurance benefits, among others, to those who work 17.5 hours or more per week.

The language in the Union's proposal has the Employer paying a fixed dollar amount which, if not changed, would result in even full time employees paying 15 to 20 percent of their health insurance premium. Those working 20 to 30 hours per week could thus well start by paying as much, or even more than, 50 percent

of the premium. It will be from this point that the parties would begin to negotiate for 1989-90 on insurance and other economic benefits if the Union's offer were awarded.

Relatedly the proportional financial obligation on the employee under NUE's offer will serve to effectively limit the increase in health insurance costs caused by additional employees being covered. In truth, the cost increases for the District in 1989-90 under NUE's proposal have yet to be determined; the most appropriate manner for the District to seek to contain what it perceives to be dramatic and spiraling cost increases is to bargain directly with NUE when the particular magnitude of those cost increases is known.

The comparables also support NUE's offer, particularly as they reveal the concept of proration.

NUE's offer goes in the direction of extending existing fringe benefits to the lower paid employees while recognizing the financial impact and responsibility on both the parties and trusting the collective bargaining process to produce a resolution of the details of the economic settlement next year and in future years.

In response to the Employer's status quo argument, given the fact that there was no prior collective bargaining agreement and no recognized bargaining unit prior to these negotiations, to the extent that the status quo represents the unilateral establishment of wages and distribution of fringe benefits by the Employer, such a status quo is appropriately subject to modification. The Employer's argument that the general arbitration standard of respecting the status quo legitimizes its desire to do what it wants. Such an argument simply should not be persuasive in a dispute over changes to be incorporated into a first collective bargaining agreement.

HEALTH INSURANCE CARRIER ISSUE:

District Position:

The District's position on this issue would maintain the status quo while the Union's proposal is not supported by one comparable. The District's option is a no-risk, cost containment measure; employees are protected from any adverse consequences since the language precludes the possibility of a reduction in benefit coverage by guaranteeing that substantially equivalent benefits will be provided. Choice of carrier decisions are better left to management to achieve timely and efficient implementation in the face of escalating insurance costs. (Citation omitted)

Union Position:

Under NUE's proposal employees are responsible for the payment of prorated insurance benefits. They thus have a direct financial interest in the costs of the carrier and coverage. Under such circumstances it is reasonable that the employees participate in the choice of carrier and coverage.

SUBCONTRACTING:

District Position:

The Union's proposal which prohibits subcontracting affecting current employees is ambiguous since it is not clear who said employees might be.

It is also important to note that the Union's subcontracting proposal is not supported by a single comparable.

Union Position:

Comparable collective bargaining agreements are silent on this issue.

The Union's proposal would provide incumbent represented employees with protection against immediate and drastic losses suffered as a result of subcontracting, but would allow the Employer to gradually engage in subcontracting, with the attrition of current staff, should that be the long range objective of the Employer.

The potention for acrimonious and disruptive negotiations exist under the District's proposal since the Union would be fighting to avoid impasse (where the Employer can implement its offer) in a situation where the union can neither legally strike nor compel third party intervention. As a result, the Union's offer on subcontracting does more to promote and insure labor peace and a stable relationship between the parties.

HOLIDAYS:

District Position:

The District's offer provides for a gradual introduction of paid holidays for school year employees, since currently such employees receive no paid holidays and in 1989-90 they would receive two. This gradual implementation keeps cost containment factors in mind and leaves open the door for increased benefits to be bargained in successive agreements.

Union Position:

Since the 12 month employees in the unit receive nearly the average number of paid holidays available in comparable districts, it is

appropriate that the school year employees in the unit also approach said average. At the same time, in order to mitigate the cost of equalizing this benefit, the Union's proposal is fashioned in such a way that the school year employees would not be eligible for any paid holidays during the last part of the 1987-88 school year, nor during the first part of the 1988-89 school year, with the net result being that of the four holidays proposed only two would be available during the term of the agreement. In the future, school year support personnel would be eligible to receive four paid holidays at their regular daily earnings.

On the other hand, during the first 18 month period of the District's offer there would be no paid holidays for school year employees, and there would be two paid holidays for said employees in the last 12 months of the District's two and one half year proposal. In contrast, comparables average more than four paid holidays for school year employees.

VACANCIES AND JOB OPENINGS:

District Position:

Under the District's proposal applicants for vacancies will be considered on the basis of relative ability, experience, and other qualifications.. This is consistent with the status quo and is supported by the comparables. None of the comparables support the Union's proposal which gives first priority to transfer applicants from within the same department, and second priority to transfer applicants from outside the department.

Union Positon:

Experiencedd, qualified employees should be given the opportunity to fill vacancies within their department prior to bringing new employees into the department. The Employer is protected under the Union's proposal since it can prohibit the transfer of an unqualified employee to a vacancy.

Within the comparaable pool, the most apparent pattern is that there is a trial period for such transfers. The reference to trial periods in comparable contracts is closer to the Union's position on this issue than the Employer's position, since trial periods are obviously based on the premise that existing employees will be given a chance to fill a vacancy before a new employee is hired.

THE ASSIGNMENT OF ROUTES TO BUS DRIVERS:

District Position:

This dispute is over the definition of a regular route for the purpose of filling bus driver vacancies.

The Union's proposed definition however reveals a glaring inconsistency in that its final offer defines the term in two very different ways. Although its Work Schedule language defines Mustard Seed, activity, and physical therapy/special education routes as "regular routes", the Union's wage language contradicts that definition and highlights these routes as "extra trips", which they are.

Union Postion:

There is such a significant difference in the large number of regular routes and the amount of money to be earned by obtaining activity routes and the Mustard Seed route that an objective system for allocating desirable routes when they become vacant is in the best interests of both parties. It prevents the appearance and reality of favoritism; it rewards loyal service; and it allows reliable, veteran employees to gradually improve their earning capacity.

ABSENCES AND LEAVES:

District Position:

Again, on this issue the Union's final offer is fraught with ambiguity. There is no definition of "maternity leave" in any pertinent statute. The use of such ambiguous language would provide fertile ground for numerous grievances and therefore should not be imposed on the District by arbitral authority. (Citation omitted) The District's offer is clearly more reasonable on this issue in that it more clearly defines its leave language, points to relevant and applicable state law, and provides for easier implementation of the contract.

Union Position:

The State of Wisconsin has recently passed a "Family and Medical Leave Act" and the proposed administrative rules for that law have not yet been finalized. Until such time as those administrative rules are finalized, the Union proposes to continue in effect the leave language currently in place for the Amery teacher contract, plus a reference to the family leave act.

DURATION:

District Position:

The Union's proposed termination date of June 30, 1989 would result in the parties entering into immediate negotiations for a successor agreement upon the issueance of this arbitration award. The District's proposed termination date of June 30, 1990 will allow the parties to work together under the contract for one year before the agreement expires.

Relatedly, the Union's contention that its offer defers negotiations on serious economic items is totally and unequivocally untrue. In fact, the Union has blatantly attempted to hide its most costly benefit under the protective shroud of a short-term duration clause. Its attempt in this regard is designed to obtain a costly benefit in 1989-90 while not costing it during the term of its current proposal.

The Union also fails to explain how its offer allows time for problematical items of the contract to arise. The Distrit's offer, on the other hand, allows ample time for the parties to work under the terms of the agreement and to discover areas which may warrant modification.

The reason Section 111.70 Wis. Stats. excludes initial collective bargaining agreements from the two-year duration requirement is to allow for up to three-year agreements, and agreements where partial years are frequently a factor.

The Union's charge that the District's duration clause avoids negotiations regarding critical issues such as health insurance and wages in 1989-90 is entirely baseless. The District's duration offer includes a health insurance offer for 1989-90. In short, the District's offer prudently addresses wages and benefits for the 1989-90 school year and does not defer negotiations on these issues until the next round of bargaining.

Union Position:

Initial contracts are critically important for establishing the groundrules for the long-term relationship. The collective bargaining process does not easily allow newly agreed-upon language to be modified.

In order to address many of the issues in dispute the Union's duration proposal will provide the parties a needed opportunity to return to the bargaining table to deal with the economic impact of the initial agreement in the next fiscal year.

On the other hand, the Employer's duration proposal is an attempt to avoid serious negotiations on critical issues such as health insurance and wages in 1989-90.

111.70 exempts initial agreements from the two year proviso. It does so because initial collective bargaining agreements frequently center on one or the other of economics or langauge, and a timely return to the bargaining table is in the interest of both parties.

Neither final offer herein contains a wage schedule. Both establish rates for new employees and generally apply across the board percentage increases to groups of employees. The result is that the individual wage rates of employess established prior to

the advent of the Union are kept in place at a proportionately higher level.

It is thus likely that wages, insurances, and other economic items will be the primary focus of the next round of negotiations.

In addition, the parties will likely address the issues noted by the arbitrator in this proceeding in their next round of negotiations. The Union's duration proposal will simply allow the parties the opportunity to address all of these above described issues sooner.

JUST CAUSE:

Union Position:

The only differnce between the parties' just cause proposals is whether or not the work "demoted" will be covered.

Virtually all of the comparables support the inclusion of the term demotion, or its equivalent, in the just cause standard.

RETIREMENT:

Union Position:

There is no significant difference between the two proposals on retirement because there is no difference in the cost of the two items. Because the Union final offer has a duration clause which is effective through June 30, 1989, and in order to match the effect of the Employer's offer on retirement for 1989-90, the Union has proposed that the 4% level of the Employer payment of the employee's share become effective one day before the Employer offer.

The comparables on this item are 100 percent in the sense that all have the employer paying the full employer and the full employee share of WRS contributions.

DISCUSSION:

As noted above, because of the number of issues which are in dispute in this matter, the undersigned will primarily address those which are of particular importance to at least one of the parties in assessing the relative reasonableness of the parties' respective final offers.

With that in mind, two inter related issues seem to be of particular importance to both of the parties,namely, health insurance for part time employees and the duration of the collective bargaining agreement which will result from this proceeding.

These issues are clearly inter related in that the Union is seeking a significant new benefit, the cost of which will not be ascertainable during the term of the agreement it is proposing. On the other hand, the Employer's duration proposal clearly would have the effect of gradualizing the introduction of new benefits of this magnitude over a relatively substantial period of time.

It is understandable, and indeed, not altogether unreasonable for the Employer to be seeking gradualization of changes in the status quo resulting from the unionization of its support personnel based upon the fact that comparable work forces in the area are only partially unionized, that such changes are often relatively costly, and lastly, based upon the desireability of having at least one year of labor relations stability uninterrupted by the negotiations process and the disputes that often result therefrom. For these reasons, at least theoretically, the Employer's duration proposal is preferable to the Union's.

However, in these circumstances this call is not all that simple to make since the Union has raised a legitimate and significant problem for a significant number of unit personnel; and furthermore, it has fashioned an approach to said problem in a relatively creative and responsible fashion which gives recognition to the substantial cost consequences for the Employer that accompany the implementation of a new benefit such as that proposed herein. Even though comparability evidence in the area doesn't mandate immediate implementation of health insuraance coverage for part time employees, equity and public policy considerations support the reasonableness of the substance of the Union's proposal.

On the other hand, the Union's proposal in this regard is somewhat unreasonable in that it creates Employer obligations and costs under the instant agreement which will not become effective during its term, thereby, at least implicitly, obligating the Employer to incur new costs during the term of the successor agreement without being given credit for such new expenditures in the successor round of negotiations. Clearly, for that reason, the Union's proposal would be more reasonable if the Union had proposed a longer duration clause, or if it were clearly understood that the costs of implementing the Union's health insurance proposal were mutually considered to be new costs in the next round of negotiations to be attributed to the value of economic package that will either be agreed upon or awarded in an interest arbitration proceeding at that time.

Since the undersigned is saddled with both parties positions on these two issues, and cannot choose the more preferable combination of the Employer's duration clause and the Union's health insurance coverage proposal, the undersigned believes that the Union's proposals on these two issues is less unreasonable than the District's since it responsibly addresses a significant problem

while the Employer's offer does not, and since it is possible to incorporate the costs of implementing said proposal into the cost of the package to be negotiated in the next round of negotiations.

On the wage issue, which the undersigned does not believe should be dispositive of this dispute, the differences between the parties again reflects a disagreement over the period of time it should take for significant changes in the non union status quo to occur. On this issue the Employer is attempting to exercise some discretion to address what it believes to be equitable considerations justifying differences in wage increases. On the other hand the Union is seeking to essentially eliminate such discretion to effectuate what its membership perceives to be uniform and thus equitable treatment.

The record does not demonstrate that the Employer's positions on this issue are either arbitrary, discriminatory, or non legitimate; however,it also demonstrates that neither party has come to grips with the task of trying to rationalize and restructure a pay system from one in which Employer discretion was the norm to one in which the parties must agree upon criteria for pay determination and a pay structure for the application of said criteria.

An assessment of the comparability data does not strongly support the merits of either party's position, nor do other considerations regarading the relationship (in terms of pay) between classifications and/or individuals. In addition, because the difference between the relative cost/value of the parties wage proposals is relatively small, there appears to be little basis to determine the outcome of this dispute on this issue.

On the health insurance carrier issue, comparability evidence and cost containment considerations clearly support the reasonableness of the Employer's position. Though, in a co-pay situation employees may have a legitimate interest in the choice of carriers, the Union's proposal, which requires mutual consent rather than providing for a viable mechanism to resolve dispute which might arise over this issue,would likely result in situations wherein the parties would be unable to constructively respond to unanticipated changes in the health insurance environment which might have a significant cost impact on on both the Employer and affected employees. In a period in which health insurance cost containment must be given serious attention, a proposal which might foreclose adaptation to unanticipated change cannot be deemed the more reasonable of the two at issue herein.

On the subcontracting issue, the Union's proposal, though equitable in trying to balance competing employer and employee interests, is not supported by comparability evidence. Absent evidence of an emerging pattern of agreements in this area or evidence that the District intends to subcontract services presently performed by bargaining unit employees in the foreseeable future, there appears

to be no pressing need to circumscribe the Employer's rights in this regard in the parties' initial collective bargaining agreement. It should be noted however that this conclusion is based upon the good faith of the Employer's assertion that it has no plans to subcontract such services during the term of this agreement.

On the holiday issue the record seems to generally support the comparability of the Union's proposal. Again, the issue appears to be how rapidly the parties should effectuate change from a non union status quo environment to one based upon the benefits afforded comparable unionized employees. Though the undersigned is mindful and respectful of the Employer's desire to introduce new benefits gradually, the District's proposal essentially to introduce two new holidays the last year of a two and one half year agreement, where comparable unionized employees already are entiitled to substantially more holidays, is simply too gradual to merit the undersigned's support herein. Had the District proposed gradual implementation of paid holidays over the two and one half year period in a fashion which would have at least approached the unionized comparable norm, the undersigned would have considered said proposal to be much more reasonable and acceptable.

It should be noted however that since the Union's proposal does not effectuate two paid holidays until the term of the parties' successor agreement would begin to run, under the Union's proposal the cost of implementing said new holidays would legitimately be incorporated into the new costs of implementing the successor agreement.

On the issue of filling vacancies, the Union has again made a proposal addressing a legitimate employee concern in an equitable fashion, and again, among comparables which are, in significant part, non unionized, said proposal is not supported by comparability evidence. On this issue again the Employer understandably appears to want to go slowly in effectuating new employee rights. However, in this case there appears to be little legitimate justification for the Employer's preferred go slow approach. While the Union's proposal would clearly be a bit more difficult for the Employer to administer, there appears to be no persuasive reason to deprive qualified employees some preference in improving their lot by giving them preferential consideration in the filling of job vacancies.

Again, this issue reflects a dispute over the extent to which the Employer will now be required to justify the discretion it has traditionally exercised in the employment process--as a result of the unionizatiof of its support personnel. While the Employer understandably resists this process, the collective bargaining process inevitably leads to such results. On this issue what the Union seeks is understandable and basically reasonable. Though it is equally reasonable for the Employer to resist such a change, no

persuasive reason has been presented to justify the Employer's position on this issue.

Relatedly, the Union's position on the assignment of routes to bus drivers is also deemed to be more reasonable than the Employer's based upon similar considerations.

In the undersigned's opinion, no determination need be made on the issue related to absences and leaves since neither party's proposal on this issue is suffiently clear to effectively eliminate the potential for future disputes. Clearly said issue cannot be deemed dispositive of the outcome of this dispute.

On the issue concerning the applicability of just cause to demotions, even though non union comparables support the retention of Employer discretion, no persuasive reason has been presented by the Employer explaining why it should not be required to provide a reasonable basis for its decision to demote an employee, if it is required to do so in disciplinary circumstances. If the demotion is non disciplinary, the applicability of the just cause standard should not foreclose the Employer from effectuating such a demontion for good and sufficient reason. Clearly the issue here, as is the case in many other disputed issues, is the extent to which the Employer must now defend decisions which traditionally have been solely within its discretion. For the same reasons discussed numerous times throughout this award, though the Employer's reluctance in this regard is understandable, it msust come to grips with the fact that its support personnel are now unionized, and that generally means that the exercise of discretion in employment related matters becomes more regulated, requiring justification when disputed by affected employees and their representative. The status quo in that regard simply no longer applies.

Lastly, on the retirement issue, the undrsigned only wishes to note that under the Union's proposal the costs of implementing said proposal should clearly be attributed to the new costs of the successor collective bargaining agreement.

Based upon all of the foregoing considerations it would appear that the Employer has proffered more meritorious positions on the duration clause, the health insurance carrier issue, and subcontracting, and the Union has submitted more reasonable positions on health insurance for part time employees, holidays, the filling of vacancies, and just cause.

The foregoing conclusion makes the selection of either party's final offer most uncomfortable; however, that is my statutorily defined task. With that in mind the undersigned is forced to conclude that the Union's final offer package more effectively addresses current legitimate issues affecting the parties than does the Employer's proposals. Therefore, the Union's final offer is

deemed to be less unreasonable than the Employer's and will be selected herein. It should be noted however, that in doing so, the undersigned anticipates that many of the economic items included in the Union's final offer with deferred implementation dates will be considered new Employer costs in the next round of the parties'negotiations.

Based upon all of the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The Union's final offer shall be incorporated into the parties' initial collective bargaining agreement.

Dated this 12th day of July, 1989 at Melbourne Australia

Byron Yaffe
Arbitrator