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In the Matter of an Arbitration between

SCHOOL DISTRICT OF RIVER FALLS

and

WEST CENTRAL EDUCATION ASSOCIATION (SECRETARIAL PERSONNEL UNIT)

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Case 18 No. 42610
INT/ARB-5334
Decision No. 26296-A

Appearances:

Mr. Richard J. Ricci, Attorney, Mulcahy & Wherry; representing the District.

Mr. Jeffrey L. Roy, Executive Director, West Central Education Association; representing the Association.

Before:

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The School District of River Falls, Wisconsin, hereinafter referred to as the District or Board, and the West Central Education Association, Secretarial Personnel Unit, hereinafter referred to as the Association or Union, were unable to reach an agreement on the terms of a new contract. Pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, the Wisconsin Employment Relations Commission appointed the undersigned to serve as arbitrator in this matter. An arbitration hearing was held on April 5, 1990 in River Falls, Wisconsin, and post-hearing briefs were exchanged through the arbitrator on May 22, 1990.

DISTRICT'S FINAL OFFER:

Article XVIII - Compensation
Revise A. and B. as follows:

A. 1989-90 Salary Schedule

Step 1	6.20	
Step 2	6.45	O'Brien
Step 3	6.80	Lueck, Wood
Step 4	7.15	Ogilvie, Briggs, Paulson, Jorgenson
Step 5	7.52	Kirk, Williamson, Nordgren, Gunderson
Step 6	8.00	Jones, Richards
Step 7	8.50	
Step 8	9.03	

Mittelstadt, Walen & Luka red-circled at $9.33.

B. 1990-91 Salary Schedule

Step 1	6.20	
Step 2	6.45	
Step 3	6.80	O'Brien
Step 4	7.15	Lueck, Wood
Step 5	7.52	Ogilvie, Briggs, Paulson, Jorgenson
Step 6	8.00	Kirk, Williamson, Nordgren, Gunderson
Step 7	8.50	Jones, Richards
Step 8	9.03	
Step 9	9.63	Mittelstadt, Walen, Luka

ASSOCIATION'S FINAL OFFER:

Article XVIII - Compensation
Revise A. as follows:

	1989-90 Per Hour	1990-91 Per Hour
Step 1	6.45	6.70
Step 2	6.71	6.98
Step 3	7.07	7.35
Step 4	7.44	7.74
Step 5	7.82	8.13
Step 6	8.58	8.92
Step 7	8.84	9.19
Step 8	9.55	10.10

Article XX - Management Rights

L. Change 2nd sentence date to July 1, 1991.

First Issue - COMPENSATION

DISTRICT'S POSITION:

It is noted by the District that as of the 1989-90 school year, the District is moving from the Middle Border Conference into the Big Rivers Conference. Therefore, it is appropriate to include both conferences among the comparables. It is well documented that arbitrators have generally recognized that schools in the athletic conference should be used as comparables. See Oconto Unified School District, Dec. No. 19895-A (6/83); School District of Marion, Dec. No. 19418 (1982).

According to the District, there is no basis for expanding the comparables beyond the athletic conferences in which the District is and was a member. In contrast, the Association proposed a separate set of comparables for each issue. In comparing wage rates, the Union offers only three school districts--Hudson, Prescott and Ellsworth. Only Hudson and Ellsworth belong to either of the conferences. While the Association may argue that Prescott is a comparable because it is contiguous to the District, the Association has failed to include two other districts which are also contiguous.

With respect to the issue of subcontracting language, the Association proposes as comparables the schools within the Big Rivers, Middle Border and Dunn-St. Croix Conferences as well as CESA 11, Altoona, Augusta and Fall Creek. The District submits the Association cannot create comparables for each issue simply to provide additional weight where weight is needed.

The District contends that its final offer is more reasonable based on increases received by comparable school districts. The District asserts that its wage offer provides a more reasonable increase based on maximum wage rate increases, actual benefit to the employe, and total percentage increases in wages and total package among the comparables.

Arbitrator Sharon Imes in Greendale School District, Voluntary Impasse Procedure (5/25/83), affirms the use of maximum wage rate increases as the best determinant regarding the effect of wage offers. Using the athletic conferences as the basis for the comparables, it is readily apparent that the District's 1989-90 maximum wage rate is, in most cases, well above those of the comparables. In the Big Rivers Conference, Hudson and only one of the four classifications in Eau Claire exceed the District's offer. Hudson is the only non-unionized member of the Big Rivers Conference. As such, its wage rates do not reflect bargaining. The District's maximum wage rate when compared to the Middle Border Conference is ranked No. 1, exceeding the next highest rate by 21 cents per hour. The District's rank in both conferences has not changed since 1988-89; it remains below only Hudson and one classification in Eau Claire in the Big Rivers Conference, and remains No. 1 in the Middle Border Conference for 1989-90.

A comparison of the cents-per-hour increase in the maximum wage rates from 1988-89 to 1989-90 reinforces the District's position that its offer is well in keeping with increases received among the comparables.

The District's maximum wage increase is clearly not out of line among the comparables. Its offer of a 30-cent increase exceeds the average of 27 cents in the Middle Border Conference, and is slightly behind the 35-cent average in the Big Rivers Conference. In contrast, the Union's offer of a 52-cent per-hour increase clearly exceeds the averages of both conferences and ranks as second highest to only one classification within all the comparables.

Further examination of the District's maximum wage-rate offer of $9.33 in 1989-90 demonstrates that District employes can expect to earn a higher maximum wage than employes within comparable districts. This evidence clearly substantiates the District's contention that its offer is more than reasonable.

Only 2 of 19 wage rates are higher than the District's offer, and the remaining 17 range from 21 cents to $2.67 per hour less than the District's offer. There can be no justification for the District improving upon an already more than favorable comparison.

The Association may contend that consideration should also be given to the minimum wage rate. The District's proposed minimum wage rate--$6.20 per hour--remains unchanged from the 1988-89 schedule. However, nothing in the contract requires that all new hires be put on the wage schedule at Step 1, the lowest rate. The District's position is and has been that it prefers to hire experienced secretarial employes and is willing to place them on the salary schedule at a step commensurate with their experience and ability. This was evident with the hiring of three new secretaries in 1988-89, the second year of the initial contract. One of the new hires was placed at Step 4 at $7.15 per hour. Another was placed at Step 2 at $6.45 per hour, and a third was hired at $6.55 per hour prior to the agreement of the initial contract and was therefore red-circled at that amount. It is noted by the District that when employes are hired at a step other than the minimum, they can expect to progress to the maximum rate more rapidly.

It is important to recognize the actual benefit being offered to the unit members in 1989-91. The District has modified Step 6. The 1988-89 schedule provides for $8.25 per hour at Step 6; that figure has been changed to $8 on the successor schedule to provide a more balanced increase between steps. Additionally, although the 1989-90 schedule has a rate of $9.03 at Step 8, three employes have been red-circled at $9.33 for that year. The Board adds a 9th step in 1990-91 of $9.63 and moves those three red-circles employes to Step 9 in 1990-91. The District's offer provides that each employe moves one step

on the schedule every year. Based on that step increase, the average hourly increase proposed by the Board for the two years of the contract is as follows:

1989-90 42 cents per hour
1990-91 40 cents per hour

In contrast, the Association's offer proposes an increase in the wage schedule each year as well as movement to the next step--in essence, a double increase. The Union's increase in the wage schedule reveals an average wage increase of 32 cents per hour in 1989-90, and 33 cents per hour in 1990-91. The evidence reveals that the average hourly increase per employe based on the Association's offer appears as follows:

1989-90 74 cents per hour
1990-91 75 cents per hour

The Association's offer is close to double that of the Board. Comparing those offers to the average increases among the comparables provides evidence that the Association's offer is clearly out of line.

The 1989-90 average increases in minimum and maximum wage rates within the athletic conferences compare as follows to the parties' offers:

	Average MIN Increase	Average MAX Increase
Big Rivers Conference	35 cents	35 cents
Middle Border Conference	25 cents	27 cents

The District's offer of 42 cents per hour in 1989-90 clearly exceeds the average wage schedule increase in both conferences. The Union's offer of 74 cents is more than double that of the Big Rivers Conference and almost triple that of the Middle Border Conference.

The District also argues that the percentage increase in wages and total package supports its final offer in contrast to that of the Association. The parties' respective offers for the two years of the successor agreement amount to the following percentage increases:

WAGES ONLY	1989-90	1990-91
Board:	5.70%	5.14%
Union:	10.06%	9.14%
(ER EXs 7 and 8)		

TOTAL PACKAGE	1989-90	1990-91
Board:	7.09%	7.04%
Union	10.97%	10.52%
(ER EXs 5 and 6)		

The District's wage offer reflects a 5.7% increase for 1989-90, well above those districts settled among both the Big Rivers and Middle Border Conferences. There are no 1990-91 settlements in the Middle Border Conference, and the District's 5.14% offer exceeds the 5% increase in Hudson, the only known settlement in the Big Rivers Conference. The Association's offer of 10.06% in 1989-90 and 9.14% in 1990-91 is clearly well beyond the pattern established among the athletic conferences.

Many districts do not cost total package costs for support staff. Those settlements available, however, lend support to the Board's offer. Those available settlements--two in the Big Rivers and one in the Middle Border--are all at 5%. The Union's offer of 10.97% in 1989-90 is more than double that of the comparables, while the Board's offer of 7.09% is already generous. The only available settlement in 1990-91 is Hudson at 5.5%, which is less than the Board's offer of 7.04% and far below the Union's inflated offer of 10.52%.

The District argues that the internal comparables also support its final offer. The Board's 1989-91 offer to the bus drivers, custodians, food service, paraprofessionals and special education assistants ranged from 8.9% to 12.17% (the Union's offer for special education assistants was 12.89%). This is in contrast to the District's 10.84% offer to this unit and the Association's request for 20.58% for this unit.

According to the District, its offer is more than comparable with other public sector employers. The counties of Pierce and St. Croix are offering increases in wages in the 3.2% to 3.6% range for 1990-91. The District's offer of 5.14% already well exceeds those offers. Additionally, the wages paid by the District are very comparable with those paid by other public employers. Therefore the District is not in a position where it must provide additional compensation to establish comparable wages.

The cost of living further supports the District's position. The CPI for 1988-89 increased by 4.46% and for 1989-90 increased 4.20%. The District's proposal for 1989-90 and 1990-91 far exceeds the cost of living. The cost of living certainly doesn't justify increases for each of the two years in excess of 10%.

Based on the District's final offer, the 16 employes will average an increase of $2,354.47 over the two-year period. In contrast, under the Association's final offer the average increase would amount to $4,268.25 during the same period, and this amount is clearly excessive.

For all of the above reasons, the District asserts its final offer regarding compensation is the preferred offer and should be selected by the arbitrator.

ASSOCIATION'S POSITION:

It is the Association's position that the District has not offered a "quid pro quo" in the area of compensation for changing the "status quo" in relation to Article XX-L. Additionally, a review of the District's final offer establishes that it contains an increment step and no percentage increase on the rates. Moreover, the District proposes dramatic changes in the previously negotiated salary schedule by removing the members at the top of the schedule and red-circling these members for 1989-90, and by reducing Step 6 from $8.25

to $8, which affects two unit members for 1989-90 and four unit members for 1990-91. For 1990-91, the District offers no increase on the rates, just an increment, and places those members that were red-circled at a new step (Step 9), again changing the salary schedule from the previous year.

In contrast to the District's final offer, the Association's final offer keeps the status quo by increasing the negotiated salary schedule by 4% at Steps 1-7 and by 5.75% on Step 8. The Association's final offer does not disrupt the schedule by red-circling employes just to give them an increase in wages, nor does it diminish any steps in order to rob one step to pay for another.

Arbitrator Krinsky stated in the School District of Barron, "any substantial restructuring of the salary schedule should be the result of voluntary collective bargaining and not imposed by the arbitrator." In keeping with arbitral authority, the Association's final offer keeps the collectively bargained structure of the salary schedule, whereas the District's final offer dramatically changes the salary structure.

According to the Association, the comparison of wages should be the school districts and public institutions in the Twin Cities Metro Area. Union exhibits show the proximity of the District to the Twin Cities, and the source for these documents was obtained from the River Falls Chamber of Commerce. Included in the area are the districts of Hudson, Prescott and Ellsworth which are all in the Twin Cities Metro Area.

Other comparables used by the Association include Pierce and St. Croix Counties and well as CESA #11, the City of River Falls and the University of Wisconsin-River Falls.

Compared to the Hudson district and the University of Wisconsin-River Falls, the wages are above what is proposed by the Association. In Prescott

and CESA #11, the top wage is above what is proposed by the Association. In the City of River Falls, the wages are very comparable. The Pierce and St. Croix County wages on the starting rates are well above the District's starting wage, and though the top rates are below the District's, they do receive a longevity bonus for service. The only comparable that is below the District is Ellsworth, and it is ending a two-year agreement as of June 30, 1990.

While the Association recognizes that arbitrators have frequently adopted the athletic conferences as a basis for comparables, the Association argues the geographic proximity it proposes is true and honest. The District lies both in St. Croix and Pierce Counties. The Hudson, Ellsworth and Prescott districts are not only in the same athletic conference as the District, but are within 15 miles of the District and are also part of Pierce and St. Croix Counties. The city of River Falls and University comparables are true as the District shares the same city, as well as counties.

While the District argues that the appropriate comparables include the Big Rivers and Middle Border Athletic Conferences, the Association contends the geographic proximity of the District to these other districts is vast in comparison to the Association's comparables. For example, the distance from River Falls to Rice Lake is 74 miles, to Amery is 58 miles, to Eau Claire is 81 miles, and to Chippewa Falls is 68 miles.

Testimony establishes that employes working for the District and living in River Falls spend a great deal of their activities not only in River Falls but in the Twin Cities area. Additionally, the District receives two daily newspapers, the Minneapolis Star Tribune and the St. Paul Pioneer Press. The area is also serviced by radio and television stations that originate in the Twin Cities.

According to the Association, the evidence and arguments are persuasive and go beyond mere assertion to alleged comparability. The Association argues that the justification for comparability is more than an inclusion of these comparables because they tend to support the Association's position, but for the reasons stated above, they are the comparables that are true and correct.

The District's exhibits claim that the wage increases sought by the Association for 1989-90 and 1990-91 by the Union are 74 cents and 75 cents respectively, whereas the District's offer is 42 cents and 40 cents respectively. What the District fails to point out in these examples is that the increment is included in the Union's 74 cents and 75 cents. In comparing these bargaining unit members with the Ellsworth secretaries, who received 25 cents, it would seem that the Union's final offer is way out of line. What the District fails to point out is that the secretaries in Ellsworth also received an increment and that cost is not reflected in the evidence. The Association would then assume that in the District's exhibits cited, these figures do not reflect an increment cost. The Association's average increase in cents from one year to the next is not 74 cents for 1989-90, but rather 32 cents; and not 75 cents for 1990-91, but rather 33 cents, as the District is figuring.

Testimony also revealed that the secretaries are not compensated equally for their duties in comparison with other employes of the District. Testimony indicates a mail delivery employe is paid $10 per hour, compared to the secretary to the Director of Academic Services, who is paid $7.15 per hour. Additionally, all 12 custodians will be making over $9 per hour for 1990-91. In contrast, only 3 out of 16 secretaries will be making over $9 per hour.

The job descriptions for the custodial and maintenance personnel, as well as the job descriptions for the secretarial and clerical personnel are in evidence. In the custodial duties there are several "key words" that are used

over and over: clean, sweep, vacuum, replace. In looking at the position guides and duties of the secretaries of the District, the following "key words" are used: computer and word processing, prepare, organize, coordinate, assume responsibility of, meet public, maintain, and assist students and staff. The Association submits it is obvious that these "key words" for the secretarial personnel have more weight than the "key words" for the custodial duties. The Association contends that it is simply not fair that secretarial employes not be paid comparably to those employes of the District who are performing less complicated work.

For the above reasons, the Association submits that its final offer in the area of compensation is preferable and should be awarded by the arbitrator.

DISCUSSION:

The parties disagree as to the comparables which should be used in comparing their respective proposals in the area of compensation. The District takes the position that the appropriate comparables are those schools in the Big Rivers and Middle Border athletic conferences. The Association's comparables include the school districts of Hudson, Prescott and Ellsworth, the counties of Pierce and St. Croix, the city of River Falls, UW-River Falls and CESA 11.

In support of its comparables, the District argues that arbitrators universally have adopted the athletic conference as the preferred group of comparables when deciding salary issues in the school setting. There is no reason, according to the District, for this arbitrator to deviate from this recognized practice. The Association argues that the District is within the greater Twin Cities area and as such is influenced by that economy, as are other public employers within that area. Therefore, the comparables selected by the Association are preferable because they include those public employers influenced by the Twin Cities.

The selection of an athletic conference as the appropriate group of comparables is quite prevalent in disputes involving school districts. It is also generally recognized that the compensation paid by an employer may be influenced by the employer's proximity to a larger labor market and the attendant higher level of compensation paid in that market. In the instant case, it appears that both sets of comparables are worthy of consideration.

The evidence introduced by the District can be summarized in the following table:

	1989-90		1990-91		
Employer	Min.	Max.	Min.	Max.	Base + Steps
Chippewa Falls	6.81	7.53	N/S		2
Eau Claire	7.06	9.63	N/S		4
Hudson	8.56	10.88	8.98	11.42	3
Menomonie	7.14	8.86	COLA		3
Rice Lake	N/S		N/S		1
Amery	N/S		N/S		
Baldwin-Woodville	7.60	9.12	N/S		
Durand	5.92	8.06	N/S		2
Ellsworth	6.22	8.90	N/S		3
Mondovi	7.57	8.79	N/S		2
New Richmond	N/S		N/S		4

(1) Minimums and maximums include the lowest minimum and the highest maximum without regard to classification.

(2) N/S = Not Settled

The above table clearly establishes that within the athletic conferences, the District's final offer is highly competitive at the maximum salary level for 1989-90. Only three district have higher maximums, Hudson, Eau Claire and

Baldwin-Woodville. (The latter has a maximum of $9.12 whereas under the District's final offer three employes would be receiving $9.33 for 1989-90 although the salary schedule has maximum of $9.03.) The District's final offer does not compare as favorably at the minimum of the salary schedule. However, the evidence establishes the District regularly hires above the minimum level if experienced employes are available, therefore the minimum is not as significant as in those districts where employes are routinely hired at the minimum.

Evidence introduced by the District indicates that the average increase in the minimum and maximum salaries of clerical employes for 1989-90 in the Big Rivers Conference was 35 cents per hour, and for the Middle Border conference the average increase in minimum was 25 cents and the average increase in the maximum was 27 cents.

Evidence introduced by the Association serves as the basis for the following table:

	1989-90		1990-91	
Employer	Min.	Max	Min.	Max
Hudson	8.56	10.88	8.98	11.42
Prescott	6.40	10.40	N/S	
Ellsworth	6.22	8.90	N/S	
River Falls (City)	6.70	9.27	N/S	
Pierce County (1)	8.52	9.03	8.83	9.34
St. Croix County (2)	6.94	8.97	7.16	9.26
UW-River Falls	6.70	12.48	N/S	
CESA 11	5.98	9.91	1% less than professional contract	

(1) Longevity paid at 1% to 3% for 5 to 15 years of service.

(2) $50 per year for 5 to 9 years of service; $100 per year for 10 or more years of service.

The above table establishes that for 1989-90 the District's final offer is not competitive at the maximum of the salary schedule for a number of the comparables urged by the Association. Of the comparables proposed by the Association, the District's final offer would equal or exceed Ellsworth, Pierce and St. Croix Counties for 1989-90. Under the Association's final offer five of the Association's comparables would be higher than the District for 1989-90--Hudson, Prescott, UW-River Falls, city of River Falls, and CESA 11.

There is insufficient evidence in the record to determine the actual increase for the 1989-90 contracts over the 1988-89 contracts for the comparables urged by the Association. For 1990-91, it is possible to ascertain the cents-per-hour increase for three of the comparables: Hudson, Pierce County and St. Croix County. Hudson increased the minimum for 1990-91 over 1989-90 by 42 cents and the maximum by 54 cents. Pierce increased the minimum and maximum by 31 cents, and St. Croix increased the minimum by 22 cents and the maximum by 29 cents.

For 1989-90, the District proposes a range of $6.20 to $9.03, and for 1990-91 the District proposes a range of $6.20 to $9.63. This is in contrast to the Association's proposal of $6.45 to $9.55 for 1989-90, and for 1990-91 a range of $6.70 to $10.10. The District's proposal includes no schedule increase for 1989-90 and 1990-91, but does add a 9th step for 1990-91 and a reduction of 25 cents at Step 6 commencing with the 1989-90 contract year. The District's proposal, which provides only for a step increase in both years, provides an average increase of 40 cents for 1989-90 and 42 cents for 1990-91. The Association's proposal, which provides for both a step increase and an across-the-board increase for both years, provides for an increase of 74 cents for 1989-90 and 75 cents for 1990-91. In percentages, the District's proposal

represents an increase of 5.7% and 5.14% contrasted with a percentage increase of 10.66% and 9.14% represented by the Association's proposal.

A comparison of the final offers of the parties with both groups of comparables leads to two conclusions. First, depending upon which comparables are used, the District's or the Association's, the District is either highly competitive or lagging behind the wages paid to other clerical employes. However, the District is competitive with three of the eight comparables urged by the Association, Pierce County, St. Croix County and Ellsworth, for 1989-90. In the opinion of the undersigned, UW-River Falls is not an appropriate comparable as the rates for that institution are established by state-wide bargaining. The District definitely lags behind Hudson, Prescott, city of River Falls and CESA 11. However, the District is highly competitive with both the Middle Border and Big Rivers athletic conferences.

Due to the geographic proximity of the District to the Twin Cities, an argument can be made that the District's employes are entitled to a somewhat higher wage rate than is being offered by the District. However, it is difficult to conclude, based on the external comparables, that an increase of the amount being sought by the Association, 74 cents and 75 cents, 10.66% and 9.14%, is reflective of settlements in the area. The Association's increase for 1990-91 far exceeds the increases granted in three of the comparables urged by the Association. While there may be justification for an increase somewhat in excess of the average increase, the undersigned can find no justification for the magnitude of the increase being sought by the Association.

While the undersigned recognizes that the Association's proposal includes increments and an across-the-board increase, nonetheless, the total increase being sought by the Association appears to exceed the pattern of settlements even among its comparables.

It is also readily apparent that the cost of living doesn't support an increase of the magnitude being sought by the Association. This is especially true where the magnitude of the cost of living for the first year of the agreement is already known.

Although the District relies upon internal comparables in support of its position, those comparables have less significance in this case due to the fact the internal comparables are unorganized with the exception of two units, and as such, are subject to the unilateral action of the District.

An additional argument is advanced by the Association that the District's final offer, which includes a reduction of 25 cents at Step 8 of the salary schedule and the addition of Step 9 in the second year of the agreement, represents a significant change in the salary schedule. The Association quotes arbitral authority which states in essence, "any substantial restructuring of the salary schedule" should be negotiated, not arbitrated, and therefore the undersigned should not award in favor the District because its final offer contains a significant change in the salary schedule.

It is undisputed that the District's final offer contains changes in the format of the pre-existing salary schedule. The question really becomes whether the proposed changes represent a "substantial restructuring" of the salary schedule thereby subjecting it to negotiations rather than arbitration. In the opinion of the undersigned, the changes are not substantial enough to remove them from consideration by the arbitrator. The changes do not affect the method of movement through the salary schedule nor do they introduce concepts not previously contained in the prior agreement. The prior agreement provided for the red-circling of employes as does the District's final offer. The adjustment of Step 6 brings it into line with the other steps, and the

proposed addition of a step to the salary schedule is nothing more than a wage increase designed to provide relief for those employes red-circled at $9.33.

In support of its final offer, the Association draws the undersigned's attention to what the Association contends is unequal treatment accorded the clerical unit compared to the custodial unit. It is noted by the Association that all of the custodial employes will be above $9 per hour while only three of the clerical employes will be above that figure for 1989-90. In support of its position of unequal treatment, the Association relies solely on the job descriptions of the positions in the respective units. In the absence of substantially more information the undersigned cannot reach the conclusion urged by the Association.

Based on a review of the evidence, it is the opinion of the undersigned that an increase somewhat in excess of that offered by the District may be warranted. However, the evidence doesn't support an increase of the magnitude being sought by the Association. Neither the District's relative standing among both groups of comparables nor the pattern of settlements among the comparables would justify an increase in the amount being sought by the Association. Additionally, the cost of living would not support an increase of the magnitude being sought by the Association.

Second Issue - CONTRACT LANGUAGE

DISTRICT'S POSITION:

The Union has proposed that language in the prior agreement be changed, thereby effectively changing the status quo. The existing subcontracting language was agreed upon by the parties as a "sunset" provision in order to effect a settlement in the initial collective bargaining agreement between the parties. The Union is attempting to change the status quo by removing the effect of the "sunset" language.

The language in dispute, Section L of Article XX, Management Rights, in the initial 1987-89 contract reads as follows:

> "The Board shall reserve the right to subcontract for goods and services as it deems necessary. However, prior to July 1, 1989, the District shall not subcontract any services now being exclusively performed by bargaining unit members."

Black's Law Dictionary, 5th Edition, 1979, defines status quo as: "The existing state of things at any given date."

The status quo is the contract language existing in the initial contract which provides the sunset provision. The District is not asking for a change in the language, whereas the Union has proposed changing year "1989" to "1991," in essence, changing the status quo.

The WERC adopted a dynamic status quo doctrine in Kenosha County, Dec. No. 22167-B (8/86), in which the Commission stated:

> "As we have defined it, the dynamic status quo doctrine calls for an examination of the language, past practice, and bargaining history relevant to the manner in which employes have been compensated to determine what the status quo as to compensation is and whether said status quo contemplates changes in compensation during a contractual hiatus."

In Lake Holcombe School District, Dec. No. 23836-A (6/87), Arbitrator Fogelberg applied the concept adopted by the WERC in Kenosha County, supra, to disputes involving language issues.

The dynamic status quo doctrine aims to effect the parties' intent, guaranteeing that the parties' interest expectations will be fulfilled. It has been the intent of the District from day one of the initial exchange of proposals for the initial collective bargaining agreement that the District have the right to subcontract for goods and services.

A review of the bargaining history between the parties, as well as the express language of the 1987-89 contract, demonstrates an intent to allow the District the managerial right to subcontract on or after July 1, 1989. The language is very clear to that effect.

The 1987-89 agreement was the first agreement between the parties, and subcontracting language remained an issue throughout the bargaining for that initial contract. Included in the initial proposals of the District was the express language under the Management Rights clause, "To contract out for goods and services."

The specific language in the initial contract had first been agreed upon by the special education assistants in their mediation session. The mediator in that session proposed to the secretarial unit that the same language be agreed to for the secretaries' initial contract. The secretarial unit agreed to the proposed language with the only change being the date--July 1, 1989, the first date of the successor agreement. The District was setting a time limit; it was the intent of the District that on or after July 1, 1989, the District would again maintain the right to subcontract for goods and services. It is emphasized by the District that the Union agreed to the language.

It is clear that the express language of the 1987-89 contract as well as bargaining history demonstrate an intent that the District be allowed the right to subcontract on or after July 1, 1989.

In the bargaining for the 1989-91 contract, the Union suggested changing the year from 1989 to 1991. The District would not agree to that change, contending that it had a need to subcontract for particular services.

Testimony and evidence substantiates the fact the District had no plans to subcontract "in general," but the District does have a problem getting Board minutes done and has a need to update the District's policy manual. Therefore, it is obvious that the District has established a need, and consistently made that need clear, that it be allowed to subcontract; and it was the District's intent that provision occur after July 1, 1989. The District, therefore, maintains there should be no change in the language.

It is asserted by the District that the subcontract provision contained in Article XX, Management Rights, Section L, is unequivocal. It means exactly what it says, that is, that the District will not subcontract services being exclusively performed by bargaining unit members before July 1, 1989. That which is prohibited prior to that date is allowed on and after that date.

The Union disagrees as to the meaning of the language contained in Section L. In Elkouri and Elkouri, How Arbitration Works, 4th Edition, it states at page 349:

> "Even though the parties to an agreement disagree as to its meaning, an arbitrator who finds the language to be unambiguous will enforce the clear meaning."

If the parties had intended that the District would never be allowed to subcontract services, the parties could easily have stated that with the wording typically used to provide such a result, that is, by inserting the words "during the term of this agreement" in place of "prior to July 1, 1989," or by simply stating that "the District shall not subcontract for goods or services." Obviously neither was done.

Arbitrators have generally recognized two conditions that must be met in order to change the status quo: (1) There must be a demonstrated need for the change; and (2) if there has been a demonstration of need, has the moving party provided a quid pro quo for the proposed change. The Union has demonstrated no need to change "1989" to "1991." It is obvious from its own meeting notes that the Union is well aware that the District has no intention of subcontracting for services currently rendered by its bargaining unit members. The only need to subcontract expressed by the District has been in the preparation of Board minutes and the revision of the District's policy manual. Neither would result in loss of work for members of the bargaining unit.

A factor often required to change the status quo is whether the change is supported by the comparables. In Amery School District, Dec. No. 25919-A (7/89), Arbitrator Yaffe comments on evidence of comparability noting that in the absence of an emerging pattern of agreements in a particular area, there is no pressing need to circumscribe the employer's rights in an agreement. It is hard to imagine how the Union might conclude there is evidence of an "emerging pattern" among the comparables. In this regard, the District asserts there is no basis to extend the comparable pool beyond the Big Rivers and Middle Border Conferences, or to compare teacher contracts to support-staff contracts. The services of teachers are not generally contracted out and have no relevance for comparability purposes.

Eliminating the extraneous comparables presented by the Association, the comparables recognized by the District remain those of the athletic conference. A review of the evidence establishes that out of 11 schools within the pool, 3 have no language, 4 have modified versions of "to contract out," 3 are nonunion--thus having managerial right to subcontract--and one is newly

unionized and is not yet settled. The Union cannot claim that a pattern is emerging.

Another factor to be considered by the arbitrator is the status of the internal comparables with respect to the Employer's right to subcontract. The District's nonrepresented employes--bus drivers, custodians, food service employes, and paraprofessionals--are all susceptible to the District's right to subcontract. There is no evidence in the record to indicate this right has provided any hardship or problems for the employes of the District.

It is generally recognized that where a party is proposing to change the status quo, the party is expected to provide a quid pro quo. Throughout the negotiating process there has been no mention of a quid pro quo being offered to the Employer.

In Black's Law Dictionary, 5th Edition, "quid pro quo" is defined as:

> "Quid pro quo: What for what; something for something. Used in law for the giving of one valuable thing for another. It is nothing more than the mutual consideration which passes between the parties to a contract, and which renders it valid and binding."

The Union has offered absolutely nothing to the District. There is nothing in the Union's final offer that could be interpreted as a quid pro quo, nor was there any testimony that anything was being offered to the Employer in consideration of the District agreeing to a change in the language. The Union has not met the criterion of providing a quid pro quo, and therefore, has not met the conditions required to change the status quo.

Therefore, the arbitrator should award in favor of the District by retaining the current contract language.

ASSOCIATION'S POSITION:

The Association desires to maintain the language in the 1989-91 contract as it currently exists in the contract by the extension of the date in the

second sentence to read July 1, 1991, thus maintaining the status quo. The District wishes the date to expire in the new contract and thus dramatically change the intent of the language by giving the District the right to contract those services now being exclusively performed by bargaining unit members, thus the District would change the "status quo."

Status quo is defined as, "the existing state of things at any given date" (Black's Law Dictionary, revised 4th Edition); and, as "the postures or positions which existed; the conditions or situations which existed" (Law Dictionary, Gifis, 1975).

Allowing the language to expire in the new contract would alter the intent that exists in the current contract and would give the District the right to contract out for services now being exclusively performed by bargaining unit members. The District's final offer changes the status quo and also makes no offer of a quid pro quo.

The Association argues that the secretarial unit accepted the Board's mediation offer in October because the District had offered the Association a "quid pro quo" for not extending the date in Article XX-L. An increase of $1 per hour for 1989-90 would mean an increase at the bottom of the schedule of 16.13% and 11.07% at the top. The District's final offer makes no quid pro quo for a change in the status quo.

The date was placed in the second sentence of Article XX-L as a compromise which was achieved by both parties in the mediation session. This language was the compromise used by the mediator to settle the contract of another bargaining unit. The language intends to insure that if the District needs to subcontract, it will inform the Union of its desire in the next bargaining session and bargain the impact; if not, the date would simply be extended into the new contract.

Changes in the status quo should be bargained not arbitrated. The overwhelming weight of arbitral authority in Wisconsin holds that the burden of proof with respect to establishing the need for any change in the status quo falls on the party proposing the change. See School District of Colfax, Dec. 19886-A (3/83); Baldwin-Woodville Area School District, Dec. No. 12182. Arbitrator Krinsky, in Barron, Dec. No. 16276 (11/78), points out:

> "The Arbitrator holds strongly to the view that unless exceptional circumstances prevail, a fundamental change in layoff language or any other fundamental aspect of the bargaining relationship would be negotiated voluntarily by the parties, not imposed by an arbitrator."

Arbitrator Krinsky goes on to state that before an arbitral change is imposed there needs to be a "compelling reason for the arbitrator to change the language."

The requisite burden of proof standard is also defined in Wisconsin Statutes. Although the issue being cited may deal with affirming the findings of a WERC examiner, Chairman of the WERC, Mr. Stephen Schoenfeld, points out that, ". . .the requisite burden of proof standard provided for in Sec. 111.07(3) which is incorporated by reference in Sec. 111.70(4)(a) Stats., and which states, '. . . the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of evidence.'" WERC Plum City, Dec. No. 22264-B, 6/23/87.

The District has stated it has "no plans, in general," to contract out for services during the new contract, yet it wants to change the status quo of Article XX-L.

The Union asserts that in impasse proceedings it is "established practice" that arbitrators are unwilling to change working conditions by a binding arbitration award in the absence of an affirmative demonstration of need by the moving party. Arbitral authority holds that the burden of proof to justify a

change in an existing contract provision is on the party proposing to effect the change. Therefore, the Association submits that to change existing practices, the moving party must have a compelling reason for any revision which was a result of a past negotiations process.

The Association argues that the intent of the parties must prevail, and the intent of the parties in this language was that the District could not subcontract for the duration of the dates that were listed. Testimony of Union witnesses established that the idea of a sunset clause with relationship to the subcontracting was never brought up during the negotiations process for 1987-89. During the current round of bargaining the District was asked if it had the need to subcontract and the answer was no. By extending the date of Article XX-L, the intent of the parties is maintained.

It was stated in the testimony of a District witness that the District had difficulty in getting a secretary to take minutes of the Board meetings; also from time to time there is a need to have a policy manual revised and it would require an extra secretary to complete this task. The Union argues that these functions are of the Superintendent's office and thus would not be unit work; therefore these functions would not violate Article XX-L of the contract.

According to the testimony of the Superintendent, it was his understanding that the language of Article XX-L was a "sunset provision" and would evaporate at the end of the 1987-89 contract. The Association argues that if this was indeed the case, the District should have proposed language that was clear and concise in reference to a "sunset provision" rather than agree to a date in the article that clearly restricts the right of the District to subcontract.

The language of Article XX-L is clear and unambiguous. The District disagrees as to the meaning of the clear language contained in the article. In How Arbitration Works, 4th Edition, it states at p. 345: "Even though the

parties to an agreement disagree as to its meaning, an arbitrator who finds the language to be unambiguous will enforce the clear meaning."

If the District truly believed that this date was a sunset provision, why then didn't the District subcontract those positions that the District had a need for regardless of whether they were considered unit members or not. The Association contends that the District did not know that it could not subcontract, for the contract was in a hiatus period and the District would have to bargain to have the date taken out of Article XX-L, thus giving the District the ability to subcontract.

The District proposed no quid pro quo for allowing the date not to be extended. The District had offered a quid pro quo in its mediated offer, which was accepted by the Association but was subsequently rejected by the District. The Association notes that the District's final offer contains far less than what had been agreed to at the end of the mediation session.

The Association also argues that a profile of the collective bargaining agreements with respect to subcontracting which exist in the management rights clause establishes that the District's proposal is not supported by the comparables. In the Big Rivers Conference there are listed 12 collective bargaining agreements of which 6 have no subcontracting language in the contract, 1 has the right to subcontract out for goods and services, and 5 have modified language that limits the district's right to subcontract.

Looking to internal comparables, the District has one contract that has no subcontracting language and two which have modified subcontracting language.

In the Middle Border Conference, there are 11 collective bargaining agreements of which 7 have no subcontracting language listed in the contract, and 4 have the right to contract out for goods and services.

The Dunn-St. Croix Conference has 18 collective bargaining agreements of which 8 have no subcontracting language listed in the contract, 5 have the right to contract out for goods and services, and 5 have modified language that limits the district's right to subcontract.

The Union submits that overall, the internal and external comparables support the Union's final offer, for the majority of the collective bargaining agreements do not give the district the right to subcontract out for goods and services as proposed in the District's final offer.

Therefore, the Union's final offer should be awarded by the arbitrator.

DISCUSSION:

The threshold issue to be determined is which party is seeking to change the status quo, the District or the Association. The language contained in Article XX, Section L of the 1987-89 agreement states the following:

> "The Board shall reserve the right to subcontract for goods and services as it deems necessary. However, prior to July 1, 1989 the District shall not subcontract any services now being exclusively performed by bargaining unit members."

The District's final offer is to retain the current language. The Association's final offer is to change the date "1989" to "1991." Both parties contend their final offer maintains the status quo.

In support of their respective positions, both parties quote from Black's Law Dictionary, however, the parties reach different conclusions. The dictionary definition of status quo states: "The existing state of things at any given date." In the absence of a negotiated change, the language as contained in the 1987-89 agreement would remain the same, and effective July 1, 1989, the District could subcontract for services being performed by bargaining unit members. The District is proposing no change in the contract language and hence no change in the status quo. In contrast, the Association is seeking a change in the language, changing the date from "1989" to "1991." According to

the Association, this doesn't represent a change in the status quo but merely reflects the original intent of the parties to continue the prohibition against subcontracting from contract to contract.

In support of its position, the Association provided the undersigned with a copy of the decision issued by Arbitrator Richard John Miller in which he sustained the Association's position in a case involving the District and Special Education Assistants dealing with the precise issue that is in dispute in this case. (There is a distinction between the dates, as the Special Education Assistants' agreement expires on a different date than does the agreement involved in this dispute.) In his award Arbitrator Miller stated:

> "By extending the date in the new contract to August 15, 1991, the intent of the language would be the same as it was in the current contract - to prohibit the School District from subcontracting for goods and services as it deems necessary. Allowing the language to expire in the new contract would alter the 'existing state of' conditions which exist in the current contract and would give the School District the right to contract out for goods and services now being exclusively performed by bargaining unit members. Contrary to the position taken by the School District, this changes the 'status quo.'"

With all due respect to my esteemed colleague, the undersigned must respectfully disagree with his conclusion. The clear and unambiguous language of the 1987-89 agreement provided that the prohibition against subcontracting for this unit would end on July 1, 1989. Therefore the "status quo," as contractually mandated, was the expiration on July 1, 1989, of the prohibition against the District subcontracting work. Changing the date to July 1, 1991, would change the status quo by extending the contractual prohibition against subcontracting for an additional two years. Additionally, in order to achieve such results it would be necessary to alter the existing contract language, thereby changing the status quo.

If the parties intended the prohibition against subcontracting to continue beyond the contractually specified date of July 1, 1989, the parties were

capable of drafting contract language which would have so specified. By specifying a date certain, it must be concluded the parties intended to have the prohibition against subcontracting expire on that date. The very fact the Association is proposing to change the date in the contract clearly suggests the Association knew full well the prohibition against subcontracting was scheduled to expire on July 1, 1989, as the agreement clearly states.

Based on the above, it is the opinion of the undersigned that the "status quo" in this case is to retain the existing contract language which includes the July 1, 1989 date. By seeking to change that date, the Association is attempting to change the status quo. Once it is determined which party is seeking to change the status quo, that party has the burden of establishing the requisite basis for the change, i.e., the need for the change and an offer of a quid pro quo.

The testimony and evidence establishes that there are two areas in which the District considers it necessary to subcontract work, the taking of Board minutes and the updating of a Board policy manual. By subcontracting this work there would be no significant adverse impact upon the bargaining unit. No employes would be laid off and no employes would suffer a reduction in their regular hours of work. Consequently, there would be no erosion of the bargaining unit. Under such circumstances it must be concluded that the Association has failed to meet the burden of establishing the need for a prohibition against subcontracting.

It is argued by the Association that taking Board minutes and updating the manual is work of the Superintendent's office and is therefore excluded from the definition of bargaining unit work. While an argument could be made that taking the minutes of Board meetings is work of the Superintendent's office, an argument could also be made that updating a manual is a clerical function that

could be performed by members of the bargaining unit. The District is seeking to avoid a confrontation in the grievance procedure over the nature of the work by continuing the existing language which removes the prohibition against subcontracting effective July 1, 1989.

A second requirement for a change in the status quo is the offer of a quid pro quo. The Union has offered the District nothing in exchange for changing "1989" to "1991." This is undoubtedly attributable to the fact the Association takes the position it wasn't seeking to change the status quo by proposing a change in the date.

Based on the entire record, it is the opinion of the undersigned that the Association is seeking to change the status quo by amending the 1989-1991 agreement by changing the date in Article XX, Section L from 1989 to 1991. The Association failed to establish a need for the change and failed to offer a quid pro quo, thus it failed to meet the requirements established by arbitral authority for justifying a change in the status quo.

Therefore, having reviewed the evidence, and having given due consideration to the statutory guidelines, the undersigned renders the following

AWARD

That the District's final offer and any agreed to changes be incorporated into the 1989-91 collective bargaining agreement.

Neil M. Gundermann, Arbitrator

Dated this 20th day
of July, 1990 at
Madison, Wisconsin.