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In the Matter of an Arbitration between

D. C. EVEREST AREA SCHOOL DISTRICT

and

D.C. EVEREST PARAPROFESSIONAL UNION LOCAL 190, AFSCME, AFL-CIO

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Case 37 No. 42242
INT/ARB-5254
Decision No. 26174-A

Appearances:

Mr. Ronald J. Rutlin, Attorney, Mulcahy & Wherry, S.C., representing the District.

Mr. Bruce F. Ehlke, Attorney, Lawton & Cates, S.C., representing the Union.

Before:

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The D. C. Everest Area School District, hereinafter referred to as the District, and the D. C. Everest Paraprofessionals, Local 1908, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to resolve a dispute regarding the terms and conditions of an agreement to succeed the agreement which expired on June 30, 1989. On August 3, 1988, the parties exchanged their initial offers and met on three occasions in efforts to reach an accord. On May 17, 1989, the Union filed a petition requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70 (4)(m)6 of the Municipal Employment Relations Act. On September 13, 1989, a member of the Commission's staff conducted an investigation and concluded that the parties were deadlocked. By September 18, 1989, the parties submitted their final offers to the Commission's investigator. On September 28, 1989,

the Commission ordered that arbitration be initiated. The parties selected the undersigned to serve as the arbitrator.

Hearings were held at the District's administration building on June 14, 15, 18, 19, 20 and August 6, 7 and 13, 1990. The parties filed post-hearing briefs as well as reply briefs.

FINAL OFFERS OF THE PARTIES

District's Final Offer:

1989-90 School Year Wage Schedule

CLASS	START	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
I	$6.86	$7.13	$7.41	$7.69	$7.96	$8.23
II	6.31	6.53	6.75	6.97	7.19	7.41
III	6.09	6.31	6.53	6.75	6.97	7.19
IV	5.97	6.14	6.31	6.47	6.64	6.80
V	5.87	6.03	6.19	6.36	6.53	6.69

1. Employees hired prior to January 1, shall be considered to have completed one (1) year of service for placement on the wage schedule following July 1. Employees hired after January 1, shall be considered to have completed one (1) year of service for placement on the wage schedule on July 1 of the following calendar year.

2. Longevity pay is provided at the rate of five cents ($.05) per hour for each year completed beginning with the sixth (6th) year to a maximum of sixty cents ($.60) per hour after the completion of the seventeenth (17th) year.

1990-91 School Year Wage Schedule

CLASS	START	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
I	$7.12	$7.40	$7.69	$7.98	$8.26	$8.54
II	6.55	6.78	7.01	7.24	7.46	7.69
III	6.32	6.55	6.78	7.01	7.24	7.46
IV	6.20	6.37	6.55	6.72	6.89	7.06
V	6.09	6.26	6.43	6.60	6.78	6.95

1. Employees hired prior to January 1, shall be considered to have completed one (1) year of service for placement on the wage schedule following July 1. Employees hired after January 1, shall be considered to have completed one (1) year of service for placement on the wage schedule on July 1 of the following calendar year.

2. Longevity pay is provided at the rate of five cents ($.05) per hour for each year completed beginning with the sixth (6th) year to a maximum of sixty cents ($.60) per hour after the completion of the seventeenth (17th) year.

Union's Final Offer:

WAGES

Effective 7/1/89--Increase all rates by eighty cents ($.80) per hour across-the-board.

Effective 7/1/90--Increase all rates by eighty cents ($.80) per hour across-the-board.

ARTICLE 14 A & B - HEALTH/MEDICAL/DENTAL INSURANCE

(Addition to A) Effective upon the receipt of the award or as soon thereafter as the District deems practicable newly hired employees shall have their benefits based on the following schedule:

> The District will make contribution toward each employee's health/medical insurance in an amount equal to that employee's full-time equivalency (FTE). Such FTE shall be computed on the basis of normal hours worked in a school year divided by 2080 hours.

(Addition to B) Upon the receipt of the award or as soon thereafter as the District deems practicable, employees shall have their benefits based upon the following schedule:

> The District will make contribution toward each employee's dental insurance equal to that employee's full-time equivalency (FTE). Such FTE shall be computed on the basis of normal hours annually worked in a school year divided by 2080 hours.

BACKGROUND:

The bargaining unit, which has been organized for approximately ten years, consists of "all regular full-time and regular part-time secretaries, teacher aides, IMC aides, special education aides, tutors, clerical employes . . ." The collective bargaining agreement which expired on June 30, 1989, listed 29

classifications. According to the testimony of Lawrence Baker, Director of Personnel for the District, the bargaining unit has approximately 80 employes in it with a full-time equivalency of approximately 55 to 60 positions.

The District also has a custodial bargaining unit which is represented by Teamster Local #446. That unit, according to Baker, consists of approximately 40 employes of which 34 are full time and approximately 5 part time. The custodial unit has been organized since at least 1970.

In 1987, members of the bargaining unit approached Phil Salamone, staff representative of AFSCME Council 40 who services the bargaining unit, and inquired about what they perceived as the disparity in compensation that existed between their bargaining unit and the custodial bargaining unit. According to Salamone, he had no answer for the employes. During the 1987 negotiations, Salamone asked the District to jointly participate in a job evaluation of all jobs in the bargaining unit. Salamone testified the District declined, however, the District agreed to provide job descriptions and permit employes to participate in interviews at their work sites.

Salamone contacted Professor George Hagglund of the University of Wisconsin and sought his assistance in conducting a job evaluation study. Hagglund, with the assistance of Nevin Olson, conducted a job evaluation study of both the clerical bargaining unit and the custodial bargaining unit. That study included a review of the job descriptions provided by the district, the completion of questionnaires by employes, the establishment of job specifications, interviews with a number of employes, a point rating for each position based on a number of predetermined factors, and a ranking of positions based on their point values. The study was conducted during the summer of 1987. Teamster Local #446 did not participate in the study, however, some of the custodial employes were interviewed.

Prior to the commencement of negotiations for the successor contract to that which expired on June 30, 1989, Salamone requested an update of the 1987 study prepared by Hagglund. Hagglund provided the update which is the first four pages of Union Ex. 4. Based on the results of that study, the Union concluded that the clerical bargaining unit was receiving substantially less compensation than was the custodial bargaining unit despite the fact that the study indicated that the clerical positions had equal or greater point value than the custodial positions. In a attempt to rectify what it considered to be unequal treatment in the area of wages, the Union proposed wage increases for the two years covered by the successor agreement in an attempt to reduce the disparity between the two bargaining units.

The District did not accept the results of the job evaluation study as the basis for the perceived disparity and rejected the Union's proposals for a new contract. Thus the parties reached an impasse and proceeded to arbitration.

UNION'S POSITION:

It is the Union's position that its proposal is the more reasonable of the two before the arbitrator for the following reasons:

1. The Union's offer would halt and somewhat reduce the unexplained and increasing disparity that has developed over the past ten years between the wages paid the District's paraprofessional employes and the wages paid its custodians.

2. In comparison with the wages paid to other District employes whose employment involves similar levels of skill, responsibility, effort and working conditions, in particular the custodians employed by the District, the Union's proposal is the more reasonable proposal.

3. A comparison of the wages paid to persons employed in similar positions of employment by comparable employers in the Wausau Area indicates that the Union's proposal is the more reasonable.

The Union argues that its offer would halt and somewhat reduce the unexplained and increasing disparity between the wages paid to the District's paraprofessional employes and its custodians. The District, in its final

offer, proposes to not only continue but to increase the wage disparity in question.

A comparison of the maximum wage rates for the highest paid classifications from each unit demonstrates the dramatic wage erosion. The Union's offer, while reversing the trend somewhat, still would not approach the cumulative increases granted custodians since 1979-80. While the wages for the Class I Secretary have failed to keep up with increases in the Consumer Price Index (CPI) since 1979, the wages paid by the District to the Custodian I employes have exceeded CPI increases.

The District has alluded to several possible explanations for the continual wage erosion experienced by the paraprofessionals. One explanation offered is that it is merely the result of the collective bargaining process. The Teamsters organized the custodial unit in 1970, and the paraprofessionals were not represented until 1979. This difference in time might account for a wage disparity in favor of the custodians, since represented employes generally earn more than unrepresented employes. However, in 1979, when the paraprofessional unit first organized, the Union negotiated what amounted to "catch-up" pay; the paraprofessional employes' first contract raised their wages to virtually the same level as that of the custodians. Since that time, there has been a continual and increasing erosion of the paraprofessionals' wages in relation to the wages paid to the custodians.

The District never has had an interest arbitration with the custodial union since its certification in 1970. However, the District has not been willing to agree to wage increases for paraprofessionals in the same amount as the wage increases paid to the custodians. The District and the Union did reach a voluntary agreement regarding their first contract; however, thereafter, with the exception of two consent awards, every subsequent contract

negotiation between the Union and the District has had to be submitted to arbitration. Each one of the subsequent paraprofessional unit contracts has seen an increase in the wage disparity between the paraprofessionals and the custodians.

The District argues that the proper measure of comparison of the paraprofessional and custodial units is total package settlements rather than actual wages. It is the Union's position that in light of the circumstances of this case, total package costing statistics are misleading and should not be considered. The proposition that percentage comparisons must be determinative of an outcome fails to account for differing wage levels and makes inevitable a growing wage disparity between units in a wage leadership position and those in a catch-up situation.

According to the information provided by the District, the total package percentage value of paraprofessional unit settlements has exceeded that of the custodial unit in every year but one since 1980-81. This is in part explained by the fact that the District presents its data only in percentage terms--statistics which completely ignore the cents-per-hour value of the increase as well as the wage levels of the two units. Another consideration is the fact that the salary schedule structures for the two units are completely different. The paraprofessionals' schedule contains six steps with the maximum rate attainable only after five years, while the custodial schedule has three steps with the maximum attainable in as little as eight months. Because package data include that cost of step movement, the percentage figure for units with multiple step progression and a junior work force inevitably will exceed that corresponding figure for a unit with relatively few steps. The step movement cost represents a significant portion of its wage package. According to the District's information, barely half of the 74 employes in the paraprofessional

unit were at the maximum pay levels in 1988-89. In contrast, all but three employes in the custodial unit, all part-time workers in the Custodian IV classification, were at the maximum rate.

The growing wage disparity cannot be explained by way of a "supply and demand" argument. There are about 2.4 times the number of applicants per position for the paraprofessional unit as there are for the custodial unit; however, since 1984 the District has increased the size of the paraprofessional unit by 39%. If the District almost continuously is creating openings for paraprofessional employes while limiting the openings for custodians at the same level, it only stands to reason that it will receive larger numbers of applications for the paraprofessional positions than for custodial positions.

Another possible explanation for the increasing wage disparity is that the custodial jobs have become more demanding relative to the paraprofessional jobs and, thus, justified a relatively higher wage rate. However, the evidence suggests just the opposite. The introduction of computers into the District has increased the demands on the paraprofessional employes beyond just their learning and working with the computers and the programs themselves. In general, the paraprofessionals' jobs are more complex, more demanding, more difficult and require more responsibility than they did ten years ago. Indeed, there are several indications that the District recognizes the increasing demands on the paraprofessional positions. The only educational requirement for a Tutor in 1981 was "high school graduation or its equivalent with appropriate coursework in the desired tutoring area(s)." However, a 1990 job posting for a Tutor reflects the District's desire that applicants be certified teachers.

The current job description for a secretary to an elementary school principal also demonstrates the District's recognition of the increasing

demands on the paraprofessional employes. In December 1987, the District revised the job description, making "proficiency in word processing applications" a requirement of the job and adding "knowledge of computer applications" as an area in which training is desired.

There is no evidence that the custodial jobs have become more demanding over the past ten years in any respect. In fact, it was made quite clear that 90% to 95% of the custodians' work is routine cleaning. Such work is rated low in comparison even with other custodial work. Custodial jobs that require more skill are contracted out with a high degree of frequency. During the 1989-1990 fiscal year, the District spent more than $108,000 on maintenance work which the custodial supervisor determined could not be done by the District's custodians. Thus, the increasing wage disparity cannot be justified by a claim that the paraprofessional jobs have become less demanding relative to the custodial jobs.

The District, in essence, argues that the failure to take wage erosion into consideration in a past agreement justifies the perpetuation of wage erosion now and in the future. If this line of thought were to be accepted, the paraprofessional employes would never be able to seek restoration of the wage relationship between their bargaining unit and the custodians' unit, because at some magical point in time in the past they failed to make a wage erosion argument.

When the Union recognized in 1987 that there was a growing disparity between the paraprofessional employes' wages and the wages paid by the District to its custodians, it concluded that a job evaluation study ought to be conducted in order to determine whether there was some basis in the relative requirements of the paraprofessional and the custodial jobs that would explain the disparity. The Union invited the District's participation but was

rebuffed. The results of the study revealed that there was nothing about the nature of the jobs that would warrant such a wage disparity. It is noteworthy that the District hired consultants to perform a job evaluation study of the District's administrative employes in 1987. As a result of the study, the consultants recommended salary increases for a number of administrative employes, and the District raised those salaries accordingly.

There is a great deal of evidence supporting the validity of both the procedure used and the results of Professor Hagglund's Job Evaluation Study. Professor George Hagglund has been doing job evaluations since his college days in the late 1950's, and Nevin Olson, who assisted Professor Hagglund, is an Industrial Engineering Consultant who also has had substantial experience in conducting job evaluations for both employe and management groups. Dennis Dresang, a University of Wisconsin Professor who teaches and advises students on the subject of job evaluation, who has been involved in numerous job evaluation studies in many states over the past 25 years and who took no part in the Hagglund study, agreed with Olson and Professor Hagglund that the procedures used were neither flawed nor inappropriate. All three professionals consistently stated that the procedures followed were common and were similar to procedures used in many other job evaluation studies.

Based on a review of the respective duties and responsibilities of the District's paraprofessional and custodial positions of employment, Professor Hagglund concluded that the positions in both units involved similar levels of skill, responsibility, effort and working conditions. As a simple matter of pay equity, the paraprofessional employes ought to be paid wages that are at least equal to, if not higher than, the wages paid the custodians.

The District insists on labeling Professor Hagglund's job evaluation study as a "comparable worth" study in an attempt to avoid facing the realities of

the study's results. Assuming, arguendo, that it is relevant to this case to assign some categorical label to Professor Hagglund's study, it is the Union's contention that the study was not a classic comparable worth study. Professor Hagglund analyzed and evaluated 33 jobs within the D. C. Everest School District. Theoretically, the wage rate for each position should reflect the number of points that job received relative to all the other jobs. The Union has limited itself to addressing the most significant finding of the study, namely that the paraprofessional jobs, as a whole, are underpaid.

The District contends that, because the job evaluation study does not take market factors into account, it is not an appropriate consideration in this case. The District's logic on this point is inherently flawed. It has already been established that wage parity, which is supported here by a job evaluation study, is an appropriate consideration under Sec. 111.70(4)(cm)(7)(j), Wis. Stats. It also is clear that criteria d, e and f of the statute call on the arbitrator to give weight to market factors in making his decision. The District argues that one factor, the job evaluation study, must incorporate another factor, the market. Nowhere in the statute is it stated that "other factors" must incorporate factors which already have been taken into account by the arbitrator, or that one factor, a market comparison, must dominate all others.

One of the District's primary criticisms of the study is that it uses the same system to evaluate both the custodial and the paraprofessional jobs. However, Professor Hagglund, Nevin Olson and Professor Dresang all testified that it is not necessary for the jobs being evaluated to be identical and that, in fact, it is common to evaluate two or more types of employes using the same factors. Professors Hagglund and Dresang noted that in the public sector job evaluations typically cover all jobs.

Professor Hagglund testified that it is not necessary for the job evaluation system to be developed within the organization for which it is to be used. In fact, people usually use a system that has been used before, in part to avoid being accused of developing an instrument that could be used to achieve some particular purpose.

The District takes the position that the job evaluation system, which was created for the Thornton Community College, was not appropriate for evaluating both clerical and custodial positions. Actually, the employe groups evaluated at both Thornton and D. C. Everest had a similar composition: the bulk of the Thornton jobs were office or clerical positions, but included custodial and maintenance jobs; similarly, the majority of the jobs evaluated at D. C. Everest (29 out of 33) were paraprofessional jobs, while the rest were custodial positions.

The District's contention that a job evaluation system must undergo six to ten applications before it can be relied upon also is without merit. The District's own expert witness admitted that, despite his own personal bias, the first six to ten applications of a job evaluation system may well be valid and, in fact, he concluded that he could not say that the results of Professor Hagglund's job evaluation study were invalid.

The District also is critical of the fact that Professor Hagglund did not create a manual to insure that the job evaluation system was applied consistently, something which is not a standard practice when conducting a job evaluation. The Union argues it is absurd to suggest that the two evaluators should have gone to the trouble of creating a manual to insure that they were applying the factor definitions in the same manner, when the same thing could have been (and was) achieved by simply talking with one another.

Another criticism made by the District is that Professor Hagglund used job descriptions prepared by the District rather than preparing his own. The District contends that the Job Evaluation Study does not accurately reflect the duties performed by the custodial employes, maintaining that "the duties and responsibilities of Custodians I, II, and III in the District are, for all practical purposes, identical." If, as the District contends, the Custodians I, II and III perform the same work, and if, as the custodial supervisor testified, virtually all of that work is routine cleaning, one cannot help but conclude that the Job Evaluation Study overrated the custodial positions to the extent that it gave non-cleaning activities more weight than they deserved.

It is not necessary to determine whether Professor Hagglund's study or Mr. Jorgenson's testimony more accurately reflects the actual duties of the custodians. Either way, it is clear that the Union's offer is more reasonable. Mr. Jorgenson's observation that the custodians all do the same work--routine cleaning--only makes the Union's offer more reasonable.

This is the sixth time in the last ten years that the District has proceeded to arbitration with one of its bargaining units. None of the arbitrators in the earlier cases showed an unwavering commitment to using the athletic conference schools relied on by the District here as the primary comparison group.

The first award involved the teachers' professional unit, in which case the arbitrator found that the other teacher units in the athletic conference schools, plus Mosinee and the Wittenberg-Birnamwood school districts, could be used as the primary comparison. D. C. Everest Schools, WERC Dec. No. 16942-A (2/25/81, A. Christenson). In the second award, also involving the teachers' unit, the arbitrator enunciated the following rationale before determining that the primary comparisons consisted only of the conference schools:

> "The primary dispute here revolves around the weight to be given to the settlement involving the School District of Wausau. First, the instant Arbitrator agrees that Arbitrator Christenson's decision in a previous arbitration award involving the parties should not per se be binding on this Arbitrator. Not only could different evidence be presented here that was not presented to Arbitrator Christenson, but factors of comparability can change over a period of time. D. C. Everest Schools, WERC Dec. No. 21207-A (6/13/84, G. Vernon.)

In the first case involving the paraprofessional bargaining unit, the arbitrator accepted the Union's argument and found that the internal comparisons provided "the best guidance as to which of the two offers is the more reasonable." D. C. Everest Schools, WERC Dec. No. 21941-A (2/25/85, J. Grenig). In the second arbitration involving the paraprofessionals, the arbitrator adopted the comparability pool that had been used in a teacher unit case, because of a lack of evidence showing that the pool should be altered. Although the arbitrator did not disturb the comparability pool, because it served as a "stabilizing factor," he qualified his decision by stating:

> "The Arbitrator agrees with the observation of Arbitrator Vernon in . . . [Dec. No. 21027-A, 6/84] wherein he observed that the determination of a comparability pool by Arbitrator Christenson is not per se binding on him. However, the record in this case is devoid of substantial evidence on which this Arbitrator could conclude that the comparability pool should be altered." D. C. Everest Schools, WERC Dec. No. 24678-A (2/15/88, S. Malamud).

In the third case involving the teachers' unit, both parties argued on the basis of conference schools. Because of a relative lack of settlements from the conference schools, however, the arbitrator considered the settlements from the Fox Valley Conference in reaching his decision in the case. D. C. Everest Schools, WERC Dec. No. 24828-A (5/22/88, G. Vernon).

The District utilizes the athletic conference for bargaining with its teachers' unit, but would add to that two smaller area districts when bargaining with the Union regarding the paraprofessional employes. Comparables other than the conference schools, namely internal comparables as in the

present case, and the Fox Valley Conference, all have played a crucial role in the District's interest arbitration cases. Neither the comparison used most recently in a teachers' unit case, nor that now proposed here, has been wholeheartedly accepted by arbitrators. Both Malamud and Vernon held that, upon the presentation of evidence showing that a better set of comparables exists, the comparison pool should be altered.

The principle that the labor market for paraprofessional employes is far more restricted than the labor market for professionals has long been recognized by employers, unions and arbitrators. In a recent award, Janesville School District, WERC Dec. No. 25853-A (10/6/89, S. Michelstetter), the arbitrator chose to use employers from within the local labor market as the comparison group, rather than the athletic conference schools. The arbitrator noted:

> "The Employer is correct that the comparison group necessarily used for teachers does not necessarily apply to this unit. The undisputed testimony in this case is that unit employees are hired almost exclusively from the Janesville area and well within thirty miles of the city. Under these facts, the thirty mile area does constitute a labor market from which employees are to be selected."

The evidence submitted in this case clearly shows the appropriate comparison pool to consist of the local labor market. There is a great deal of evidence that the Wausau Urban Area, in which 90% of the District's employes live, is an area which is readily distinguishable from the rest of Marathon County and from the surrounding counties in which the athletic conference schools are located. Since 90% of the District's employes live and work in the economic environment of the Wausau Urban Area, their wages should be compared to the wages of other employes also working in the Wausau area. Wausau and its suburbs share a "high degree of economic and social integration." There is no evidence that the D. C. Everest School District has anything in common with the outlying athletic conference schools, other than that their students engage in

athletic competitions against each other. Common sense tells us that comparables should be established on the basis of economic factors rather than using illogical, albeit sometimes convenient, pre-existing groupings. For these reasons, the Union believes that the appropriate comparison pool consists of the city of Wausau and its suburbs.

The city of Wausau, the village of Rothschild, and Marathon County are the only Wausau area municipalities for which data has been presented in this proceeding whose paraprofessional employes are represented by a bargaining unit. Likewise, the school districts of Wausau and Mosinee are the only Wausau Area districts that have organized paraprofessional units. The Union believes that these five employers constitute the best comparability pool at this time.

A comparison of the wages paid to employes in similar positions by the above mentioned employers demonstrates that the Union's offer is more reasonable than the District's. Under the Union's offer, D. C. Everest's top-paid paraprofessional employes would rank third in wages during the first year of the contract. In the second year of the contract, they would rank second in wage rates among the comparables, just as the District's custodians do.

Under the Board's offer, D. C. Everest's Class I Secretary would be paid the lowest wage of all the comparables, even after the second year. In fact, D. C. Everest would not "gain" on any of the comparable rates during the second year of the contract; it would tie for the lowest wage increase, a mere 31 cents.

Even if one's analysis is confined only to the comparable paraprofessional positions, the Union's offer is more reasonable than the District's, which would drive the D. C. Everest paraprofessional employes' wages down to the lowest level of all the comparables. If the custodians' wage rates are taken into consideration, the choice becomes even more obvious.

The District argues that the paraprofessional employes' wage increases have exceeded cost-of-living increases since 1980. This argument is based on data which compares the wage increases that would have been received by a paraprofessional employe from 1980-81 through 1988-89 to cost-of-living increases during that same period of time. The percent wage increases, as calculated by the District, take into account two types of wage increases: those resulting from actual wage increases through the collective bargaining process and those resulting from movement through the salary schedule. It is the Union's position that a more appropriate measure of wage increases as they relate to the cost of living are the minimum and maximum wage rates. The evidence demonstrates none of the maximum wage rates and only a few of the minimum wage rates have kept up with cost-of-living increases since 1979.

The District claims that the Union is attempting to subvert the collective bargaining process because its final offer could not have been agreed upon voluntarily by the two parties. In order to reach this conclusion one must assume that the District would have continued to refuse to address the wage disparity between the paraprofessional employes and the custodians, would have continued to refuse to consider Professor Hagglund's Job Evaluation Study and would have ignored the wages paid comparable employes within the local labor market. It is the Union's position that it is not unrealistic to expect that at some point the District would have addressed the difficult issues, such as those in the present case, during negotiations, even absent mediation-arbitration, and the Union's final offer would have been accepted through a "voluntary" agreement, especially in light of the fact that approximately 95% of all agreements in the public sector are settled voluntarily.

Any lack of "negotiation history" in regard to wage erosion is merely a function of the fact that a "history" of wage erosion, by definition, needs

time to develop. Further, it would not be unrealistic to expect that any employer would consider the results of a job evaluation study in determining a fair wage for its employes, since job evaluation is regularly used in the context of collective bargaining and has been used in other school districts. Arbitrators have also found in other districts that the local labor market constitutes a better set of comparables than the athletic conference schools, especially for nonprofessional staff.

The District's offer would perpetuate the disparity between the rankings of the paraprofessionals and the custodians among the conference schools, keeping the paraprofessionals' wages among the lowest of all the comparables, while the custodians continue to enjoy their position near the top of the ranks. The Union's offer would result in the paraprofessionals' wages ranking about the same as the custodians' wages, relative to the other athletic conference schools.

The package percent methodology advanced by the District fails to account for the fact that custodial employes are able to achieve significantly higher wage levels in a period of time far shorter than it takes paraprofessional employes to reach their maximum rate. The District's methodology, which ignores the differences in wage levels as well as schedule structures, allows the District to claim that the paraprofessional unit's settlements have been generous in comparison with those of the custodial unit, when in fact the reverse is true.

If one's information were limited to District Exhibit 32, which shows the historical package value of the paraprofessional unit's settlements to have exceeded those of the custodial unit in every year but one since 1980-81, one would expect the wage levels of the paraprofessional employes to have improved when compared to those of the custodians. However, an examination of the wage

schedules shows that, rather than improvement or even maintenance of position vis-a-vis custodial wage rates, substantial erosion has occurred.

The median length of service for the paraprofessional employes is 7.25 years, as compared to 9.92 years for the custodians. In other words, half of the paraprofessional employes have worked for the District for less than 7.25 years. In comparison, half of the custodians have worked for the District for over 9.92 years. Any attempt by the District to minimize the significant turnover among the paraprofessional employes by numerical manipulations which distort reality should not be given consideration.

Section 111.70(4)(cm)(7)(j), Wis. Stat., states that the arbitrator shall give weight to:

> "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 the private employment."

The undisputed testimony of Professor Hagglund, Nevin Olson and Professor Dresang demonstrates that job evaluation studies frequently are used in the context of collective bargaining.

DISTRICT'S POSITION:

The District argues that in interest arbitration the arbitrator should attempt to put the parties in the position they would have reached had they been able to reach a voluntary negotiated settlement. Arbitrator William W. Petrie summarized this principle in City of Kaukauna, Dec. No. 26061-A (2/8/90):

> "At this point it will be emphasized that the role of the interest arbitrator is to attempt to put the parties into the same position they would have reached across the bargaining table, had they been able to reach a negotiated settlement, and in this process the neutral will look closely at the parties' past agreements, and their past practices, and to their negotiations history; although neither of these considerations is specifically identified as an arbitrable criterion in Section 111.77(6) of the Wisconsin Statutes, it must be recognized that all three factors are frequently used in both the negotiations and in the interest arbitration process and, they fall well within the scope of Sub-section (H) of Section 111.77(6)."

Arbitrator Michael F. Rothstein recognized the principle in Waukesha County, Dec. No. 19515-A (6/20/83) where he stated:

> "The mediation-arbitration process should not be used to subvert the collective bargaining process. If the parties engaged in collective bargaining perceive the mediation-arbitration process as a method of achieving results which they could not have achieved through collective bargaining, the entire bargaining process itself will become distorted. Bargaining will no longer take place between unions and employers, but rather wages will be established and other conditions of employment will be set by third parties (arbitrators); the undersigned does not believe that the goal of the mediation-arbitration process is that of eliminating arms-length collective bargaining. 'The arbitrator must try to achieve a result that would be comparable to what would have been agreed upon between a strong and realistic union and a strong and realistic employer.' (City of Milwaukee, Dec. No. 17143-A, Rice, 1980)."

The District's final offer is more consistent with what the parties would likely agree to in a voluntary settlement based upon their past agreement, negotiation history and past practices.

The wage schedule and classification system agreed to in 1979 has remained virtually unchanged through the 1988-89 contract. Throughout this period, the parties reached voluntary settlement on all but two occasions. In 1983-84, the

parties petitioned for arbitration but were able to reach a voluntary agreement when a consent award was issued by Arbitrator June Miller-Weisberger. However, in 1984-85, the parties were unable to reach voluntary agreement and Arbitrator Jay Grenig issued a decision wherein he accepted the Union's final offer.

In negotiations for the 1985-86 and 1986-87 contract, the parties once again filed for arbitration but were able to reach a voluntary settlement when Arbitrator George R. Fleischli issued a consent award. D. C. Everest School District, Dec. No. 22858-A (11/27/85).

During negotiations for the 1987-89 contract, the parties proceeded to arbitration on the issues of wages and health insurance. Arbitrator Sherwood Malamud selected the final offer of the Union concluding that while the Employer's offer was more reasonable on the wage issue, there was no support in the comparables or the Employer's proposal to provide for the proration of the Employer contribution to the health and dental premiums for employes scheduled to work less than 2,080 hours.

The District submits that its final offer here is the more reasonable. It has utilized the comparable pool selected by Arbitrator Grenig in 1985 and embraced by Arbitrator Malamud in 1988. As Arbitrator Malamud stated in his decision, the comparability pool should serve as a stabilizing factor in the bargaining relationship between the parties. The District's offer is also more consistent with the percentage increase granted to similar employes in the external comparables. It maintains the District's relative position with respect to the wage comparisons for the external comparables. Finally, the District's final offer is more consistent with the percent increase granted to other employes within the District.

There is no evidence in the record that the Union has ever suggested or proposed that the concept of "comparable worth" or "pay equity" be a factor in

negotiations or be considered by an arbitrator prior to the negotiations which led to this dispute. The Union is attempting to achieve through arbitration a result it knows it could not achieve in negotiations with the District.

Section 111.70(4)(cm)7, Wis. Stats., provides that the arbitrator shall analyze the final offers of the parties in light of the wages, hours and conditions of employment of other employes in comparable communities. The Board submits that for the purpose of these proceedings, the parties' final offers should be considered in comparison to the following school districts: Antigo, Marshfield, Merrill, Mosinee, Rhinelander, Stevens Point, Wausau, Wisconsin Rapids, and Wittenberg-Birnamwood.

The two previous interest arbitration awards involving the parties to this dispute have utilized the Board's current selection of comparable districts. In 1988, Arbitrator Malamud concluded that the District's selection of comparables, comprised of the Wisconsin Valley Athletic Conference plus the adjacent districts of Mosinee and Wittenberg-Birnamwood, was the most appropriate. Statistical similarities, combined with the geographic proximity of the districts, provides a sound basis for the Board's selection of comparable school districts. This pool has traditionally been utilized for bargaining purposes and has been deemed appropriate by two separate arbitrators. Therefore, the focus of attention by the arbitrator regarding comparative analysis necessary in this dispute must center on the data of those districts selected by the Board.

The Union in this proceeding, for the first time ever, suggests that the proper group of comparable employers should be limited to the school districts of Wausau and Mosinee, the city of Wausau, Marathon County and the village of Rothschild. The problem with this group of comparables is that it is difficult, if not impossible, to be sure that similar positions are being

compared. The District would not object to a comparable pool of contiguous school districts. However, to mix cities, counties, and villages with school districts makes legitimate wage comparisons difficult if not impossible.

The Board's offer includes a wage increase of 4.57% for 1989-90 and 5.12% for 1990-91. On the other hand, the Union seeks a wage increase of 13% for the first year and 11.60% for the second year.

The 1988-89 wage settlement for the D. C. Everest clerical and paraprofessional employes was 5% in a year when the settlements in the comparable districts ranged from 2.61% to 5.5%. Under the District's final offer for 1989-90, the employes in this bargaining unit will receive a 4.57% increase. The settlements in the comparable districts range from 4% to 6.69% in 1989-90. In 1990-91, these employes will receive a 5.12% increase under the Board's offer while the settlements in comparable districts range from 4% to 6.09%.

The three-year total percentage wage increase under the Board's offer is the second highest total. Only Rhinelander, with a completely restructured salary schedule, has a higher cumulative percentage wage increase over three years.

Not only is the percent proposed by the Union excessive, there is no justification for the hourly rate increase being proposed by the Union. An analysis of the data for 1988-89 reveals the following:

BOOKKEEPER, ACCOUNTS PAYABLE CLERK

	MIN	MAX	MAX WITH LONGEVITY
Average	$6.98	$8.65	$8.80
D.C. EVEREST	$6.64	$8.01	$8.61

SECRETARY TO SENIOR HIGH PRINCIPAL

	MIN	MAX	MAX WITH LONGEVITY
Average	$6.48	$7.84	$8.26
D.C. EVEREST	$6.64	$8.01	$8.61

ELEMENTARY SECRETARY

	MIN	MAX	MAX WITH LONGEVITY
Average	$6.07	$7.33	$7.75
D.C. EVEREST	$6.09	$7.19	$7.79

TEACHER AIDES

	MIN	MAX	MAX WITH LONGEVITY
Average	$5.89	$6.87	$7.06
D.C. EVEREST	$5.65	$6.47	$7.07

SPECIAL EDUCATION AIDES

	MIN	MAX	MAX WITH LONGEVITY
Average	$5.83	$7.24	$7.44
D.C. EVEREST	$5.75	$6.58	$7.18

The above data establishes that employes in these classifications in D. C. Everest are paid competitively with their counterparts in comparable districts. The District argues that this data should be the focus of the arbitrator's attention since it is the only year where there is data available from all school districts. While the District is not the wage leader, it pays its employes competitively.

Arbitrators often look at internal settlement patterns to determine which offer is more reasonable in interest arbitration proceedings. As this arbitrator stated in Oneida County, Dec. No. 26116-A (3/5/90):

> "It is generally recognized by arbitrators that settlements arrived at between an employer and other bargaining units should be given significant weight when determining which final offer should be awarded. The rationale for giving internal comparables significant weight is that voluntarily negotiated agreements represent the best evidence as to where the parties would have settled if they had reached an agreement."

In 1985, when Arbitrator Jay E. Grenig issued his arbitration decision involving these same parties, he stated as follows:

> "In determining which party's offer is more reasonable, arbitrators attempt to determine what the parties would have settled on had they reached a voluntary settlement. Since the parties did not reach a voluntary settlement, one of the most important aids in determining where the parties would have settled is an analysis of the wages paid similar employes by other, comparable, employers. In addition, arbitrators have given great weight to settlements between an employer and its other employes." D. C. Everest Area School District, Dec. No. 21941-A (2/25/85).

The District submits that a historical analysis of the settlement patterns between the two nonprofessional organized employe groups within the District is strong evidence of how the parties would have voluntarily settled this dispute.

With the exception of one year, the EPU employes have historically received a higher percentage settlement than the custodial employes. The Board offer for 1989-90 and 1990-91 is more consistent with the settlement pattern that has historically existed between these two organized groups. The EPU has historically received a somewhat greater total package increase than the custodians and will do so again under the Board's offer. The Union's offer is 9% greater than the total package settlement received by the custodians in 1989-90, and is 8.5% greater than the custodian settlement for 1990-91.

Section 111.70(4)(cm)7e directs the arbitrator's attention to the cost-of-living factor. Employer Exhibit 29 contains data which compares the wage increases that would have been received by an employe in Classification I and Classification V from 1980-81 through 1988-89 and compares it to the cost-of-living increases during that same period of time. In 1980-81, an employe

starting in Classification I would have received $4.45/hour. In 1988-89 that same employe would be at $8.01/hour on the salary schedule. The cumulative wage increase based upon the salary schedule alone over that period of time equals 61.07%. Over that same time, the cumulative cost-of-living increase was 34.30%. A Class V employe starting in 1980-81 received $3.35/hour and in 1988-89 would receive $6.47/hour based upon placement on the salary schedule. This amounts to a 68.69% wage increase as compared to an increase in the cost of living over that same period of time of 34.30%.

The D. C. Everest School District paraprofessional wage increases have historically significantly exceeded the rates of inflation as measured by the Consumer Price Index.

The 1990-91 School District levy includes a 12.87% increase over 1989-90 and, over the last three years, there has been approximately a 30% increase in the levy.

The difference between the final offers over the two-year term of the contract is over $140,000. Should the Union prevail in this matter, the Board would have no alternative but to consider hiring freezes, layoffs, and other cost indications which would have a significant impact upon the educational program provided by the District.

Section 111.70(4)(cm)(7)(h) requires the arbitrator to consider the overall compensation presently received by the employes in this bargaining unit and the stability of employment. A review of the evidence makes it clear that not only the wages, but the vacation, holidays, insurance, retirement, medical and hospitalization, dental, and other fringe benefits of these employes are competitive with and in many cases superior to what their counterparts receive in other school districts.

The continuity and stability of employment among employes in this bargaining unit also favors the District's proposal. The average length of service for paraprofessional employes in the D. C. Everest School District is 12.89 years. This compares to an average length of service of 9.76 years for custodial employes in the District. The Union submitted an exhibit attempting to establish significant turnover among the clerical and paraprofessional employes in the D. C. Everest School District between 1984 and May of 1990. The District submits the data establishes that there has not been significant turnover in positions within the bargaining unit.

The Union's attempt to explain why the District has more applications on file for paraprofessional positions per position than for custodial positions has no basis in fact. Personnel Director Larry Baker testified without contradiction that the District very seldom advertises vacancies in these positions. Rather, the applications on file for both paraprofessional and custodial positions are the result of people walking in and submitting unsolicited applications. Baker also testified that the District has no difficulty filling the positions within the bargaining unit. As of June, 1990, the District had 256 employment applications for secretarial, clerk, aide, and tutor positions. On the other hand, the District only had 54 applications for custodial positions.

The hourly rate differentials in the D. C. Everest School District between the custodial employes and the employes in the EPU unit are the result of many factors. First of all, the custodial employes have been organized for a longer period of time. Secondly, the fact that the custodians and the paraprofessional staff have been in separate bargaining units is a factor. The District uses the same set of comparables with the custodians that it uses when it bargains with the EPU bargaining unit. A review of the data prepared

by the District establishes that custodial employes within that group of comparables are consistently paid higher than employes in the classifications represented by the EPU unit. The dynamics of collective bargaining, particularly under the municipal interest arbitration law in the State of Wisconsin, create and perpetuate the difference between custodial and clerical and paraprofessional staff hourly rates. Wage comparisons under the Wisconsin interest arbitration law are driven by external comparisons. They are not driven by external wage equity or relative worth considerations.

Another factor accounting for the wage differentials is the difference in the salary schedules of the custodial contract and the EPU contract. The EPU salary schedule has a starting rate and five steps which employes move through based upon years of service. The parties have always negotiated on a total package basis and costed step movement as part of the settlement package. With the custodians, there has been minimal, if any, "step movement" which has to be costed in to determine the total wage package. The custodial hourly rates increase at a more rapid rate than the actual rates on the EPU salary schedule due to the cost of step movement under the EPU salary schedule.

The Union obviously recognizes that one of the primary reasons for the increased differential in maximum rates is what they call "cast-forward package percent" costing. In the parties' 1988 arbitration before Arbitrator Sherwood Malamud, the District had included increment and longevity in the costing of its proposal. The Union argued that increment and longevity should not be included. In disposing of this issue, Arbitrator Malamud stated as follows:

> "Generally, this arbitrator would agree that step increases should not be costed against a package in a clerical unit with a five-step schedule exclusive of the starting rate. However, in unrebutted testimony, director of personnel Baker testified that since his employment in the district in November, 1980, the steps or increment have been costed in the total package. This costing procedure is part of the parties' bargaining relationship.

> "Oftentimes, the parties establish their own ground rules or assumptions for costing the packages. If those assumptions or ground rules are to change, it is best left to the parties to make such changes in the course of their collective bargaining."
> D. C. Everest School District, Dec. No. 24678-A (2/15/88) at p. 5.

The Union in this case once again attacks the costing method which the parties have utilized for over ten years. The Union should not be allowed through this proceeding to attempt to correct what it perceives to be an unfair result of over ten years of collective bargaining. If the Union is unhappy with the salary schedule, it should propose to modify it so that employes reach the maximum rate earlier instead of proposing an unreasonable wage increase.

The EPU unit during the period of 1980-81 through 1988-89, has received total package settlements which average almost 1% higher than the custodial employes for that same period. Over this period the cumulative increase for EPU versus custodians has been almost 10%. The average total package increase from 1980-81 through 1989-90 for the custodians was 6.59% while during that same period the average total package increase for the EPU unit was 7.52% and the cumulative percentage increase was 65.97% for custodians and 75.16% for the EPU unit.

Significantly, during the term of the contract at issue, the average total package under the two-year custodian contract is 4.04%, while under the Board's offer for the EPU unit the average total package is 5.91% or a difference of almost 2%. The Board in its negotiations with the custodians has attempted to keep the settlement percentages with the custodians lower than for the EPU unit. This is in recognition of the fact that the custodian employes rank higher in the external comparables than do the employes in the EPU unit. Therefore, the District has agreed to higher percentage settlements with the EPU unit in an attempt to put the EPU bargaining unit employes in a better position in the external comparisons. This has had to be tempered by the fact

that the external comparables still control the parties with respect to wage comparisons where custodians are compared with custodians, and paraprofessional are compared with other paraprofessional employes in the comparable districts.

Notwithstanding the fact that the majority of the Union's testimony and exhibits submitted to the arbitrator in this case are related to the Union's job evaluation/comparable worth study conducted by Professor George Hagglund, the District submits the report and testimony related thereto should be given little, if any, weight by the arbitrator in reaching a decision in this case.

If the EPU bargaining unit believes it has an equal pay claim or that the District was violating its rights under Title VII of the Civil Rights Act of 1964, appropriate litigation would be the remedy. Instead, the Union is attempting to inject the "comparable worth" argument into the interest arbitration process. Comparable worth is not an appropriate factor to be utilized under the statutory criteria outlined in Section 111.70(4)(cm)(7), Wis. Stats.

The Union is attempting to persuade the arbitrator to abandon the traditional standards used by arbitrators in interest arbitration disputes to determine appropriate wage levels for specific occupational groupings. The Union is asking the arbitrator to look to wages paid in two distinctly different occupational groups within the District to justify its position.

Two unstated premises are implicit in the doctrine of comparable worth. First, the doctrine assumes that every job has some intrinsic worth to the employer or to society, separate and apart from the price that can be obtained for it in the labor market. Second, it assumes that some common scale exists on which the relative amounts of this intrinsic worth contained in different jobs can be measured and compared.

Courts have consistently rejected the concept of comparable worth as a basis for establishing intentional discrimination because it ignores market conditions. In Spalding v. University of Washington, 740 F.2d 686 (9th Circuit, 1984), cert. denied 469 US.2d 1036 (1984), female faculty members in a nursing school charged the university with sex discrimination based upon comparisons of their pay with male faculty members in other departments at the university. The court refused to mandate revisions of wage rates established in the marketplace stating:

> "Every employer constrained by market forces must consider market values in setting its labor costs. Naturally, the market prices are inherently job-related, although the market may embody social judgments as to worth of some jobs. Employers relying on the market are, to that extent, 'price takers.' They deal with the market as a given, and do not meaningfully have a 'policy' about it in the relevant Title VII sense." 740 F.2nd at 708.

The District submits that the arbitrator should give the Union's comparable worth argument no weight in this proceeding for the same reason that the courts have refused to accept it to mandate wage increases. It ignores the realities of the marketplace which accounts for the differences between clerical/professional and custodial rates in the D. C. Everest School District.

The District submits that the Union's attempt to utilize a job evaluation/comparable worth study in the context of interest arbitration in Wisconsin is inappropriate. The use of job evaluation in the comparable worth setting, at best, only provides an internal rank order or hierarchy of jobs with different working conditions under a subjective system of evaluation. Purposely excluded from this analysis is the external market which is the critical factor in determining wages in the real world and the primary criteria used by interest arbitrators in Wisconsin. Arbitrators almost universally look at wage rates of individuals performing the same type of work for other employers within the comparable pool or appropriate labor market.

The District submits that the study conducted by Professor Hagglund is so fatally flawed that it would be inappropriate to give it any weight in this proceeding. Mr. Paul Rusch testified that over a period of 40 years he and his staff have implemented an average of 30 to 40 job evaluation installations every year. Mr. Rusch testified that for a job evaluation system to reach an acceptable level of reliability it would require a minimum of 6 to 10 installations. It is undisputed that the system utilized by Professor Hagglund was only used one other time at a community college in Illinois. Mr. Rusch also testified that, as evaluation systems are developed, manuals are created to be used by those applying the system. Without such a manual, and without a significant number of installations to establish validity, the reliability of the conclusions under the system would be extremely suspect.

The District submits that the system utilized by Professor Hagglund was not adequate to properly and fairly analyze the diverse jobs within both the clerical/paraprofessional bargaining unit and the custodial unit. This is not surprising since it is almost universally recognized that such a system has not been developed.

Not only was the system utilized by Professor Hagglund inadequate, there were numerous flaws in the procedures used. Rather than writing the job descriptions from scratch, the existing job descriptions prepared by the District were used. These descriptions were not adequate as a basis of performing a reliable job evaluation study since they did not contain adequate detail. Another shortcut was the utilization of a point factor system identical to a system used by Professor Hagglund at a community college in Illinois. Professor Hagglund conceded that the bulk of the positions studied at the community college were office and clerical positions. He also conceded that where production-type jobs are being compared with clerical positions, the

factors utilized have to be modified. He further testified that the selection of the factor definitions can have an impact on the outcome of the job evaluation study. Finally, he stated that he did not take into account the different working conditions under which the clerical and custodial employes work as part of his "organizational study."

The testimony of Nevin Olson is also enlightening with respect to the system and procedures utilized in the Hagglund study. He conceded that manuals are important to eliminate as much subjectivity as possible and that where there are no guidelines, the likelihood of bias is increased.

The undisputed testimony of the District's Supervisor of Buildings and Grounds, Lee Jorgenson, established that the duties and responsibilities of Custodians I, II and III in the District are, for all practical purposes, identical. Given this testimony it is incredible that the total points attributed to a Custodian I (276), Custodian II (230), and Custodian III (206) vary by a total of 70 points. It is obvious that neither Mr. Olson nor Professor Hagglund were aware of the actual duties of the custodians. Mr. Olson testified that it was his job to talk to the employes, observe their work, and become intimately acquainted with their actual duties. It is clear that he did not do this. Another explanation for the lack of knowledge by Mr. Olson and Professor Hagglund regarding the actual duties of the custodians is that they never talked to a custodial supervisor.

The Union cites two Wisconsin interest arbitration decisions in support of its contention that the procedures used by Professor Hagglund in the case at bar were appropriate. It cites City of Green Bay, Dec. No. 19841-A (5/22/86 Kerkman), and Waukesha County (Department of Public Works), Dec. No. 19515-A, (8/3/84 M. Rothstein), for the proposition that job evaluation studies conducted by Professor Hagglund in the context of collective bargaining have

previously been accepted by arbitrators in Wisconsin. However, in both of those cases, the arbitrators criticized the methodology of Professor Hagglund.

In the City of Green Bay case, the employer argued that the Hagglund report was flawed because he failed to: (1) take an organizational study to determine the appropriate unit of jobs to be studied; (2) select an appropriate plan which fairly and equitably evaluated all jobs within the unit; (3) hold an orientation to explain the purpose and procedure of the job evaluation; (4) provide the incumbents in the job with structured questionnaires or to ask structured interview questions; (5) interview supervisors, using the previously completed questionnaires as a base and to properly secure other data through the use of appropriate techniques from supervisors; (6) provide a review by two levels of supervision for accuracy and completeness of the job description; (7) use appropriate guidelines and controls in assigning factors in degree of points; (8) have the assignment of the degrees reviewed by at least two levels of supervision; (9) as a result of the job evaluation, reconcile his results with the external market factors. Arbitrator Kerkman acknowledged these shortcomings concluding as follows:

> "The undersigned has evaluated all of the record testimony with respect to the foregoing employer arguments, and finds that the methodology employed by Dr. Hagglund leaves open to question the accuracy of his opinion that the nurses' positions are at least equal in value to the sanitarian positions."

The Union attempts to justify its position by arguing that the paraprofessional jobs have become more demanding over the past 10 years. All of the testimony relied upon by the Union to support this contention was supplied by incumbents. The Union equates change with increased complexity. However, as the arbitrator surely recognizes, there are few jobs anywhere that have not changed over the last ten years. As with the paraprofessional employes, technological advances allow them to be more efficient.

Clerical and paraprofessional employes in other school districts have been confronted with the same changes experienced by the D. C. Everest employes. Clearly, it is the paraprofessional positions in the external comparables that must be controlling since those employes are facing the same changes in their jobs.

The Union's cost-of-living argument is misleading since it does not take into account step increases under the paraprofessional salary schedule. Using the same mathematical calculations utilized by the Union, a Class I Paraprofessional who started at $4.45 in 1980-81 and making $8.01 in 1988-89 would have realized an 80% increase over that term. A Class V Paraprofessional who started at $3.35 in 1980-81 and making $6.47 in 1988-89 would have realized a 93% increase. These comparisons demonstrate the impact of the step increases which have affected the paraprofessional maximum rates much more dramatically than the custodial maximum rates. They also substantiate the fact that the paraprofessional employes have received higher percentage increases than the custodial employes over that period of time.

DISCUSSION:

The controlling issue in the instant dispute is that of wages. The District is offering a wage increase of 4.57% for 1989 and a wage increase of 5.12% for 1990. The Union is seeking a wage increase of $.80 per hour for 1989 and a wage increase of $.80 per hour for 1990. The District's justification for its proposed wage increases is based primarily on the increases granted to other paraprofessional bargaining units by other school districts in the athletic conference and the District's relative position compared to other districts within the athletic conference. The Union's justification for its proposed wage increases is based primarily on the results of a job evaluation study commissioned by the Union which covered positions in the paraprofessional

bargaining unit as well as the custodial unit. According to the Union, the results of the job evaluation study support an increase in excess of that being proposed by the Union, therefore its proposed increase is relatively modest.

Job Evaluation

The job evaluation study elicited considerable testimony during the eight days of hearing and was discussed extensively in the parties' briefs. Much of the testimony and discussion of the job evaluation study concerned its methodology and validity.

According to the evidence, in 1987 the Union proposed that the parties jointly participate in a job evaluation study. The District declined but did agree to provide copies of the job descriptions and time during which employes could be interviewed. Testimony of both District and Union witnesses indicated that it is more desirable to have employer participation in the process. However, where an employer refuses to participate the employer cannot subsequently argue persuasively that the study was flawed as a result of the employer's lack of participation. To the extent there was no employer participation in the 1987 study it was undoubtedly not as complete as it otherwise could have been.

It must also be noted that the custodial unit elected not to participate in the study. This lack of participation further limited the information which was available during the course of the study. It appears that this lack of participation, combined with the lack of participation by the employer, materially affected the results of the study, at least as to the comparability of custodial positions and paraprofessional positions.

Any judgment as to the efficacy of the job evaluation study must take into consideration, along with other relevant factors, the impediments confronted by Professor Hagglund and Mr. Olson in their conduct of the study.

The methodology employed in the study first provided for a review of the job descriptions provided by the District. The District argues that the job descriptions did not contain sufficient detail to permit their use in a job evaluation study. In an attempt to determine if any duties were added or changed, questionnaires were sent to members of the paraprofessional bargaining unit. Those questionnaires were reviewed and changes made where appropriate. While admittedly a more thorough study could have been made if each and every employe had been interviewed, there were fiscal constraints placed upon those who conducted the study, and within those constraints a reasonable effort was made to assure the correctness of the job descriptions.

The next step involved the preparation of job specifications utilizing the information contained on the job descriptions as well as the information obtained from the questionnaires. The job specifications for the paraprofessional bargaining unit were verified by interviews conducted by Olson at the individual employe's work site. Not all employes were interviewed, but it appears that Olson attempted to interview a number of employes representing a broad range of classifications within the paraprofessional bargaining unit. Again, within the limitations imposed on those who conducted the study, it appears that the methodology was appropriate.

Due to the fact the custodial bargaining unit, which is represented by a different labor organization, did not participate in the job evaluation study, questionnaires were not received from custodial employes. The bases for preparing job specifications for the custodial employes were the job descriptions and brief interviews conducted by Olson of four custodial employes. Those interviews, which were conducted for periods of 10 to 25 minutes, involved Custodian I, II and III classifications. Olson did not speak to any custodial supervisors. The job specifications which were subsequently

prepared based on the job descriptions and the brief interviews conducted by Olson differ from the descriptions of the duties given by District witness Lee Jorgenson, Supervisor of Building and Grounds, who has overall responsibility for custodial employes.

Jorgenson testified that custodians spend approximately 85% to 90% of their time performing cleaning duties. The Custodian IV's are part-time employes who generally work evenings during the winter and days during the summer. According to Jorgenson's testimony, with the exception of the Custodian II's who drive the vans picking up mail and delivering food to the schools and the Custodian III's who are laundresses, all of the custodians perform substantially similar, if not identical, duties. The difference in compensation between the Custodian I, II and III classifications does not reflect a difference in responsibility or job knowledge but is more a product of bargaining over the number of custodians that will be assigned to the various levels of custodian. Thus, the distinctions that appear on the job specifications do not fairly represent the job content of the I's, II's and III's. The Custodian I classification is given a point value of 276, whereas the Custodian III is given a point value of 206; however, according to testimony of Jorgenson, employes in the Custodian I, II and III classifications perform identical duties.

This raises a question as to the relationship of the custodial positions to the paraprofessional positions. Presumably, if the Custodian I classification is properly rated at 276 points and the Custodian II's and III's perform the same work, then they too should receive a value of 276 points. Clearly this would change the results of the job evaluation study. There appears to be only one classification in the paraprofessional bargaining unit that has a higher point value than the Custodian I, and that is the

classification of Tutor. Certain conclusions contained in the job evaluation study regarding the relationship of point value to compensation between the two bargaining units would be erroneous if the point values assigned to the different levels of custodians were in error, which they appear to be.

Although the District contends that the job evaluation study used in the instant case has not been validated by sufficient use as it has been used in only one prior study involving the Thornton Community College, there is no evidence in the record to indicate that the study is not valid. Certainly it would have been more desirable to have had the study conducted more frequently, but that factor alone does not invalidate the study. Similarly, the lack of a manual did not have an adverse impact on the conduct of the study. Hagglund and Olson rated the jobs independently and then compared their ratings and arrived at a consensus. Presumably they discussed their evaluations in those instances where they arrived at a different conclusion and reconciled the differences. If a number of people had been involved in conducting the study then obviously the need for a manual would have been present, but not under the circumstances involved in the conduct of the study at issue in this case.

The District also challenges the job evaluation study on the grounds that it combines clerical and custodial positions in one study, which, according to the District, is improper without a more detailed analysis of the factors used in making the evaluations. The Union responds that the same study was used in Thornton Community College and included both clerical and custodial positions establishing that the study can encompass both groups.

Almost any job evaluation study can be used to evaluate jobs with differing components, however the results would not be as reliable where a significant difference in job components exists. While a different study technique may have produced different results, the undersigned is not persuaded

that the study was fatally flawed as result of including clerical and custodial positions.

A further argument in opposition to the study is made by the District on the grounds that the study was essentially a "comparable worth" study, not a job evaluation study. There is really no evidence to support this assertion. There is no claim of unlawful conduct on the part of the District, and evidence establishes that there are female employes in the custodial bargaining unit. The study appears to be what it purports to be, a job evaluation study, albeit with an intended result. Obviously the only reason the custodial unit was included in the study was an attempt to justify a higher wage rate for the paraprofessional unit when compared to the custodial unit.

It has been the experience of the undersigned that job evaluation studies are used primarily for the purpose of determining the relative value of jobs within a particular universe, generally a bargaining unit. Once all of the jobs have been assigned a value, the parties then negotiate the number of labor grades that will be used and the assignment of jobs to the various labor grades based on the point value or other value assigned to each job. After this has been accomplished, the parties then negotiate the rate of pay which will be assigned to each labor grade.

In this case, the Union has not proposed making any adjustments in the existing compensation level for any positions based on the job evaluation study even though the study indicates that some of the jobs may not be properly assigned to the appropriate wage classification. Rather, the Union is seeking to tie the rates of the paraprofessional unit to the custodial unit based on the job evaluation study, and use the custodial rates as justification for its proposed wage increases.

There are a number of factors which would militate against this approach. First, the paraprofessional unit and the custodial unit are two separate bargaining units each represented by a different labor organization. The only similarity between the units is the common employer, the District. Second, the bargaining history of the two units differs significantly. The custodial unit has been organized for approximately ten years longer than the paraprofessional unit, and the custodial unit has been able to reach voluntary agreements with the District. The paraprofessional unit has been compelled to use the statutorily provided impasse procedures to reach agreements in most cases, as voluntary agreements have not been possible. This fact is particularly significant in the instant case.

It has been generally recognized by arbitrators that the results of the arbitration process should reflect, as nearly as possible, what the parties would have agreed to if a negotiated settlement had been achieved. In his decision involving these same parties Arbitrator Grenig stated the prevailing view when he concluded: "In determining which party's offer is more reasonable, arbitrators attempt to determine what the parties would have settled on had they reached a voluntary settlement." The parties to the instant dispute have gone to arbitration on four occasions. On two occasions the parties reached a consent award and in two cases the Union prevailed, the most recent being the decision of Arbitrator Malamud issued on February 15, 1988. Given this bargaining history, it cannot be persuasively argued that the Union voluntarily accepted settlements which were less than the settlements of comparable groups. Certainly those settlements have been less in terms of actual dollar amounts than the settlements achieved by the custodial unit. While the custodial unit has been considered as an "internal" comparable, the percentage increases given the paraprofessional unit over the years has

exceeded the percentage increases given to the custodial unit. The Union argues, with some justification, that the percentage increase isn't really relevant because the paraprofessional unit has been charged, as part of its total package, for the cost of step increases and this had reduced the amount of money available to apply to the steps and the salary classifications. This issue was addressed by Arbitrator Malamud in his most recent decision in which he concluded the inclusion of step increases in the costing had been done since 1980 and therefore: "This costing procedure [including the cost of step increases in the total cost] is part of the parties' bargaining relationship." He further concluded that any change in costing should be left to the parties in their collective bargaining. The Union has proposed no such change in its final offer.

A third factor which militates against consideration of the custodial bargaining unit as a comparable, a result which would be achieved if the job evaluation study became the basis for the wage increase proposed by the Union, is that the custodial unit has never been considered a "comparable" except when considering "internal" comparables and then the custodial unit's percentage increase, not its actual wage rates, were the basis of comparison.

In support of its position that the job evaluation study should be the foundation of the wage increases to be granted, the Union notes that the District had a job evaluation study done for administrative personnel, accepted the results of the study and implemented the study. Therefore, according to the Union, the District should similarly accept the job evaluation study in this case. The job evaluation study of administrative positions referred to by the Union didn't involved different bargaining units with different bargaining history, as the administrative personnel are not organized. Additionally, the District was not compelled to bargain over the implementation or any other

aspect of the study. It also appears that the study compared the wages paid by comparable employers, the same procedure that is generally followed in interest arbitration.

Comparables

The next issue to be addressed is the selection of the appropriate comparables. The District takes the position the appropriate comparables are those used by Arbitrator Malamud in the prior decision. Those include the districts within the Wisconsin Valley Athletic Conference--namely, Wausau, Stevens Point, Wisconsin Rapids, Antigo and Merrill--plus Mosinee and Wittenberg-Birnamwood. The Union's comparables include the school districts of Wausau and Mosinee plus the city of Wausau, the village of Rothschild and Marathon County.

A review of the Grenig and Malamud decisions suggests that the Union is proposing comparables in this case that are different from those it proposed in the prior two cases. In the Grenig case the Union argued that only the internal comparables were relevant. Subsequently, in the Malamud case the Union accepted the comparables with the exception of Wittenberg-Birnamwood arguing that that district was too small to serve as a comparable. That argument was rejected by Arbitrator Malamud.

It is generally recognized by interest arbitrators that although they are not bound by the comparables used by other arbitrators in disputes involving the same parties, to do so adds a degree of stability to the bargaining relationship. Arbitrator Malamud noted: "The comparability pool may serve as a stabilizing factor in the bargaining relationship between the parties." There are, however, circumstances where a second group of comparables may appropriately be given consideration. As noted by the Union, a number of arbitrators have used local labor market comparisons rather than athletic conferences in determining the wage rates for clerical and custodial positions.

Those arbitrators who have done so used as their rationale the conclusion that clerical and custodial positions are filled locally, thus the employer is competing within the local labor market, not within the athletic conference.

It is argued by the Union in this case that the city of Wausau and its environs is the area from which the District draws its employes and therefore the compensation paid by other governmental jurisdictions is germane to this dispute. In broad terms such argument has merit, especially when considering the percentage increase granted by the other public employers, but certainly no adequate comparison can be drawn based solely on job titles without any supporting data to establish comparability. Thus, the primary comparables must be drawn from those employers whose employes are performing similar, if not identical, work and the most obvious employers would be other school districts. This is the comparability group the parties have historically used in arbitration.

A review of the evidence as it relates to certain benchmark positions (Bookkeeper/Accounts Payable Clerk, Secretary to Senior High Principal, Elementary Secretary, Teacher Aide and Special Education Aide) establishes that the District is among the lower paying districts in the athletic conference. Under the District's final offer it will retain its relative position. The District will continue to be below the average at both the minimum and maximums of each classification. Its position is somewhat enhanced with the addition of longevity pay, however, longevity pay does not appear to be a particularly significant factor considering it amounts to $.60 per hour maximum and is awarded in increments of $.05 per year. It takes 17 years of employment to reach the maximum, while the median length of employment in the paraprofessional unit is 7.25 years and the average length of service is 12.89 years.

It is argued by the District that its percentage increase for 1989-1990 of 4.57% is competitive with the percentage increases granted by those comparables that have settled, and 5.12% for 1990-91 is in excess of those same comparables. It further argues that for the three-year period, including 1988-1989, its increase of 14.69% is competitive with the comparables. The evidence regarding the percentage increases supports the District's position. However, the use of percentages is sometimes deceiving as is evident from the following taken from District Exhibit No. 35 referring to the classification Secretary to Senior High Principal.

	1988-1989	1989-1990	Percent	1990-1991	Percent
Ave. Min.	6.65	7.20 (.55)	8.3%	7.68 (.48)	6.67%
Dist. Min.	6.64	6.94 (.30)	4.5%	7.30 (.36)	4.9%
Ave. Max.	8.05	8.39 (.34)	4.2%	8.92 (.53)	6.3%
Dist. Max.	8.01	8.38 (.37)	4.6%	8.81 (.43)	5.1%

Although the evidence indicates the District's percentage increases have equaled or exceeded those of the comparable districts, the evidence shows that over a three-year period the difference in the minimum of this classification between the average and what the District pays has increase from a penny to $.38 per hour. At the maximum the difference increased from $.04 to $.11.

The following table is a similar analysis of the Elementary Secretary classification.

	1988-1989	1989-1990	Percent	1990-1991	Percent
Ave. Min.	6.23	6.81 (.58)	9.3%	7.42 (.61)	9%
Dist. Min.	5.87	6.14 (.27)	4.6%	6.45 (.31)	5%
Ave. Max.	7.56	8.10 (.54)	7%	8.64 (.54)	6.7%
Dist. Max.	6.97	7.29 (.32)	4.6%	7.66 (.37)	5.1%

The evidence indicates a similar result for this classification, i.e., an increase in spread of rates from the average to what the District pays at both the minimum and the maximum. In 1988-1989, the average minimum rate was $6.23 compared to the District's rate of $5.87, a difference of $.36. By 1991, under the District's final offer the spread will widen to $.97. The spread at the maximum rate in 1988-1989 was $.59, and by 1990-1991 that spread will widen to $.98.

Based on the evidence, it seems reasonable to conclude that even if the District has granted percentage increases in excess of the percentage increases granted by other districts in the comparable pool, the District is falling behind the average.

Part of this may be attributable to the costing method used by the parties over the years of including step increases in the costing of the wage increases. Although the parties have had a practice of doing this over the years, the results of such practice are now becoming apparent and the parties may review this in future bargaining. However, as noted by Arbitrator Malamud in his decision, issues such as this are best left to the bargaining process and there is no issue regarding the costing before this arbitrator.

In the opinion of the undersigned, the evidence regarding the primary comparables suggests that an increase in excess of that offered by the District would be appropriate in this case. However, the undersigned is equally persuaded that an increase of the magnitude being sought by the Union, $1.60 over two years, is not warranted based on the primary comparables.

The secondary comparables urged by the Union for consideration also support an increase in excess of that which is being offered by the District. However, again, an increase of the magnitude being sought by the Union is not really justified. Under the Union's proposed increase if longevity is included

the Bookkeeper/Accounts Payable Clerk would become the highest paid of that classification among two of the secondary comparables urged by the Union--the Wausau and Mosinee School Districts. For the classification of Secretary to Senior High Principal, under the Union's proposal the District would be higher than Mosinee by $.85 an hour without longevity, and close to what is paid in the Wausau district. For the classification Elementary Secretary, the District would be paying less than Wausau or Mosinee. The latter classification is one which the Union contends is not properly assigned to the correct wage classification based on the job evaluation study.

Cost of Living

Both parties argued at length over the cost-of-living factor, tracing its history to the first collective bargaining agreement. The Union argues the appropriate method of computing the cost of living is to compare the increase in the CPI to the minimums and maximums of the wage classifications (labor grades). The District takes the position that the most appropriate method of computing the increase in the CPI and the increases granted to employes is to compare the percentage increase in wages received by employes annually over the period being compared. There is some validity to the position taken by both parties, however, it is not the function of this arbitrator to go back for a period of approximately ten years and determine whether the increases for that period of time in wages and the CPI were comparable. Clearly this was not contemplated when the CPI was included among the statutory criteria to be considered by an interest arbitrator. In this case, the relevant period is the period of the collective bargaining agreement for which the terms are being set--not a period of ten years. It is readily apparent that the Union's final offer far exceeds the CPI for the relevant period. The District's offer exceeds the CPI for the relevant period.

Interest and Welfare of the Public

Another statutory criterion which must be addressed is: "The interest and welfare of the public and the financial ability of government to meet the costs of any proposed settlement." While not contending that it cannot meet the costs of the Union's final offer, the District does contend that it would have a significant adverse impact upon the District if it had to do so. This case is somewhat unusual in that the budget for both years of the agreement which are in dispute have already been approved. While the District has had the money which it budgeted for increases available, and presumably earning interest, it is doubtful that the Union's final offer could be financed without some discomfort to the District. However, this is not the controlling factor in this case.

Summary

In the opinion of the undersigned, the evidence establishes the following: 1. Over the last ten years, the wages received by members of the paraprofessional unit have declined relative to the wages received by the custodial unit. 2. This is partly attributable to the method of costing the paraprofessional total wage package which includes the cost of step increases. 3. The paraprofessional bargaining unit and custodial bargaining unit are two separate and distinct bargaining units with different bargaining histories and separate and distinct classifications. 4. The custodial unit is an internal comparable and the percentage increase granted to that unit is relevant as an internal comparable. 5. The job evaluation study did indicate the need to study the internal relationship of the paraprofessional classifications. 6. Regardless of what set of comparables are used for comparison purposes, the primary comparables, i.e., the athletic conference and contiguous districts, or second-tier comparables, the increase being sought by the Union is excessive

compared to increases received by comparables. 7. While the District has granted wage increases that, when expressed in percentage terms equal or exceed the increases granted by the primary comparables, the District is falling behind the average of the primary comparables.

Based on these conclusions, it is the opinion of the undersigned that the Union's final offer is excessive. It is also the opinion of the undersigned that an increase in excess of that contained in the District's final offer is warranted. After giving due consideration to the evidence and the statutory criteria, it is the opinion of the undersigned that the District's final offer is to be preferred over that of the Union.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

That the District's final offer be incorporated into the collective bargaining agreement for 1989-1991 along with the parties' stipulations.

Neil M. Gundermann, Arbitrator

Dated this 14th day
of February, 1991 at
Madison, Wisconsin.