ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

MELLEN SCHOOL DISTRICT

and

CHEQUAMEGON UNITED TEACHERS

Case 15
No. 42648 INT/ARB-5350
Decision No. 26309-A

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: 12 School Support Staff

HEARING: April 20, 1990
Mellen, Wisconsin

RECORD CLOSED: June 9, 1990

AWARD DATE: July 29, 1990

APPEARANCES:

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ARBITRATION OPINION AND AWARD

Mellen Support Staff and Mellen School District

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of an initial collective bargaining contract between the parties.

The parties exchanged their initial proposals on January 23, 1989 and met thereafter on five occasions in an effort to reach an accord. On August 7, 1989, the parties filed a stipulation with the Wisconsin Employment Relations Commission (Commission) alleging that an impasse existed and requesting arbitration pursuant to the Section 111.70(4)(cm) of the Wisconsin Statutes. On October 12, 1989 and January 22, 1990, Raleigh Jones, a member of the Commission staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. By January 22, 1990 the parties submitted their final offers and Investigator Jones notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On January 31, 1990 the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was appointed by the Commission on March 5, 1990.

Upon receiving the certified final offers of the parties, the Arbitrator, on March 22, 1990, requested the Employer to provide a re-typed version of its final offer. The District complied with this request on April 3, 1990.

An arbitration hearing was held on April 20, 1990 at the VFW Hall, across from the Mellen School District offices in Mellen, Wisconsin. At that hearing the Arbitrator accepted into the record the amended re-typed version of the District's offer along with a letter from the Employer dated April 2, 1990 clarifying a proposal in its offer (attached as Appendix C and D). Also at the hearing exhibits were presented and testimony was heard. It was agreed that briefs would be submitted to the Arbitrator and each party through the mail postmarked by May 29, 1990. Reply briefs would be exchanged through the Arbitrator by June 7, 1990. The parties agreed the record would remain open for corrections and some additional evidence that both agreed could be submitted after the hearing until May 8, 1990. Subsequently, briefs and reply briefs were filed with the Arbitrator as agreed, the last one of which was received June 9, 1990. The record was closed on June 9, 1990.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70(4)(cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm) 7 sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in the document that I have attached to this award as Appendix A. For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public; (d) comparisons--other support staff; (e) comparisons--other public employees; (f) comparisons--private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

The employees involved in this proceeding compose of a collective bargaining unit represented by the Union which is described in the stipulated

recognition clause as "...all regular full-time and regular part-time employees of the Mellen School District, excluding professional, confidential, supervisory and managerial employees." There are 12 employees in the unit.

FINAL OFFERS AND STIPULATIONS

FINAL OFFERS

Both parties have submitted proposals for a two and 1/2 year contract and agree the term should be from January 1, 1989 through June 30, 1991. Based upon the final offers there are 12 major issues involved in this dispute: duration of agreement; union business leave; the right of management to sub-contract; holidays; vacations; wages; health, dental, LTD, and life insurance; annuity contributions; personal, emergency, funeral leave; sick leave; family/medical leave; and unpaid leaves. Many of these issues have a number of sub-issues also. The two final offers of the parties reflect the following positions (see Appendix B through D for copies of the actual final offers):

Union Business Leave

The Union proposes that Union representatives who miss work because they are required to attend bargaining sessions or grievance hearings should be paid. The Employer's offer states Union representatives who miss work for Union business would be allowed to make up the time.

Holidays

The parties agree as to the number and which holidays employees would be entitled to have as paid holidays. However, they disagree on the following issues: 1) how to define the employees that will be entitled to these holidays; 2) requirement to work or be on paid leave the day before and after the holiday; and 3) the rate of pay when working a holiday.

The Union proposes that employees who work forty-one or more weeks in a year should be eligible for paid holidays. The District believes employees who work more than the school year plus two weeks and day care workers should be eligible for the paid holidays. The Employer's proposal also requires employees to work or be on paid leave the last scheduled day before and the first scheduled day after the holiday in order to be paid for the holiday. In addition, the Employer would pay double time in lieu of holiday pay whenever an employee is required to work on a holiday.

Vacations

The parties agree to the scheduling of vacations, the carryover of vacation time, and (in general terms) to the vacation schedule and the amount of vacation earned compared to years worked. The parties disagree over 1) how

to define the employees that will be entitled to vacations; 2) the phasing out of bonus days; 3) whether vacation time can be taken in less than 1/2 day increments; 4) how vacation time is calculated and expressed (hours vs weeks); and 5) proration for part-time employees.

Similar to holidays, the Union proposes that employees who work forty-one or more weeks in a year should be eligible for paid vacation. The Employer defines eligible employees as twelve (12) month employees.

Under the Unions's offer employees would continue to receive bonus days up to a maximum of 10 days. The Employer proposed to phase out the bonus days by "grandfathering" those employees currently receiving them, but not providing them to new employees.

The District seeks in its offer to restrict the taking of vacation days to no less than 1/2 day increments. The Union places no restriction on how days can be taken.

The Union's offer expresses the vacation time earned in weeks (1 week, 2 weeks, etc.), and the Employer's proposal uses hours (40 hours, 80 hours, etc.).

The Employer's offer makes provisions for prorating vacation for employees working less than full-time. The Union's offer has no comparable provision.

Wages

The parties are in general agreement regarding the basic structure of the salary schedule; the number and types of job classifications; the increase in wages (5%) for the second year (1990-91); and that there should not be a separate off-schedule wage rate for probationary employees. There is disagreement over the amount of wage increases (by classifications) for the first year and 1/2--essentially how much money and where on the schedule to place it for second half of 1988-89 and all of 1989-90.

The Union's offer increases each classification in the 1987-88 schedule by 10.0% for the 1 1/2 year period. The Employer's offer provides for a range of increases to the classifications of the 1987-88 schedule from 3.9% to 13.7%.

Annuity Contribution

Traditionally, the Employer has provided an annuity program for its 12-month employees in lieu of a more traditional retirement program. Both parties propose to make improvements in the existing annuity program. The Board proposes to phase in contributions for the employees who are not 12-month employees (3.2% for 1989-90 and 4.1% for 1990-91) and to also increase the percentage contribution for the 12-month employees from 9.0% to 9.8% effective with the 1990-91 school year. The Union's proposal is to increase the percentage for the 12-month employees in each year of the agreement (9.2% for last half of 1988-89, 9.8% for 1989-90, and 10.3% for

1990-91) and to add those employees who work less than 12 months, but more than 41 weeks, to the program. In addition the Union's proposal seeks to maintain the same plan and carrier in effect during the 1987-88 year.

Personal, Emergency, and Funeral Leave

The parties differ quite extensively on the issue of leaves--not only in the number of days employees would be allowed, but how the days would be "paid for," and even in how they organize these items as clauses in the contract.

The Union proposes that all employees should be allowed to take up to one each "personal day" and "emergency day," and that these days would not be deducted from sick leave. In a separate section the Union proposes employees should receive time off from work with pay (no deduction from salary or from sick leave) for up to 2 work days at a time due to a death in the employee's immediate family.

The District's offer provides that employees may take up to 4 days off from work per incident when a member of the employee's immediate family is hospitalized or receiving services from a physician. These leave days would be deducted from the employee's accumulated sick leave. Additionally, the Employer provides up to 4 days of funeral leave, also deducted from accumulated sick leave, to be taken for deaths in the employee's immediate family.

Sick Leave

The parties agree that prior accumulated sick leave would be retained by the employees. However they disagree on: 1) the yearly accumulation amount and the total number of days which can be accumulated; 2) whether sick leave can be used for other than the personal illness of the employee; and 3) whether sick leave use should be restricted to 1/2 day increments.

The Union's proposal: 1) grants 12 days per year of accumulation and places the limit on sick leave accumulation at 100 days; 2) allows employees to use sick leave for their own personal illnesses, as well as serious illnesses of an immediate family member; and 3) does not restrict the use of sick leave to only 1/2 day increments.

The Employer's offer: 1) grants 10 days per year sick leave accumulation and caps the total accumulation at 90 days; and 2) provides that sick leave shall be taken in only 1/2 day increments. In a separate section, the Employer provides that family and medical leave would be granted as provided by state and federal law.

Family/Medical Leave

The Union proposes in Section D of Article XIII that, after two years of employment, any employee requesting an unpaid maternity or child rearing leave would be granted a leave for up to 1 year by the District. The Employer, as

mentioned above, indicates in this section that family and medical leave would be granted as provided by state and federal law.

Unpaid Leaves

Both parties agree that the Employer has unilateral discretion to grant other unpaid leaves that are requested by an employee and that during those leaves employees would not receive or accrue any benefits and seniority. They disagree on whether the decision to grant leaves ought not to be subject to review under the grievance procedure with the Employer explicitly stating in its offer that the Board's decision to grant unpaid leaves would not be subject to grievances under the grievance procedure.

STIPULATIONS

Mutual Agreements

The final offers of the parties include the following issues which essentially are identical and which the parties, by mutual agreement in their briefs, indicate are either stipulated to or are essentially non-issues: duration of agreement; subcontracting; and health, dental, LTD, and life insurance. These issues will be considered agreed to and will not be discussed in this award.

Tentative Agreements

The parties resolved or eliminated all other substantive issues related to this first contract during their negotiations or the certification process. These tentative agreements are stipulations and are attached in Appendix F.

ISSUES SUBJECT TO ARBITRATION

Final Offer Issues

After eliminating the three final offer issues of duration of agreement, subcontracting, and insurance as disputed, substantive issues, there remain nine final offer issues subject to this Arbitration: union business leave; holidays; vacations; wages; annuity contributions; personal, emergency, funeral leave; sick leave; maternity/child rearing leave; and unpaid leaves.

Other Issues

At the hearing and in their briefs the parties raised several other issues relevant to this Arbitration and that will be addressed in this decision. These are: the appropriate comparables; costing of the parties offers; objections to the submission of certain exhibits; whether legality concerns or perceived major flaws in the Employer's offer should control the

outcome of the decision; and whether the Union is asking for too much, too fast.

GENERAL SUMMARY OF PARTIES' POSITIONS

In this section I would like to briefly summarize the general positions of the parties. More detail of each of the parties' specific positions will be provided as I discuss each of the issues and sub-issues in the "DISCUSSION" section of this award.

UNION'S POSITION

Regarding the wages issue, the Union believes its offer is far more equitable in the way it handles the first 1 and 1/2 years' salary adjustments--an across-the-board percentage increase. The District's proposal is not only unfair in the way it treats individual employees (by providing different percentage increases), but is severely flawed by singling out one employee (AV/Health/Fixed Point of Referral position) for an unjustifiably low wage increase.

The Union maintains that even though there are many issues in this case, all can either be supported by the comparables or they are equity issues involving how some employees are treated compared to others. The Union argues that when negotiating or arbitrating a first contract, changes in the status quo--what the Employer has previously implemented unilaterally--should be judged on standards of equity and comparisons to other employee groups, and not on the higher standards used when changes are proposed in existing contracts. Looking at each issue separately, even under the Union's offer, Mellen support staff are behind the comparable districts.

EMPLOYER'S POSITION

On the wages issue, the District believes the best time to address wage rate inequities is at the time the initial salary schedule is developed. In constructing its salary proposal, the Employer attempted to even out several wage inequities, which results in an offer with higher wage rates for many positions than are provided by the Union's offer.

The District maintains that it has proposed a carefully structured offer with an eye towards problem solving while at the same time providing a fair and reasonable wage and benefit package. With only one exception, the Board's offer maintains or improves upon the status quo on all issues. Moreover, the District's offer includes language addressing questions which are left unanswered by the Union's proposal. The Employer believes the Union's offer takes a "shotgun" approach and seeks substantial gains in numerous areas while offering no quid pro quo and often no support among the comparables. In short, the Union's offer is simply too much, too fast.

DISCUSSION

INTRODUCTION

It is my impression, as an outsider to this dispute, that the parties honestly struggled to reach a settlement in this, their first contract negotiations. While there are certainly quit a few issues that remained unresolved coming into arbitration, the parties really did well in establishing the ground work through their tentative agreements and stipulations. Their efforts toward settlement also show up in their final offers--both well thought-out and carefully constructed.

Although there are a number of unresolved issues, it seems to me that the parties became "hung-up" on two major issues: how to define a full-time, more-then-school-year employee; and how wages should be increased in the first year and 1/2 (with the corresponding equity concerns). It is my hunch that, had the parties been able to resolve these major issues, they may have been able to voluntarily resolve this matter. In any case, these major issues, along with all the others in their final offers, have been turned over to me, the Arbitrator, for a decision.

In this case both final offers appear to be reasonable (setting aside for now the Union's legal and basic flaw assertions). Both are very close on the economics--a fact admitted by both parties. Both address, although differently in some ways, the issues directly and appear to present reasonable solutions to the problems facing the parties. Both offers are really pretty close--the parties themselves agree three can be considered stipulations, and others differ only slightly.

Since both offers appear to be basically reasonable, the job of the Arbitrator will be to determine which offer is more reasonable. In doing this, I will need to determine the import of the Union's legal and basic flaw assertions, and then, if necessary, determine which offer more closely meets the reasonableness standards set forth in Section 111.70(4)(cm) of the Wisconsin Statutes.

The report of these decisions will be accomplished in two parts of this "DISCUSSION" section. In the first, PARAMETERS OF ANALYSIS, I will respond to the parties suggestions as to how the evidence is to be viewed and establish the procedures by which the offers will be analyzed.

In the second part, ANALYSIS AND OPINION, I will analyze the data and substantive arguments proffered by the parties on each of the issues utilizing the parameters established in the PARAMETERS OF ANALYSIS. In both parts I will summarize briefly each party's specific position on the pertinent issue(s) and criteria.

PARAMETERS OF ANALYSIS

The parties in this case have presented evidence and argument both as to the way they believe the Arbitrator should proceed to analyze the evidence in the record as well as to the favorableness of their case on the issues being contested. In this section I will respond to the parties' objections,

arguments and suggestions on how the evidence should be analyzed, and then establish the procedures and parameters by which the parties' final offers will be analyzed.

Evaluation of Evidence

Comparables

The Employer argues that the districts in the Indianhead Athletic Conference (Conference) should be the primary pool of comparables. The Board maintains that the rationale for selecting the Conference is sound because the eleven districts in the Conference form a geographic cluster of small school districts across the State's northern tier. The Employer objects to the Union's exclusion of Butternut and Hurley from the comparisons. Even though Butternut is not unionized, it is a small district very similar to Mellen and is only 26 miles away. Butternut should not be excluded merely because it is not unionized. Hurley's support staff is currently under a collective bargaining agreement covering school years 1988-91, a comparable period to the final offers in Mellen. Thus, the entire Conference, including Butternut and Hurley, should be used as the appropriate comparable pool. In addition, the District proposes that Ashland County and the four counties contiguous to Ashland County are appropriate for a secondary comparable pool.

The Union also suggests the Indianhead Conference as the primary comparable pool with the exception of Hurley and Butternut. Hurley is excluded by the Union because: 1) of the 15 bargaining unit positions at Mellen, only two such positions are represented in the Hurley contract; 2) data for total wages and benefits are not available as in the other districts; and 3) Hurley was the first in the Conference to settle and none of the other districts who settled later followed Hurley's pattern. As for Butternut, the Union excludes it because: 1) it is non-union without a collective bargaining agreement; 2) there are no written policies or consistently followed practices regarding such things as vacations, holidays, leaves, insurance for difference types of employees, etc.; and 3) data for total wages and benefits are not available as in the other districts.

It is clear that both parties accept the Indianhead Athletic Conference as the primary comparables. The issue is whether Butternut and Hurley should be included in the comparables for this analysis and arbitration.

In this case, I think the problem of including the districts, specifically Butternut and (86% of) Hurley, which are not unionized is really a problem of data availability and accuracy, not of comparability. No arguments or evidence were presented indicating that these two districts were not comparable based upon size, location, etc. The basic reasons the Union eliminated the two districts were lack of comparability data.

The Union makes a compelling argument on this point--one which the Employer made as convincingly on another, but similar, issue (Employer Brief, p. 31). Contracts provide a consistent and reliable source of data. When contracts are not available the parties can get information and data in other

ways (e.g. through surveys, as is mentioned below in more detail). But in this case, as pointed out in length by the Union, there are little or no reliable data regarding the issues in dispute for Butternut and Hurley. As with a district that is comparable but isn't settled, why even list it? If wage and benefit data were available, and either party had presented documented exhibits providing the data, Butternut and Hurley could probably have been included in the comparisons for this case.

As it is, for this arbitration, Butternut and Hurley will be eliminated due to lack of sufficient data related to the issues in dispute.

Regarding the Employer's suggestion for a second comparable pool made up of Ashland County and the four contiguous counties of Bayfield, Iron, Price, and Sawyer, I agree that it is appropriate to use these counties and their municipal employers for comparisons with other employees performing similar services as well as with other employees in public employment in the same community and in comparable communities. I will consider employers from these counties as comparables for these other comparisons.

Costing of Offers

The parties differ somewhat, but not significantly, on the costing of their proposals. The Union revised its costing based upon a mistake that was pointed out by the Employer in its brief. The Employer indicated that even if the Union's costing was used (including the mistake) its offer is more reasonable (Employer Brief, p. 12). Therefore, since there seems to be little dispute over the costing and the economic proposals are so close (only $2,500 apart for the third year), the Union's revised costing figures will be used.

Direct Wage Comparisons

The Union argues (primarily in its Reply Brief, pp. 23-24) that comparisons between the Mellen support staff and other district's support staff cannot be made directly because there is no evidence in terms of job description to verify whether the specific job classifications are actually comparable. The Union cites several arbitrators' opinions in regard to and support of its position regarding the lack of information concerning job descriptions (and other items) that make direct comparisons impossible.

As do some arbitrators, I also believe that if jobs descriptions are not available to confirm the comparability of certain job classifications, it makes direct comparisons very difficult and suspect. The problem for the parties, and for arbitrators, is not so much that the information is not available or in the record, but what would be done with it if it was available. The question would be one of how detailed one would need to be in order to justify comparability. As it is, parties and arbitrators generally have to accept the difficulty and possible errors related to incomplete information, and operate under the assumption that like job titles have like or similar duties. That is, we have to assume that a "Head Cook" generally has cooking and baking duties along with some lead responsibilities, and does not perform family counseling, collect garbage, or even type letters. Given

the general comparable nature of job titles, I think it reasonable to assume some general comparability of job duties and responsibilities.

Given this, I think direct wage comparisons can provide useful guidance as to general reasonableness of wage schedule adjustments and for this decision, direct job classification comparisons will be utilized.

Objections to Submitted Evidence

The Employer, at the arbitration hearing and in its written arguments, objected to the Union's submission of two exhibits: Union Exhibit 86 and a portion of Union 91. The Employer asserted that all of Union Exhibit 86 and the sixth paragraph of Union 91 are based upon hearsay and ought not to be admitted into the record. The District also objected to much of Union Exhibit 92.

Union Exhibit 86

The Employer argues that Union Exhibit 86 was "concocted" solely from statements the Union obtained from local union presidents as to what the practice is in other districts regarding the use of sick days for family leave. The Employer submits that such "evidence" is hardly evidence credible enough to alter long-established written policy and practice.

It is usually important in arbitration cases for the parties to provide as much relevant information and data as possible so that the arbitrator can make a reasonably informed decision. However, the information provided must be reliable and credible in order to be useful to the arbitrator. There are, unhappily, few ways the parties can obtain and present this information in interest arbitration. Here the Union attempts to gather information regarding what the comparables' actual practice is regarding the use of sick days for time off for family illnesses. While it is questionable if the parties could even get undisputed data or information regarding the actual practices in other districts (after all, they're in dispute over many of their own practices), the most common way to obtain this information is through a written survey. Had the Union provide supporting evidence for this exhibit in the form of written (and signed) survey forms, this evidence would have been more credible and helpful.

Such as it is, I will accept Union Exhibit 86 into the record, but will place very little weight on it.

Union Exhibit 91

The Employer objects to the sixth paragraph to Union Exhibit 91 (p. 91-A) based upon hearsay and irrelevancy. The reason why the Mellen non-teaching staff chose to form a union is not important to this proceeding and is only an expression of an opinion of the Union Representative who prepared the document.

Since Union Exhibit 91 is a chronology of the bargaining history of the parties, the reason why the employees decided to form a union, while perhaps important information is at best speculative, but mostly is misplaced in this exhibit. Again, if the Union had thought this information vital to its case, a well done survey could have provided more accurate facts and opinions of the employees.

I believe the second sentence in paragraph six of Union Exhibit 91 is a statement of the unsubstantiated opinion of the Union and will treat it as such.

Union Exhibit 92

The Employer, at the hearing, raised many questions regarding Union Exhibit 92--a compilation of the opinions and beliefs of the employees relating to the District's practice regarding leaves, holiday pay and vacation time. The Employer objected to information provided in the exhibit that was unsubstantiated by testimony of the employees making the statements.

The Union presents evidence here based upon a survey. It seems, relying on testimony presented at the hearing, that the survey conducted was in written form, but had actually been completed in some cases by local union officials during phone or in-person interviews. Although a couple of the employees were present to testify as to the accuracy of their statements and opinions presented in Exhibit 92, the original surveys as well as the majority of the employees were not available to confirm the accuracy of the Exhibit.

Again, surveys are an important way for parties to get information for making decisions during negotiation as well as during the arbitration process. But surveys must be done carefully in order to maintain the integrity of the procedure. It is not feasible to bring large numbers of witnesses to hearings to testify as to their knowledge or opinions. In this case, having the original signed survey forms in the record would have been very helpful to check for the accuracy of the information in this exhibit.

While the best practices were not maintain in putting together this information, I think enough testimony was presented at the hearing to check the accuracy of the survey results and the information presented in Union Exhibit 92. I will allow the Exhibit with the belief that it is a reasonably accurate indication of the knowledge and opinions of the employees.

Controlling Issues

The parties raised several issues in their briefs and reply briefs relating to the weight which they believe ought to be placed on issues. Specifically, in this case, the parties raise questions as to whether the Arbitrator should place so much weight on an issue that it becomes "controlling." This is not unreasonable, because there may in fact be issues that are of such importance that an arbitrator is compelled to order a party's offer based wholly on the merits of that single issue.

In this regard, the parties raise four issues. First, the Union maintains (Union Brief, pp. 40-42) that the Board's offer on the Emergency and/or Family Leave is in direct violation of the State Family Leave Act, and as such, cannot or ought not to be order by the Arbitrator. Second, the Union believes the Employer's offer contains a sever flaw regarding its wage offer by giving the AV/Health/Fixed Point of Referral position such a low increase--a flaw, by itself, justifying the Arbitrator to rule in favor of the Union's offer (Union Brief, p.9). Third, the Union accuses the Employer (Union Brief, p. 19) of being completely unfair by taking the position that paid vacations should only apply to 12-month employees thereby discriminating against the office secretary who works as many (or more) weeks as janitors and other 12-month employees--a position alone justifying the Arbitrator to select the Union's offer. And fourth, the Employer maintains (Employer Reply Brief, p. 19) that the Union's offer, perhaps reasonable as individual issues, totaled together make an offer that's just "too much, too soon," and requires the Arbitrator to select the Board's offer. These issues will be discussed separately.

State Law Violation

The Union argues that the Board's offer on Emergency and/or Family Leave is in violation of the State Family Leave Act (Act), or at the very least is self-contradictory and flawed. The Union believes the Employer is trying to limit the use of family leave, which is contrary to state law, and would result in litigation if the employer's offer is selected by the Arbitrator. Arbitrators have been very reluctant to select an offer that is obviously going to result in litigation. The Union thinks the Employer's offer violates state law in three ways: 1) it only allows four days of medical or family leave per incident rather than the two weeks allowed by the law; 2) the Act does not require the hospitalization nor the services of a doctor for the purpose of receiving family leave as does the Employer's offer; and 3) the Employer's offer, contrary to the Act, limits the rights of the employees to substitute paid or unpaid leave.

The District maintains that the Union has concocted a legal challenge in order to detract the Arbitrator from the fact the Union's proposal--unlimited sick leave for family illness--goes far beyond what the comparables support. The Employer argues its offer in no way violates the Act. First of all, the parties are required to comply with state and federal law no matter what their contract says. If state law provides for additional leave for employees, the employees are entitled to such leave. In this case, the Employer's offer allows an employee to take 4 days emergency leave paid with accumulated sick leave, and in addition, under the Act, another two weeks of unpaid medical leave. And second, the Union is wrong when it states that "...the Act does not require the hospitalization nor the services of a doctor...." The use of family leave for the illness of a child, parent or spouse is restricted to serious health concerns which is defined in the Act very nearly identical to the Board's language. But even this is not important because the employees get emergency days under the contract in addition to the statutory medical or family leave.

The Union here raises, I think, an important concern for arbitrators--that language offered by parties ought to be clear, concise, match the intent of the parties, and be legal. The Union is right that arbitrators are reluctant to order contract provisions which may be illegal or may cause further disputes between the parties in the future. I too subscribe to this principle and would very reluctantly order language that would be troublesome for the parties, legal or otherwise. On the other hand, I do not think it is the role of an interest arbitrator to rule on the legal interpretation of state or federal law, or to do an in-depth interpretation of proposed contract language, especially without a specific set of facts. But the question is raised, and will be answered, as to whether the Employer's offer regarding emergency and/or family leave will obviously cause legal or other problems between the parties and should not be ordered.

It is my understanding of the District's offer (in Article XIII - Leaves) that five types of leaves are identified: emergency; funeral; family; medical; and other unpaid. Emergency, funeral, other unpaid have separate descriptions (Section A-1, Section A-2, and Section F respectively). Family and medical leaves are covered together in Section D. From what the Employer states in its Reply Brief (pp. 15-17), these types of leaves are different and would operate independent of each other. So, while emergency leave is defined very similarly to the Act's definition of medical leave, they are different, and could be applied separately or concurrent, depending upon the request of an employee and the particular circumstances. So, in fact, the District's offer adds an additional type of leave (actually paid from the employee's sick leave accumulation) over the requirements of the Act.

It appears to me the illegality of the Board's offer is not in the provisions themselves, but in how the District would implement its leave policy based upon these leave types. If the Board limits medical or family leaves to only four days (based upon the emergency leave clause), I believe there would be, probably justifiably, grievances forthcoming from the employees and the Union. However, if the Board allows an employee two weeks of unpaid family or medical leave and then four additional days paid with sick leave time, or allows two weeks with four days of the two weeks being paid with sick leave time, there would probably be few complaints from the employees (based upon the current Act, anyway). The point here is that, given the Employer's language proposal on leaves and the possible ways to implement the leaves, I don't think it is obvious that the parties would automatically have legal or other problems and disputes.

Therefore, I find that the Union has failed to show that the Employer's offer will obviously result in legal or other trouble for the parties and reject the notion that this issue should solely control the outcome of this decision.

Severe Wage Flaw

The Union vigorously argues (in its Brief, pp. 8-9) that the Employer's offer on wages in the first year and 1/2 has a most severe flaw which by itself is sufficient to justify the Arbitrator awarding the Union's offer. Under the Employer's offer the AV/Health/Fixed Point of Referral position (occupied by one individual) only receives a 3.9% increase (for the 1 1/2 year

period) while all other employees at the top of the schedule receive 7.3% - 13.7% increases. The Union maintains that there is no justification for the Employer to single out this one employee for such harsh and unfair treatment. The equity of this situation and how this one employee is treated overshadows the economics of this dispute and demands that the Union's offer be chosen.

The Employer maintains that it is incumbent upon both parties, when formulating an initial salary schedule, to develop a wage schedule which will alleviate rather than perpetuate wage inequities. In order to do this, there would have to be some one-time adjustments which would deviate from the standard across-the-board increases typically applied to schedules in subsequent years. The Union's proposal, with its flat across-the-board 10% increase, results in the rich getting richer. The Employer believes that the truth is that the Union's failure to address inequities in the wage schedule exacerbates the very inequities which may have fostered support for the Union in the first place. The Employer goes on to say that, specifically relating to the AV/Health Aide/Fixed Point of Referral (AV Aide) position and contrary to the Union's assertion, the Board's offer for this position is fair and equitable for several reasons: 1) previous bonuses were added to the base rate before the 3.9% was applied resulting in a higher base than other positions; 2) the wage rate ($8.21) proposed by the Board results in the position being the highest paid aide position in the Conference; and 3) the AV Aide position will now be paid overtime for all hours outside of the regular work day resulting in an understatement of the parties' hourly wage rate increase for the position.

The Union raises an equity issue with the Employer's wage offer regarding primarily one position--the AV Aide. Without making any specific accusations, the Union is essentially claiming that the Employer, through its wage offer is singling out and treating differently the one employee who occupies this position. The Union says (in its Brief, p. 9) that there are no comparables to justify such harsh treatment and wonders why the District is behaving so arbitrarily. There is little other evidence presented by the Union regarding its claims, and even so, there would be a better forum for the Union to present complaints regarding the possible discriminatory treatment of one of its members. But, in order to determine if the Employer has a basic and fundamental flaw in its offer, two areas must be examined: the reasonableness of the Employer's approach; and the fairness of salary offer (of the AV Aide position) itself.

The Employer explains (in its Brief pp. 16-17 and Reply Brief pp. 2-6) that its proposal attempts to deal with salary schedule inequities, thus the resulting range of increases 3.9% to 13.7%. This approach is common in the "industry" and is a reasonable way to make one-time adjustments to the salary schedule in order to bring job classifications in line with the comparables. Therefore, I find the Employer's attempts to correct perceived inequities in this way a reasonable procedure.

Regarding the AV Aide position and the Union's claims that it is so unreasonably low that it is a fundamental flaw in the Board's offer, I think the Employer's contention that the AV Aide is the highest paid in the Conference is noteworthy. And a glance at Employer Exhibit 49 shows this to be true. Using the year 1989-90 on the exhibit and the Employer's offer

1/1/89 - 6/30/90 AV Aide maximum of $8.21, examination reveals this AV Aide position is the highest in the Conference--the closest wage rate for any other aide is the Washburn Library Aide maximum at $7.84. Even considering differences in job duties and responsibilities, this is a large difference in pay.

The evidence does not show and I do not believe this is a situation where the Employer is "picking on" one employee. While it certainly would seem unfair to the employee in question, I believe the Board's offer would probably have been the same had there been 2, 5, or 10 individuals working as an AV Aide. The Employer, based on comparisons with similar job classifications in other districts, believes the position to be over-paid, and proposes the lower rate increase as a one-time adjustment. I believe, and sincerely hope, it is as simple as that.

Given this discussion, I do not find the AV Aide position's increase under the Employer's offer so low that it is completely unreasonable and/or flawed.

Therefore, I do not find that 1) the Employer's offer is fundamentally flawed on this account, or 2) the Union's offer should be automatically ordered because of this issue.

Completely Unfair Vacation Plan

The Union maintains that the District has proposed a vacation plan under which only four employees would qualify--the 12-month employees. As the Union figures it, these 12-month employees actually work only 47 weeks in the year (52 weeks minus three weeks vacation and an additional 10 bonus days or 2 weeks) under both offers. The Union maintains that the evidence in the record clearly shows that the office secretary, based upon her contract for 44 weeks plus the additional summer time requested/required of her of more than 5 weeks, worked more than 49 weeks each year. Even though the office secretary works longer than the 12-month employees, she does not qualify for any paid vacation under the Employer's offer. The Union says the absurdity of this position is completely unfair to this one employee and is justification alone for the Arbitrator to select the Union's offer.

The Employer takes exception to the Union's blatant distortion of the record on this issue. The District maintains that the Union is just plain wrong when it alleges that the secretary worked more than the four 12-month employees who received paid vacations. Based upon the employment records (Employer Exhibit 76), the secretary worked 205 days each year for the two years. Allowing for possibly an additional 26 days of summer work, she worked 46.2 weeks, not the 49+ weeks alleged by the Union. Also, the Union's claim that none of the other comparable districts have employees working part of the summer is not supported by the evidence. In the exhibits referred to by the Union most of the data on the districts merely list total annual hours from which there is no way to determine the number of days the employees work.

Both parties really miss in their approach to this problem what I believe to be the crucial element with this issue--how an employee is classified. I do not think the number of weeks, days, or hours an employee works is as

important for establishing eligibility for certain benefits as the employee's classification. Employee classification connected to level of benefits is a fundamental premise in standard personnel policies, as well as being supported by the comparables in this case. This means that certain employee classifications and definitions are established, and then benefits are assigned/allotted based upon those classifications. Time scheduled (not necessarily hours worked) can be a key element in these classifications, but there are many other elements too.

Employees are usually hired into a certain employee classification (say part-time, full-time, temporary, or in this case, maybe also all-year or school-year). An employee accepts employment based upon this classification and consequential level of benefits. The employee's classification cannot be changed by temporary or situational changes in work load or duties. If, for instance, a part-time employee is asked (or volunteers) to work additional hours (even enough hours, say, to equal full time), this does not change the employee's classification (he/she does not become a "full-time employee").

The problem here is that the parties have not agreed upon and have not established in their contract (stipulations) these different classifications for their different types of employees. Additionally, they have not assigned to those employee classifications their employees and/or the various job classifications they have agreed to (at least that are mutually identified in their final offers). Had they decided these issues specifically and directly, they may not have had to deal with this situation. While the parties present this issue as a dispute over establishing eligibility for certain benefits, it seem to me this is really a dispute over how to classify the secretary's position--year-around or school-year, or something in between.

But the issue now raised is whether the Employer's offer is so "absurd" that the Union's offer ought to be ordered, on this issue alone, by the Arbitrator. I do not think the Employer's offer on this issue is unreasonable, let alone "absurd." It appears the District is attempting to apply standard personnel procedures (employee classifications) to its benefit packages. The Employer does this here (in the vacation section), as well as elsewhere (in the holiday and annuity contribution sections). And I think it is perfectly reasonable, moreover, it is advisable.

However, the equity problem still remains--it does seem to be very unfair that one employee should work so many days/weeks and receive no vacation. Perhaps the problem stems from the way this employee was treated when there was no Union-negotiated, master contract. From what I understand, this employee (and others too) had an individual contract with the District which spelled-out terms and conditions of employment, number of weeks of work being one. But executing individual contracts (I'm assuming) will no longer be the practice. Thus the Employer has a chance now to re-classify employees and to re-establish equity among the job classifications. That is, if the office secretary does actually work full-time for nearly the entire year, perhaps that position should be classified as a 12-month position. If not, perhaps there is another classification that can be developed. (Some of the comparable districts I noticed have "11-month" employees with different benefit levels.) The point here is that this appears to be mostly an employee classification problem, and not necessarily an equity problem brought about by a critical flaw in the Employers approach or proposal.

The Union has not established this issue as being so crucial that it should control the entire outcome of this decision and award.

Too Much, Too Soon

The Employer states (Brief, p. 37 and Reply Brief, p. 19) that the Union's excessive proposal is just too much, too fast. The Union counters by indicating that every improvement proposed by the Union can be justified by the comparables, and in fact, the Mellen support staff has a long way to go in order to catch up.

What, in essence, the Employer is suggesting is this: even if the Union's offer is found to be reasonable on individual issues, taken in combination (as a package), it should be found unreasonable. In order for a party to prevail under this theory, it must show either: 1) the other party's total package offer (including the stipulations) is unreasonable; or 2) there are compelling economic reasons for not selecting the other parties offer (e.g. Employer cannot pay, or will have grave difficulty paying, for the Union's offer); or 3) there are compelling, non-economic reasons for the arbitrator not selecting the other parties offer (e.g. issues of precedence, equity among the employees, etc.).

This "too much, too soon" issue and the Union's offer taken as a whole, if necessary, will be analyzed below (in the ANALYSIS AND OPINION section) using the immediately above criteria.

Organization of Issues

As indicated above the parties present quite a few issues for the Arbitrator to decide. For ease of establishing and placing weight on the appropriate criteria for the reasonableness tests, these issues will be divided into two groups: economic issues and language issues. The language issues in this case are not necessarily strictly non-economic in nature. In fact, most will involve some costs to the District upon implementation. However, the sub-issues the parties raise regarding these issues are primarily non-economic--thus they will be discussed in the language issues section.

Therefore, the substantive, final offer issues will be discussed under the headings of: "Economic Issues" and "Language Issues." The economic issues will be: wages and annuity contributions. Language issues will include: union business leave; holidays; vacations; personal, emergency, funeral leave; sick leave; family/medical leave; and other unpaid leaves.

Reasonableness Tests' Criteria

As mentioned earlier, the statutes require the Arbitrator to judge the reasonableness of the offers based upon ten criteria. The relevancy of the criteria and the weight to be placed on each criterion will be establish for both the economic and the language issues.

Criteria Not Relevant

Lawful Authority

The lawful authority of the Employer has not been challenged or denied, so this criterion will not be used in this decision process.

Comparisons--Private Employees

No evidence was provided by either party related to private sector wages or practices so this criterion is not relevant to this award.

Changes

The parties present no evidence of relevant changes in circumstances during the pendency of the arbitration proceedings so this criterion is eliminated from the discussion.

Relevant Criteria and Appropriate Weight

Stipulations

The Union does not believe it is practical to compare only the two salary offers with just the salary settlements of the comparable districts because many of the districts recently increased their benefits in lieu of average salary increases. The Union also points out (Union Reply Brief, pp. 35-57) that the Employer accuses the Union of making no quid pro quo for certain changes being proposed. The Union maintains it has, in fact, made substantial concessions. For these reasons the Union believe all the economic issues need to be considered as a whole, including the stipulations.

The parties do not really discuss this criterion very much and the Employer actually eliminates it as a relevant criterion at one point. But since the Board does make a strong argument that the Union is asking for "too much, too soon," and there are cries for "quid pro quo's" by the parties, over-all compensation should be considered. A small amount of weight will be placed on this criterion.

Interests and Welfare of the Public

Both parties place some importance on this criterion. The Union maintains that the Employer does not argue an inability to pay, therefore that portion of the criterion is not applicable.

The interests and welfare of the public is usually an important criterion in an interests arbitration, but in this case the parties mention it very little. The Union is correct that there is no ability to pay argument here being made by the District, so that portion of the criterion will not be considered. Interests and Welfare of the Public will receive a small amount of weight in this case.

Comparisons--Other Support Staff

There is not much disagreement as to the weight to be placed on this criterion--it is a major criterion for both parties. The Union spent a majority of its brief and reply brief, and devoted nearly all of its exhibits to comparisons with other support staff. The Board also devoted a substantial amount of its briefs and its exhibits to comparisons with other support staff among the comparables. Therefore, a major amount of weight will be place here.

Comparisons--Other Public Employees

The Board submitted some exhibits and presented some argument related to pay rates and salary increases among other employee groups, both locally and among the contiguous counties. The Union rejects the Employer's suggestion on the basis of lack of sufficient data, and argues that the Mellen teachers are a more appropriate comparable.

Secondary comparables can be very helpful in some cases. But only a little weight will be placed on this criterion because: 1) the real issues with the wages are not so much the amount of increases being proposed by both parties; and 2) the fact, as pointed out by the Union, that there are not much data for the contiguous counties.

Other

Equity

The Union raises the questions relating to the equity of the Employer's wage and annuity contribution proposals, as well as with many of the other issues. The Union states (Union Brief, pp. 8-9) that the inequities of the Employer's offer on wages (and other benefits) is the most important issue before the Arbitrator. Thus, the criterion of "Equity" will be considered relevant and will receive substantial weight.

Past Practice

Both parties rely heavily on the past practice of the District as a way to both justify their position to maintain the status quo and to change it. However, the Union feverishly argues, supported by many quotes from other arbitrators (Union Brief, pp.49-51), that past practice or status quo as a standard in first contracts should be down-played. This is so for at least two basic reasons: 1) there actually is not a "status quo," at least as far as contractual conditions are concerned; and 2) the burden to change a past practice established unilaterally by an employer prior to a collective bargaining relationship should not be as great because that previous practice may have be the catalyst for the unionization effort in the first place.

Even though both parties rely a great deal on the past practice of the Employer to substantiate it proposals and seem to place great weight on this criterion, I tend to agree with the Union's above-stated position that it would be inappropriate to place a major amount of weight on past practice in

first contract cases. Therefore, for this case, the criterion of "Past Practice" will receive a relatively small amount of weight.

Prioritization and Weighting of Issues

The parties have presented to the Arbitrator nine substantive issues, each having many sub-issues. Based upon what the parties have specifically stated in their briefs and/or reply briefs as to how the issues ought to be weighted, and also upon the amount of effort (primarily amount of space) each spent in their written arguments on each of the issues, I place weight on the issues and divide it among the sub-issues in the following manner:

Issue	Weight
Wages	substantial
Type of Increase	majority
How Much	small
Annuity Contributions	moderate
Eligible Employees	majority
Amount of Increase	substantial
What Plan?	little
Vacations	moderate
Eligible Employees	majority
Bonus Days for Secretary	substantial
1/2 Day Increments	moderate
Proration for Part-Timers	moderate
Calculation: Hrs vs Weeks	little
Holidays	small
Eligible Employees	majority
Rate of Pay	substantial
Prerequisites	moderate
Sick Leave	small
Use for Family Leave	majority
Restriction to 1/2 Day Increment	moderate
Total Accumulation Amount	small
Yearly Accumulation Amount	small
Personal, Emergency, Funeral Leave	little
Added Days	substantial
Deducted from Sick Leave Bank	substantial
Purpose of Use	moderate
Family/Medical Leave	little
Child Rearing Leave	substantial
Restriction to Serious Illness	substantial
Unpaid Leaves	very little
Union Business Leave	very little

ANALYSIS AND OPINION

In this section I will discuss each of the issues and sub-issues and determine the reasonableness of each of the offers using the criteria and weight assigned to each as described above.

Because of the large number of issues and sub-issues, it will not be feasible to specifically discuss each criterion as it would apply to an issue or sub-issue. While I will thoroughly consider the relevant criteria as it applies to each of the issues and sub-issues, I may not make a direct reference to it in discussing the issue.

Employee Eligibility

A significant sub-issue that affects two relatively major issues in this dispute (annuity contributions and vacations) is what the parties will use to establish the employee qualifications for certain benefits. For brevity sake, I will discuss this issue here in general terms, and then discuss important differences, if any, when discussing the individual issues.

For purposes of defining eligibility for certain benefits (annuity contributions and vacations) the Employer relies on its past practice of using "twelve (12) month employees." The Employer believes that the past practice of the District mandates that the "12 month" definition be used in order to maintain continuity and because of ease of administration. The District objects to the Union's "41 week" proposal because: 1) it is difficult to understand exactly how to calculate and implement; 2) it is unfair to regular 12-month employees to have 41-week employees get these benefits that have so long only applied to 12-month employees; and 3) the comparables do not support the 41-week criterion.

The Union proposes a new way of determining the eligibility for these benefits (41 weeks) essentially because one employee (the office Secretary) contracts for more than the school term, works as much or more than 12-month employees, and equity demands that she receive benefits on the level that 12-month employees receive.

It is always difficult to formulate policy when one or two people may perceive they are being treated unfairly and the policy-makers know and work closely with the individuals every day. Large, impersonal corporations or bureaucracies can make policy for the majority and may not have to deal directly with personal disappointments and/or losses effectuated by those policies. Such is not the case of small organizations such as Mellen Schools--everyone knows and works closely with everyone else. It is much more difficult for employers and unions to formulate and bargain policies and take into account everyone's interests under these more intimate working conditions. This difficulty, I'm sure was, and still is, present on this issue of determining who should qualify for these important benefits.

This is not only a difficult issue for the parties to deal with, but also for this Arbitrator. The future, long term agreeable employment of a very valued employee may be a stake. But arbitrators must follow standards and

make judgements according to mandated criteria. Decisions must be made in spite of the personal interests of one or two employees that may "hang in the balance" along with the policies that are being judged.

The Union's proposal is innovative and does attempt to deal with the perceived inequity of one employee (now, but perhaps more in the future) who works enough days to be very close to the 12-month status quo qualification standard and yet who does not receive vacation and annuity contributions. But I think the "41 weeks" is not a reasonable alternative primarily because: 1) it is unsupported by the comparables--not one (that I could find) uses this standard or another comparable standard (like 10 months); 2) it is unsupported by the past practice of the Employer; 3) it creates as many contractual problems (definition, calculation, etc.) as it tries to solve; 4) 41 weeks is just not a logical break-off point and is not connected to any employee definition (such as 12-month employees) which is more traditional and easier to understand (by employees) and to work with (by employers); and 5) as pointed out by the employer, it really does not solve the inequity problem, just pushes it out of the way (for now).

For these reasons, I find the Employer's language proposal relating to eligibility qualifications to be substantially more reasonable than the Union's.

ECONOMIC ISSUES

There are two economic issues which are discussed in this ECONOMIC ISSUES section. In addition to economic concerns, the parties raise several non-economic sub-issues with these issues.

Wages

The parties are in general agreement regarding the basic structure of the salary schedule; the number and types of job classifications; the increases in wages (5%) for the second year (1990-91); and that there should not be a separate off-schedule wage rate for probationary employees. There is disagreement over the amount of wage increases (by classifications) for the first year and 1/2--essentially how much money and where on the schedule to place it for second half of 1988-89 and all of 1989-90.

The Union's offer increases each classification in the 1987-88 schedule by 10.0% for the 1 1/2 year period. The Employer's offer provides for a range of increases to the classifications in the 1987-88 schedule from 3.9% to 13.7%.

Type of Increase

The Employer proposes to make individual wage adjustments to the 1987-88 wages for each of the 12 job classifications. The District argues that when it developed its salary proposal, it attempted to address wage inequities between the job classification as compared to other comparable districts. Specifically, the Board reviewed and analyzed the wage data for support staff

positions in each of the Conference schools, resulting in a finding that some positions (secretary, head cook, assistant cook, and playground aide) were substantially lower and that some (head secretary, head custodian, and custodian) were very favorable as compared with the comparables. Therefore, when constructing its salary schedule proposal, the District attempted to even out these inequities.

The Union believes that the fairest way to increase the wages of the Mellen support staff is through an across-the-board increase of 10%. The Union argues that the Employers proposal, which provides a range of increases from a low of 3.9% to a high of 13.7%, is very unfair, especially to the one employee who receives the low 3.9% increase for 1 1/2 years. Contrary to what the Employer argues, the comparables either have no job classifications comparable to Mellen's (playground aides, day care workers, and head secretary), or they show that Mellen is behind the average wages (head custodian, custodian, and secretary). The Employer established these classifications and pay rates unilaterally presumably at a reasonable level as compared to the comparables. The Union says that now, through the "use of smoke and mirrors," the District is saying the previously established rates are not equitable and need adjustment.

The parties present much evidence and argument regarding this sub-issue. Contrary to the situation in other issues, the Union basically relies on past practice or status quo (the original wage rates), while the District looks to the comparables to support its position that the wage rates need a one-time adjustment. Earlier, I found that the Employer's approach (of making one-time wage adjustments) was reasonable. The question now is whether the Mellen support staff wages, as compared to the other comparable districts, need a one-time wage adjustment and whether the Employer's offer is economically reasonable. [The issue of whether the offers over-all are economically reasonable (are enough of an increase) will be discussed below.]

In looking at the wage and other economic data submitted by the parties in exhibits and written arguments, it appears that Mellen is generally about 5% below average in its wages as compared to the other comparable districts (see Chart I, Average Per Hour, p. 24). Based upon this, and the fact that the Union has not argued "catch-up" for any specific classifications (actually just the opposite) and that both offers are so close on the total cost, it seems reasonable to assume for this arbitration that Mellen support staff, taken as a whole, fall about 5% below the Conference average in wages. Thus, comparing the two offers to this benchmark (of 95% of the average), has the following results.

It appears that of those classifications (cook, head cook, secretary and other aides) which are below the 95% benchmark, the Employer's offer brings the wages closer to that mark (increases the ratio of Mellen compared to the average). (However it is true, as the Union points out, the increase for the head cook is not very significant and actually warrants a greater increase.) Also, the District's offer, on those classifications (custodian, head custodian, head secretary, and study hall/special ed. aides) which are above the benchmark, again moves the wages closer to the benchmark (decreases the ratio by less of an increase). Thus, the District's offer, with only one

exception (head cook), makes adjustments in the direction of equalizing the classifications at the 95% benchmark.

In looking at the Union's offer, it appears that the Employer's accusation that "the richer get richer" is true. The most outstanding example is the (head) secretary's classification which under both offers is more than 20% above the Conference average. Under the Employer's offer the ratio is 121% and under the Union's proposal the ratio goes to 124%. Even given some possible discrepancies in job duties and responsibilities, 20% above the Conference average is large difference, given that the others are below the average. And the Union's proposal to widen the gap to 24% above the average is unreasonable. Therefore, the Union's proposal for an across-the-board increase is not as reasonable as the Employer's proposal to make one-time classification adjustments.

Based upon this and the other relative statutory criteria, the Employer's offer on this sub-issue is considerably more reasonable.

Chart I

Wage Comparisons
Average Wage Rates by Job Classification
Indianhead Athletic Conference
1989-90 Maximum Wage Rates

	Conference Average	Mellen Board	% of Av	Mellen Union	% of Av
Cook	7.25	6.38	88%	6.29	86%
Custodian	8.49	8.27	97%	8.37	99%
Head Cook	8.45	6.94	82%	6.91	82%
Head Custodian	10.14	9.72	96%	9.97	98%
Secretary	8.06	9.72	121%	9.97	124%
		6.03	75%	5.91	73%
Aide	7.12	7.62	107%	7.66	108%
		5.40	76%	5.23	73%
Average per hour	8.25	7.86	95%	7.95	96%

Source: Employer Exhibits 49-54; Union Exhibits 70-77

How Much?

The parties present evidence and argument as to the reasonableness of their wage proposals. Normally, this is an important issue. However, as explained earlier, this issue is of minor importance compared to the sub-issue just above regarding how the money is placed on the schedule. This sub-issue will be only briefly discussed here.

The Union points out that the parties are very close on the total amount that they are offering (only $2,500 apart for the third year). Even so, the Union maintains that even under its offer, Mellen support staff will fall behind the comparables on wages. When looking at average total increase per hour per employee, the Employer's offer provides an hourly increase that is $.56/hour less than the average while the Union's increase is $.42/hour less than the average. The Union says that, on all comparisons, the Employer's offer is "way out of step" with what has happened within the comparable districts and even the Union's offer is much too low.

The Employer believes its offer is more reasonable because: 1) the small metropolitan CPI ran between 4.0% and 5.4% for the period; 2) other public sector settlements have been ranging between 3.0% and 3.5%; and 3) when taken with all the other benefits offered in its package, the District's offer is more considerably more reasonable.

On this sub-issue it does appear that the Union's offer is closer to the comparables, both in terms of wages only and total package cost increases (Union Brief, pp. 12-17). On the other hand, the cost of living, and other public sector settlements supports the Employer's offer. Overall, considering the relevant statutory criteria and the weight applied to each, the Union's offer, on this sub-issue, is found to be substantially more reasonable.

Issue Summary

On this issue the Employer's offer is found to be considerably more reasonable than the Union's regarding the type of increase. However, the Union's proposal is seen to substantially more reasonable on the sub-issue of how much of an increase. Overall, of this Wages issue, the Employer's offer is substantially preferred.

Annuity Contributions

To review what this issue involves, the Employer in the past has provided an annuity program for its 12-month employees in lieu of a more traditional retirement program. Both parties propose to make improvements in the existing annuity program. The Board proposes to phase in contributions for the employees who are not 12-month employees (3.2% for 1989-90 and 4.1% for 1990-91) and to also increase the percentage contribution for the 12-month employees from 9.0% to 9.8% effective with the 1990-91 school year. The Union's proposal is to increase the percentage for the 12-month employees in each year of the agreement (9.2% for last half of 1988-89, 9.8% for 1989-90, and 10.3% for 1990-91) and to add those employees who work less than 12 months, but more than 41 weeks, to the program. In addition the Union's proposal seeks to maintain the same plan and carrier in effect during the 1987-88 year. There are three sub-issues with this issue: employee eligibility, amount of increase, and plan and carrier guarantee.

Employee Eligibility

The general discussion above about employee eligibility (12-month vs. 41 weeks) is pertinent to this sub-issue. In addition, the discussion regarding employee classifications ("Completely Unfair Vacation Plan") is also relevant here. Based upon these findings, the Employer's offer is found to be substantially more reasonable on this sub-issue.

Amount of Increase

The Employer argues that the amount of increase that is proposed here under the annuity contributions should be considered along with the wages and other benefits--as a total package. When considered in this light, it becomes clear that the Board's offer is generous, while the Union's offer is excessive. The Employer also maintains that there is only one district among the comparables that has an annuity plan for comparison purposes: South Shore. The District believes that its offer is more than reasonable because it allows the 12-month employees to keep pace with South Shore, while also providing substantial gains in an annuity program for the employees who work less than 12 months.

The Union suggests that there are more comparable districts on this issue than just South Shore: actually all the other districts participate in some retirement program (mostly the State Retirement System [WRS]). Just because Mellen chooses to participate in another plan does not mean it cannot be compared to the other comparable districts. The districts that participate in the WRS not only contribute an employer's share, they also contribute the employee's share. Even the Union's offer on this issue provides less than one-half of contributions to a retirement plan than five other districts did during their first year under a collective bargaining agreement. Even the Union's offer is low, but comes closer to what these other districts contribute to their retirement plans.

The parties are really not very far apart on the issue in economic terms. The Union makes a good point about other districts contributing not only the employer's share of retirement contributions, but also the employees' shares. The record (Union Exhibits 70-78) shows that the average retirement contribution in 1989-90 for the eight comparable districts was 11.6% of wages. The Union's higher offer (41-week employees) is for 9.2% of wages, and the Employer' proposal is for 9.0% of wages. Both offers are well below the comparable average.

Thus, on this sub-issue, the Union's offer is found to be more reasonable.

Plan & Carrier Guarantee

The Union seeks to guarantee that the District continue with the same plan and carrier that District was participating in during 1987-88 year.

The Union argues that different annuity programs have vastly different benefits and pay differently on monies invested. The (agreed upon) insurance contract provisions all guarantee that plans and/or level of benefits that were in effect previously would continue, and, like the insurance benefits, it is important for the employees to have some say in what annuity they will have and for what they have given up salary increases.

The Union's position on this sub-issue is reasonable, is supported by the comparables, and is consistent with what the parties have agreed to with other (insurance) benefits. The Union's offer on this sub-issue is considerably more reasonable than the District's.

Issue Summary

On this issue of Annuity Contribution I have found 1) the Employer's offer substantially more reasonable on the eligibility question, 2) the Union's proposal to be more reasonable on the issue of the amount of annuity increase, and 3) the Union's position to be considerably more reasonable regarding the issue of the guarantee of the plan and carrier.

Therefore, considering the relevant weighted criteria and the weight applied to the sub-issues, the Employer's offer is considerably more reasonable.

LANGUAGE ISSUES

The issues identified and examined here, as mentioned earlier, are not strictly non-economic issues. However, the many sub-issues raised by the parties for each of these issues are more non-economic than economic in nature. Consequently, these issues are discussed in this LANGUAGE ISSUES section.

Vacations

The parties agree on the basic vacation schedule (amount of vacation earned for years of service), but disagree over: which employees should be eligible; the continuation of, and which employees should get, bonus days; whether vacations may be taken is less than 1/2 day increments; whether part-time employees should be prorated; and the calculation of vacation time (hours vs weeks).

Eligible Employees

The analysis above regarding a 12-month vs 41-weeks standard is pertinent to this sub-issue and is adopted unchanged. The Employer's offer is substantially more reasonable than the Union's.

Bonus Days

The Employer proposes to phase out bonus vacation days while the Union's offer continues them. Under the Union's offer, each qualified employee (working 41 or more weeks in a year) will receive one additional vacation day for each year of service up to a maximum of 10.

The Employer maintains that the Union's offer would result in qualified employees being eligible for a maximum of 25 days (or 5 weeks) of vacation. This is not only unreasonable, but is unsupported by the comparables where maximum vacation amounts range from 3 to 4 1/2 weeks. The Employer states in exchange for the elimination of the bonus days for new employees, it improved the over-all vacation schedule.

The Union argues that its offer (of providing bonus days) is consistent with the past practice in this district. Also, of the comparable districts, four provide extra vacation days based upon years of experience. None of these districts treat new employees differently regarding the bonus days, as the Employer here proposes to do.

On this sub-issue, past practice is on the side of the Union. While the Employer is right that more employees are added because of the way the Union defines eligible employees, a vacation schedule that was enhanced by bonus days is what the District has had over the past years. Equity somewhat supports the Union's proposal.

Bonus days are also supported by the comparables--both in terms of the fact that many districts utilize them, as well as no evidence existing in the record that other districts treat new employees differently from senior employees. While I find the Employer's method of implementing the phase out of bonus days reasonable, the "quid quo pro" really is not adequate to constitute a "buy out," or for that matter, an even trade, in order to eliminate the practice. But the Union's offer (of accumulation up to 10 days or 5 weeks) is definitely excessive and, as suggested by the District, is not supported by the comparables.

On this sub-issue of bonus days, I find neither offer very reasonable.

1/2 Day Increments

The Employer proposes to restrict the taking of vacation days to 1/2 day increments. The District reasons that, since there really is no current or past practice of employees taking vacation days in less than 1/2 day increments, it is better not to leave the contract silent on the issue. If the guideline proves to be unduly restrictive, the parties can revise the guideline during future contract negotiations.

The Union states that none of the current Mellen employees know of any policy of restricting the use of vacation to 1/2 day increments. More importantly, none of the comparable districts have language similar to the Employer's here.

The Union is right in that the past practice and the comparables are all on the Union's side on this sub-issue. But the Employer makes a good point that the contract would probably be clearer if this was spelled out. Also, I suspect that the Employer needed this language because of its proposal to identify vacation in hours rather than weeks--it would keep employees from taking 1 or 2 hours of vacation at a time.

The restricting the taking of vacation days to 1/2 day increments seem innocent enough, especially with apparently no employees ever using vacation in less than 1/2 day increments. Yet as innocent and clear as the Employer's clause seems, I wonder: Is the 1/2 day a "work day" or a "calendar day?" If it is meant as a work day and an employee works different length days during the year (from an example the Employer proposed, Reply Brief, p. 10), how many hours of vacation would the employee be restricted to? It is unclear--to me anyway.

On this sub-issue I think the Union's proposal is substantially more reasonable.

Proration for Part-Timers

The Employer proposes that vacation time be prorated for 12-month employees working less than full-time. The Employer suggests that the Board's pro rata proposal is a logical solution to the problems/questions which could be raised by 12-month employees with variable work schedules. In contrast, the Union believes the Employer's offer is unnecessary because the vacation schedule provides proration already built in--part-time employees (4 hours/day) would get paid or take vacation based upon their part-time experience (4 hours/day).

The Employer's offer here makes sense in the context of its entire proposal on vacations, and even makes sense as a "stand-alone." When employees have varied work days, as apparently happens in this district, there ought to be a way to determine how much vacation the employee is entitled to. However, the comparables just do not favor this type of proration formula, and it certainly hasn't been a part of the practice of the District.

The Employer's proposal is slightly favored on the proration sub-issue.

Calculation: Hrs vs Weeks

The Employer wishes to indicate vacation time based upon hours rather than weeks, as proposed by the Union. The Union cannot understand why the District proposes a change. The Union argues that the Employer in its proposal is not consistent (e.g. referring to bonus vacation days as "days" rather than hours).

The parties talk very little on this sub-issue, and so should I. I believe the Employer uses hours instead of weeks to be consistent with its concerns of calculation of part-time and variable-time employees. But, no other comparables have such a method of calculation and the Employer provides

little in the way of support for the change. I find the Union's offer substantially favors the use of weeks over hours.

Summary of Issue

The Employer attempts to make some innovative changes to the vacation schedule and the way the vacation benefit is administered. Taken as a whole, the hours, proration and 1/2 day increments make a great deal of sense and could possibly be the answer to many problems/questions that the parties may currently have or could have in the future. The real problem is not so much that the proposals are not supported by the arbitral criteria established to judge them, the problem is that they are not accepted and supported by the employees that will be affected by them. Proposals must meet the arbitral criteria now, but that more important criteria (employee acceptance) later if ordered by this Award.

In the discussion above, I found the following: the Employer's offer is substantially favored regarding the definition of eligibility; neither offer is reasonable on the "Bonus Days;" the Union's offer is substantially more reasonable on the "1/2 day Increments;" the Employer's proposal on "Proration" is slightly preferred; and the Union's offer regarding "Days vs Weeks" is substantially favored.

Overall, based upon the above and the weight placed on the sub-issues, the Employer's offer on the Vacation issue is somewhat preferred.

Holidays

To review this issue, the parties agree as to the number and which holidays employees would be entitled to have as paid holidays. However, they disagree on the following issues: 1) how to define the employees that will be entitled to these holidays; 2) requirement to work or be on paid leave the day before and after the holiday; and 3) the rate of pay when working a holiday. Each of these sub-issues will be discussed individually.

Eligible Employees

The Employer departs from its definition of "twelve (12) month employees" in this section and defines employees eligible for 9 1/2 holidays as "employees who work more than the school year plus two weeks." The Union points out that the difference between the two offers do not affect any bargaining unit employees.

In order to stay consistent with the holidays for "school year plus up to two weeks employee" clause, the Employer departs from the "twelve (12) month employees" clause offered in its annuity and vacation sections. The Union's offer of eligibility for 41-week employees looks to be somewhat inconsistent with this other clause, and could possibly leave some employees in "no man's land." Therefore, I find the Employer's offer more reasonable on this portion of this sub-issue.

The Employer adds the Day Care Workers to those eligible to receive 9 1/2 holidays. The Employer explains that Day Care Workers may actually end up working year around and, therefore, should receive the same number of holidays as do the other 12-month employees. The Union complains that the Day Care Workers would get 9 1/2 holidays no matter how much of the year they worked--even if they only worked during the school year. This is unfair to the other school-year employees. The Employer says the Union misses the point and fails to consider the Board's offer completely--Day Care Workers would only receive the same number of holidays as the other school-year-plus-two-weeks employees if they work or are on paid leave the day before and the day after the holiday.

The Board makes a strong argument here for including the Day Care Workers--that they could end up working a full year and should be entitled to 9 1/2 holidays. And I think the Union did miss something in the Employer's offer--the connection between the "day before/day after" language and the Day Care Workers. I am not so sure though, if the employer's language is implemented, if the contract would actually guarantee the three holidays to the Day Care Workers as the parties assume. This does not seem to be as clear as it could.

On this portion of this sub-issue I find the Employer's offer only slightly preferable.

Overall, on this sub-issue, I find the Employer's offer considerably more reasonable than the Union's.

Rate of Pay

The Union argues that the Employer's offer to pay double time if an employee must work a holiday 1) is in conflict with the over-time provisions of the stipulated agreement, 2) penalizes an employee for working a holiday, and 3) takes away holiday pay from an employee who only works part of a holiday. Moreover, there is not one comparable which provides this type of pay scheme for holidays.

The Employer questions where the penalty is in an employee receiving double time for working a holiday. Also, there really is no conflicts with the District's proposed language and the stipulations, only the Union trying to confuse the issue.

The Union raises some interesting and important questions which I don't believe the Employer's language addresses. The penalty for only receiving double time pay for working a holiday (if one has already worked 40 hours in a week) is 1/2 time pay--time and 1/2 pay for the over-time and another days straight-time pay for the holiday equals 2 1/2 time pay.

Contrary to the Union's claim, the record shows that Drummond has language very similar to what the Employer is offering, so at least there is some president among the comparables.

But the real problem with the Board's language raised by the Union, which I don't think were adequately answered by the Employer, is what happens when an employee works less than a full day on a holiday. The Employer's proposal states: "If an employee is required to work on a holiday, as designated above, the employee shall be paid double time in lieu of holiday pay." The Employer explained (Reply Brief, p.12) that, if the employee works 2 hours, s/he would receive double time plus regular holiday pay. But that is not what the proposed clause says. Under the clause the employee would not get holiday pay--that's what "in lieu of" means. If the Employer plans to implement this clause the way it explained it, it may be okay--until someone works 4, or 6 or 7 1/2 hours on a holiday. The question then becomes: At what point is double time paid in lieu of holiday pay? I don't think it is the intent of the District to pay an employee almost triple time for working a holiday. Maybe I'm missing something too, but I think the language as presented is unclear in this regard.

On this sub-issue, I find little support among the comparables and many implementation problems for the parties with the Employer's proposal, and thus, find the Union's language substantially more reasonable.

Prerequisites

The Employer's proposal adds the requirement that in order for school year plus two weeks employees to get paid for a holiday, they "...must work or be on paid leave the last scheduled day before the holiday and the first scheduled day after the holiday." The District believes this is a reasonable way to give extra holidays to those employees who work more than the school year plus 2 weeks and yet ensure that certain employees (like Day Care Workers) actually are working during the holiday period. The Union rejects the Employer's proposal because 1) it requires regular employees to work or be on paid leave the day before and the day after the holiday while school year employees do not have to meet this requirement, 2) past practice supports the Union's offer which has no prerequisites to qualify for the holidays, and 3) only three of the comparables have clauses similar to this proposal of the Employer.

The past practice of the parties and what the comparables have in their contracts seem to support the Union on this sub-issue. With regards to the equity criterion, I don't think it is unreasonable for employees to be asked to work the days before and after a holiday--this is not an uncommon requirement, at least in other Wisconsin public sector contracts. And as far as treating the two groups differently, while it would be far better to have consistent requirements, given what the Employer is trying to do with qualifying the Day Care Workers, it is understandable. All in all, I tend to somewhat favor the Union's position on this sub-issue.

Summary of Issue

On this issue of Holidays, I find the Employer's proposal considerably more reasonable regarding employee eligibility, the Union's offer substantially more reasonable on the rate of pay, and the Union's offer

somewhat more reasonable regarding the prerequisites. Therefore, considering the weights placed on the individual sub-issues, I find that neither offer is more reasonable on the Holiday issue.

Sick Leave

The Union's proposal on sick leave: 1) grants 12 days per year of accumulation and places the limit on sick leave accumulation at 100 days; 2) allows employees to use sick leave for their own personal illnesses, as well as serious illnesses of an immediate family member; and 3) does not restrict the use of sick leave to only 1/2 day increments. On the other hand, the Employer's offer: 1) grants 10 days per year sick leave accumulation and caps the total accumulation at 90 days; and 2) provides that sick leave shall be taken in only 1/2 day increments. These sub-issues will be discussed separately. To help analyze this issue, I will refer to Chart II (below).

CHART II

SICK LEAVE PROVISIONS
Indianhead Athletic Conference

District	Accumulation 9 mo./pt	12 mo.	Total	Use for Family	1/2 Day Inc.
Bayfield	10	12	120	No	No
Drummond	12	12	100	Yes	No
Glidden	10	12	100	No	No
Mercer	10	10	60	No	No
Ondossagon	12	12	120	Yes	No
Solon Springs	12	12	130	Yes	No
South Shore	10	12	100	No	No
Washburn	12	12	100	Yes	No
Average	11	11.75	103.75		

SOURCE: District contracts (Union Ex. 2 - 19)

Use for Family Leave

The Union maintains that all the comparable districts allow employees to use sick days for family illness through contract language or through practice. And further, the past practice of the District is to grant paid sick leaves to employees for illness within the family.

The Employer claims that only two of the unionized Conference districts provide for the use of sick leave for family illness; the other contracts make no provision for the use of sick leave for family illness. The District

believes the Union's offer is a relatively unfettered use of sick leave as compared to the comparables.

Based upon the evidence submitted and testimony presented at the hearing, past practice seems to favor the Union's offer.

Both parties claim that the comparables are on their side. Complicating the matter, I believe, is the new Wisconsin Family and Medical Leave Act (Act) which provides that "an employee may substitute, for portions of family leave or medical leave, paid or unpaid leave of any other type provided by the employer." (Union Ex. 89-A) Employers around the state, and in the comparable districts, may be required by this language to allow employees to use sick leave as a substitute for any portion of family or medical leave. If this is so, this District may be similarly required, even though its offer does not so provide. This makes it difficult to use only the contract language to determine what the current level of benefits are in this situation. But since the record contains no real reliable evidence regarding the practice of the comparable employers (as discussed in depth earlier), contracts will have to be relied upon to analyze this sub-issue.

Based upon the contracts of the districts in the Conference (as summarized in Chart II, p. 33), four of the eight districts provide for some use of sick leave for family illness. Of these four, two districts, Solon Springs and Washburn, have restrictions on the maximum number of days that can be used, 5 and 3 respectively. On this basis, the Employer's offer is somewhat closer to the comparables.

Overall on this sub-issue, the Employer's offer is somewhat more reasonable.

Restriction to 1/2 Day Increment

The Employer would like to try restricting the use of sick leave to increments no smaller than 1/2 days in order to provide more clarity to this first contract.

While the Employer may be trying the "head off" potential problems down the road and its offer seems fairly innocent, there lacks a showing of a real need, and more importantly, no support among the other comparable districts.

On this sub-issue the Union's offer is more reasonable.

Yearly and Total Accumulation Amount

The Employer's offer is for an accumulation of 10 days per year to a total of 90 days; and the Union's proposal is for an accumulation of 12 days per year to a total of 100 days.

The past practice of the parties favors the Employer's offer, but on the higher weighted criterion of the comparables, the Union's offer is more reasonable. With the average of the comparable districts' accumulation rate at 11.75 (see Chart II, p. 33), the Union's 12 days is closer than the Employer's 10 days. And on the total accumulation, the average is 103.75, again making the Union's more reasonable.

Thus, on these two sub-issues, the Union' offer is considerably more reasonable.

Summary of Issue

In summary on this sick leave issue, I found: 1) the Employer's offer somewhat preferred on the Use for Family Leave sub-issue; and 2) the Union's offer more reasonable on the remainder of the sub-issues of 1/2 Day Increment, Total and Yearly Accumulation. Consequently I find the Union's offer on the sick leave issue considerably more reasonable.

Personal, Emergency, Funeral Leave

The Union's offer provides for one each personal and emergency leave day per year for all employees. The Employer's offer provides for no personal leave time and 4 emergency days per year to be deducted from sick leave.

Added Days

The Employer argues that the Union's proposal is a change in the status quo in that it expands the purposes for which paid leave may be used. The District points out that leave days, under the Union's proposal, could be used for reasons beyond the purposes for which emergency leave days could be used under the District's long established written policy. In addition, the Union seeks a third type of leave, funeral leave, which it also proposes would not be deducted from sick leave.

The Union claims that its proposals are reasonable in that they 1) are supported by the majority of the comparables, and 2) are reasonable because they establish definitions and criteria for taking the personal and emergency days so that taking of these leave days are not abused.

The issue of paid personal and emergency leaves as proposed by the Union is substantially supported by the comparables. Virtually every other district in the comparable pool provides some type of personal and/or emergency leave (usually 1 to 2 days) for its employees. The Union's language even goes much farther than many other districts by defining and restricting the use of personal and emergency leave-taking. Only the past practice of the District supports its regressive position on this issue.

The Union's offer is completely reasonable and is selected on this sub-issue.

Deducted from Sick Leave Bank

The Employer proposes to deduct emergency and funeral leave time from the employees' accumulated sick leave bank. The Union points out that only one district among the eight comparable schools deducts funeral (called emergency there) leave from sick leave.

The Employer offers no explanation for this policy of deducting emergency and funeral leave from sick leave. I will have to assume it is for cost saving reasons. It is too bad the District could not find a better place to save money--deaths and emergency do affect employees, and their employer should be sensitive to the emotional and financial impact of these events. Support, in terms of time-off with pay, is not only the least an employer can do, but in this case, it is what every other district does.

The Union's offer is completely reasonable on this sub-issue.

Purpose of Use

The Union proposes to restrict the use of personal and emergency leave by offering definitions and conditions for taking these leave days. The Employer objects to the addition of two days of paid leave primarily because of the added cost and the clause allows the taking these days for non-emergency reasons.

While there would be added cost to the District under the Union's proposal, I think the Union has gone to great lengths, as mentioned above, to: 1) reduce the probable number of days taken in a year and thus the impact on the District (in terms of lost productivity and added payroll costs) of leave taking; and 2) reduce the likelihood of misuse of these paid leave days. Allowing employees to take time off with pay to conduct personal business is not uncommon among the comparables.

I find the Union's position here very reasonable.

Summary of Issue

The Union's offer is found to be more reasonable on each of the sub-issues and thus is found substantially more reasonable on the leaves issue.

Family/Medical Leave

The Union proposes in Section D of Article XIII that, after two years of employment, any employee requesting an unpaid maternity or child rearing leave would be granted a leave for up to 1 year by the District. The Employer indicates in this section that family and medical leave would be granted as provided by state and federal law. Two sub-issues are pertinent to this issue, but are of equal weight, and thus will not be discussed separately.

Despite the complaints from the Union that the Employer's offer may illegally restrict the use of medical leave (discussed in detail above), the Union provides little rationale for its proposal. The Employer maintains its proposal should be favored because: 1) the District has had no maternity or family leave requests in the last six years, thus no past practice; 2) three other districts (Hurley included) make no reference to maternity leave; and 3) the current state law provides for family and medical leave and is unnecessary in the contract.

On this issue, I find both offers acceptable and reasonable.

Unpaid Leaves

The parties generally agree the Employer should have the discretion to grant unpaid leaves as it sees fit. The Employer proposes to guarantee this unilateral decision-making power by adding language that would remove these decisions from being challenged under the grievance procedure.

The Union believes that there may be times where the granting or denying of unpaid leave should be challenged through the grievance procedure. Employees should be treated somewhat the same and, if not, the employees should be able to file a grievance. Or, if the Employer grants a leave and then fails to allow the employee to return to work at the completion of the leave, the situation should be grievable.

The Employer maintains that only the granting of a leave is exempt from a grievance under its proposal--conditions under which an employee returns to work are certainly subject to the grievance procedure. Also, the District maintains that its proposal on unpaid leaves is more detailed and attempts to prevent disputes, and is thereby more reasonable than the Union's offer.

If the granting of unpaid leave is at the sole discretion of the Employer (which the Union seems adopt in its language too), its seems reasonable that the decision should be protected from the grievance procedure--the District would not want to have to defend a grievance every time it denied a request for an unpaid leave. As the Employer points out, only the decision, and not the implementation of the leave, would be bared from grievances.

On the other hand, the employees should have some protections from the District acting in an arbitrary or discriminating manner. But perhaps the Union's language does not mean what it really says, or the Union wishes it to mean something else. For instance under the Union's language, if the Employer did not grant a leave because it did not "desire" to after it "desired" to in another but similar case, does the Union have cause to complain about the Employer acting in an arbitrary and discriminatory manner given the permission by the Union to the District to do what it "desires?" Probably so, but why have language which raises such problems?

Regarding the Employer's proposal to bar from grievances its leave decisions, there is no support (that I could find) among the comparables for such a restriction. Quite the opposite--most districts have more liberal

leave policies than what is being proposed by either party here. Also, I would like to point out that as the Employer's language attempts to clarify the issue of accrual of benefits, it confuses the issue somewhat by contradicting the parties' agreed to "Article VIII - Seniority..." which states that seniority will continue for up to six weeks during a continuous unpaid leave of more than six weeks.

While I favor the way the Employer organizes its unpaid leave clause (separate from the other leaves), I find both clauses problematic. However, the Union's proposal is more supported by the comparables, so is found to be somewhat more reasonable than the Employer's.

Union Business Leave

The Union says it could live with the Employer's offer, but the Employer finds the Union's proposal excessive. On this very minor issue, based primarily upon the comparables, I find the Employer's offer to be more reasonable.

CONCLUSION

In this Arbitration Opinion and Award I have discussed each of the issues and sub-issues that were presented to me by the parties in their final offers, exhibits, briefs, and reply briefs. In my deliberations and analysis I have considered all the relevant statutory criteria and all pertinent evidence and argument present in the record of this case. Base upon these deliberations and analyses as presented in the discussion herein, I conclude the following:

- The Employer's offers are preferred on the major issues of wages and annuity contribution. The Employer's proposal is also more reasonable on the very minor issue of union business leave.

- The Union's proposals on the lower weighted issues of sick leave and personal/emergency leaves are more reasonable.

- Both proposals are found to be equally reasonable on the remaining two issues of holidays and family/medical leave.

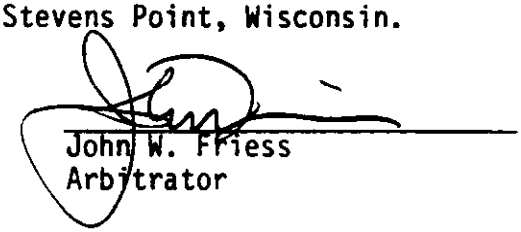
Therefore, overall, taking into consideration the relative weights given to these issues, the Employer's final offer is found to be somewhat more reasonable than the Union's final offer.

Based upon this, I find the Employer's offer is preferred over the Union's offer and make the following:

AWARD

The final offer of the Mellen School District, along with agreed upon stipulations, shall be incorporated into the 1989-91 collective bargaining agreement between the parties.

Dated this 29th day of July, 1990 at Stevens Point, Wisconsin.



John W. Friess
Arbitrator

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering an award under Section 111.70(4)(cm) 7 of the Wisconsin Statutes are as follows:

"(7) 'Factors Considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

(a) The lawful authority of the municipal employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and financial ability of the unit of government to meet the costs of any proposed settlement.

(d) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

(e) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

(f) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

(g) The average consumer prices for goods and services, commonly known as the cost of living.

(h) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(i) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(j) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration and otherwise between the parties in the public service or in private employment."

APPENDIX "B"

Name of Case: Mellen School District
Case 15 No. 42640 Int/Arb. 5350
(Support staff)

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we (do) (~~do not~~) authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

January 22, 1990
(Date)

Kathryn J. Pearson
(Representative)

On Behalf of: School District of Mellen

ZMARB9.FT

DO OFFER #3

SCHOOL DISTRICT OF MELLEN

~~REVISED~~ ~~PRELIMINARY~~ FINAL OFFER TO

CHEQUAMEGON UNITED TEACHERS

FOR A 1989-91 AGREEMENT

1. ARTICLE XIV - MANAGEMENT RIGHTS

Add the following to the first paragraph of the tentative agreement:

The Board will not contract out for goods and services if such subcontracting would result in the reduction of time and/or layoffs of any bargaining unit member. ~~This limitation on the Board's right to contract out for goods and services shall only apply to employees hired before January 1, 1989.~~

2. ARTICLE II - UNION RIGHTS

Section D:

Employees who are Union representatives and who miss work time for attendance at bargaining sessions or grievance meetings with District representatives will be allowed to make up the time. The scheduling of the makeup time shall be subject to the approval of the District Administrator.

3. ARTICLE VI - HOURS

Section F:

2. Employees who work more than the school year plus two weeks, and day care workers shall receive the following paid holidays:

1/2 day before New Year's Day — Good Friday
New Year's Day
Memorial Day — Day after Thanksgiving
Fourth of July
Labor Day
Thanksgiving
~~1/2~~ day before Christmas
Christmas Day

~~3~~ In order to be paid for the holiday, the employee must work or be on paid leave the last scheduled day before the holiday and the first scheduled day after the holiday.

5. If an employee is required to work on a holiday, as designated above, the employee shall be paid double time in lieu of holiday pay.

11/24/90

5. Bargaining unit employees who had, pursuant to past practice, annually received ten(10) additional vacation days (bonus days) shall continue to annually receive ten (10) additional vacation days (bonus days). Bonus days can be sold back to the District if the employee does not wish to have the days off. Such days will be sold back at the regular daily wage for each bonus day sold back.

4. ARTICLE VI - HOURS

Section G:

1. All twelve (12) month employees shall receive the following paid vacation:

Years Worked	Weeks Paid Vacation
After 1 year	40 hours
After 3 years	80 hours
After 10 years	120 hours

2. Vacation time will be pro-rated for twelve (12) month employees working less than full-time based on the total number of regularly scheduled hours worked and hours of paid leave in the preceding year compared to 2080 hours.

3. Scheduling of vacation time shall be subject to the approval of the employee's immediate supervisor. If no agreement can be reached, then the vacation time will be scheduled as per past practice. Vacation may not be taken in less than one-half (1/2) day increments.

4. Vacation must be taken within twelve (12) months of when it was earned and cannot be accumulated unless agreed to by the employee's immediate supervisor.

5. See top of page.

5. ARTICLE X - INSURANCE AND RETIREMENT

Section A:

An employee who is on an unpaid leave of absence or receiving disability insurance benefits may remain a part of the group insurances listed below at his/her own expense for the period of time provided by state and federal law. Such employee will pay his/her premiums to the District bookkeeper while on leave.

Section C:

The District shall provide a group life insurance plan for each employee which provides for insurance equal to or greater than one (1) times the employee's annual salary. The District may change life insurance carriers, provided the level of benefits remains substantially equivalent to the level of benefits during the 1987-88 school year.

Section B: Entire section as Union proposed 1/22 in first last offer.

FP 1/24/89

Section D:

~~For employees working four (4) or more hours per day, the district shall provide Long Term Disability Insurance. Such insurance shall have a sixty (60) day waiting period and shall provide benefits at ninety percent (90%) of regular salary.~~

Section F:

Effective July 1, 1990, the contribution for twelve (12) month employees shall be increased to 9.8%.

For twelve (12) month employees, the District shall contribute nine percent (9%) of the employee's wages to a retirement annuity. Effective January 1, 1989, the District shall contribute 1.2% of all wages earned by employees who work less than twelve (12) months to a retirement annuity. The percentage contribution paid for employees who work less than twelve (12) months, shall increase to 2.2% July 1, 1989 and 4.1% July 1, 1990.

6. ARTICLE XIII - LEAVES

Section A:

1. Emergency leave, deducted from accumulated sick leave, may be taken for serious illness requiring hospitalization or the actual services of a physician for a member of the employee's immediate family (spouse, children, parents) up to four (4) days per incident.

2. Funeral leave, deducted from accumulated sick leave, may be taken for deaths which occur in the immediate family (spouse, children, parents, brother, sister, and in-laws in the same degree of relationship) up to four (4) days per death.

Section B:

Employees shall be granted ten (10) days of sick leave per year, cumulative to ninety (90) days. Accumulated sick leave days that an employee had prior to the ratification of this Agreement shall be retained. ~~Sick leave may be used for personal illness of the employee or serious illness of an immediate family member. Immediate family includes spouse, children and parents.~~ Sick leave may only be used in one-half (1/2) day increments.

Section D:

Family leave and medical leave shall be provided pursuant to state and federal law.

11/24/9

Section F:

The Board may, in its sole discretion, grant additional unpaid leave to an employee for medical or personal reasons. The Board's decision regarding a request for unpaid leave shall not be subject to review under the grievance procedure. While on such leave, the employee shall not receive or accrue any fringe benefits or seniority.

7. ARTICLE XIV - DURATION OF AGREEMENT

This Agreement shall be in full force and effect from January 1, 1989, to and including June 30, 1990.

WAGE SCHEDULE

(Effective January 1, 1989 through June 30, 1990)

POSITION	STEP 1	STEP 2	STEP 3
Head Cook	6.00	6.35	6.94
Cook	5.50	5.80	6.38
Head Secretary	7.00	8.20	9.72
Secretary/Clerical	5.50	5.75	6.03
Head Custodian	8.00	8.70	9.70
Maintenance Custodian	7.00	7.85	8.99
Custodian	6.50	7.25	8.27
Lead Day Care Worker	5.01	5.25	5.50
Day Care Worker	4.91	5.15	5.40
Aides (AV, Health Aide and Fixed Point of Referral)	7.15	7.55	8.21
Aides (Special Education)	5.50	6.45	7.62
Aides (Study Hall)	5.50	6.45	~~7.36~~ 7.62
Aides (All Other)	4.91	5.15	5.40

The employee's anniversary date (initial date of employment) will be used for advancement on the salary schedule.

Effective July 1, 1990, increase the above wage rates by 5.0%.

RPF 1/22/9

APPENDIX "C"

SCHOOL DISTRICT OF MELLEN

FINAL OFFER TO
CHEQUAMEGON UNITED TEACHERS
FOR A 1989-91 AGREEMENT

1. ARTICLE XIV - MANAGEMENT RIGHTS

Add the following to the first paragraph of the tentative agreement:

The Board will not contract out for goods and services if such subcontracting would result in the reduction of time and/or layoffs of any bargaining unit member.

2. ARTICLE II - UNION RIGHTS

Section D:

Employees who are Union representatives and who miss work time for attendance at bargaining sessions or grievance meetings with District representatives will be allowed to make up the time. The scheduling of the makeup time shall be subject to the approval of the District Administrator.

3. ARTICLE VI - HOURS

Section F:

2. Employees who work more than the school year plus two weeks and day care workers shall receive the following paid holidays:

1/2 day before New Year's Day
New Year's Day
Good Friday
Memorial Day
Fourth of July
Labor Day
Thanksgiving
Day after Thanksgiving
Day before Christmas
Christmas Day

In order to be paid for the holiday, the employee must work or be on paid leave the last scheduled day before the holiday and the first scheduled day after the holiday.

5. If an employee is required to work on a holiday, as designated above, the employee shall be paid double time in lieu of holiday pay.

4. ARTICLE VI - HOURS

Section G:

1. All twelve (12) month employees shall receive the following paid vacation:

Years Worked	Weeks Paid Vacation
After 1 year	40 hours
After 3 years	80 hours
After 10 years	120 hours

2. Vacation time will be pro-rated for twelve (12) month employees working less than full-time based on the total number of regularly scheduled hours worked and hours of paid leave in the preceding year compared to 2080 hours.

3. Scheduling of vacation time shall be subject to the approval of the employee's immediate supervisor. If no agreement can be reached, then the vacation time will be scheduled as per past practice. Vacation may not be taken in less than one-half (1/2) day increments.

4. Vacation must be taken within twelve (12) months of when it was earned and cannot be accumulated unless agreed to by the employee's immediate supervisor.

5. Bargaining unit employees who had, pursuant to past practice, annually received ten (10) additional vacation days (bonus days) shall continue to annually receive ten (10) additional vacation days (bonus days). Bonus days can be sold back to the District if the employee does not wish to have the days off. Such days will be sold back at the regular daily wage for each bonus day sold back.

5. ARTICLE X - INSURANCE AND RETIREMENT

Section A:

An employee who is on an unpaid leave of absence or receiving disability insurance benefits may remain a part of the group insurances listed below at his/her own expense for the period of time provided by state and federal law. Such employee will pay his/her premiums to the District bookkeeper while on leave.

Section B:

Entire section as Union proposed 01/22/90 in first Last Offer.

Section F:

For twelve (12) month employees, the District shall contribute nine percent (9%) of the employee's wages to a retirement annuity. Effective July 1, 1990, the contribution for twelve (12) month employees shall be increased to 9.8%. Effective January 1, 1989, the District shall contribute 1.2% of all wages earned by employees who work less than twelve (12) months to a retirement annuity. The percentage contribution paid for employees who work less than twelve (12) months shall increase to 3.2% on July 1, 1989, and to 4.1% on July 1, 1990.

6. ARTICLE XIII - LEAVES

Section A:

1. Emergency leave, deducted from accumulated sick leave, may be taken for serious illness requiring hospitalization or the actual services of a physician for a member of the employee's immediate family (spouse, children, parents) up to four (4) days per incident.

2. Funeral leave, deducted from accumulated sick leave, may be taken for deaths which occur in the immediate family (spouse, children, parents, brother, sister, and in-laws in the same degree of relationship) up to four (4) days per death.

Section B:

Employees shall be granted ten (10) days of sick leave per year, cumulative to ninety (90) days. Accumulated sick leave days that an employee had prior to the ratification of this Agreement shall be retained. Sick leave may only be used in one-half (1/2) day increments.

Section D:

Family leave and medical leave shall be provided pursuant to state and federal law.

Section F:

The Board may, in its sole discretion, grant additional unpaid leave to an employee for medical or personal reasons. The Board's decision regarding a request for unpaid leave shall not be subject to review under the grievance procedure. While on such leave, the employee shall not receive or accrue any fringe benefits or seniority.

7. ARTICLE XIV - DURATION OF AGREEMENT

This Agreement shall be in full force and effect from January 1, 1989, to and including June 30, 1991.

M3028TE.FIN

WAGE SCHEDULE

(Effective January 1, 1989 through June 30, 1990)

POSITION	STEP		
	1	2	3
Head Cook	6.00	6.35	6.94
Cook	5.50	5.80	6.38
Head Secretary	7.00	8.20	9.72
Secretary/Clerical	5.50	5.75	6.03
Head Custodian	8.00	8.70	9.72
Maintenance Custodian	7.00	7.85	8.99
Custodian	6.50	7.25	8.27
Lead Day Care Worker	5.01	5.25	5.50
Day Care Worker	4.91	5.15	5.40
Aides (AV, Health Aide and (Fixed Point of Referral)	7.15	7.55	8.21
Aides (Special Education	5.50	6.45	7.62
Aides (Study Hall)	5.50	6.45	7.62
Aides (All Other)	4.91	5.15	5.40

The employee's anniversary date (initial date of employment) will be used for advancement on the salary schedule.

Effective July 1, 1990, increase the above wage rates by 5.0%.

APPENDIX "D"

Mulcahy
&Wherry

REC'D
APR 13 1990

Mulcahy & Wherry, SC
Attorneys at Law

715 South Barstow Street
P O Box 1030
Eau Claire, WI 54702-1030
715-839-7786
Telecopier 715-839-8609

April 12, 1990

Mr. John W. Friess
Conciliation Services
1917 College Avenue
Stevens Point, WI 54481

Re: Mellen Public Schools
Case 15, No. 42648, INT/ARB-5350

Milwaukee
Eau Claire
Green Bay
Madison
Oshkosh
Sheboygan
Wausau

Dear Mr. Friess:

Pursuant to the discussions during our conference call earlier this morning, this letter will confirm that the language referenced in Article X, Section B, of the District's Final Offer is identical to the language contained in Article X, Section B, of the Union's Final Offer.

Very truly yours,

MULCAHY & WHERRY, S.C.

Kathryn J. Prenn

Kathryn J. Prenn

KJP/maf

c: Eugene Johnson
Barry Delaney

APPENDIX "E"

RECD
MAR 6 1990

Name of Case: Mellen School District
Case 15 No 42640 Int/Arb-5350
(Support staff)

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we (do) (~~do not~~) authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

January 22, 1990
(Date)

Barry Delaney
(Representative)

On Behalf of: Chequamegon United Teachers

ZMARB9.FT

Chequamegon United Teachers Last Offer
For a ~~1988~~ 1989-1991 Collective Bargaining Agreement

The ~~1988~~ 1989-1991 Agreement shall contain the provisions stipulated by the parties and those provisions provided within this final offer.

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BD 1/27/90

1 Article II (D)

"D. In the event that the District is unwilling to schedule grievance meetings (and/or grievance hearings) and bargaining sessions (and/or interest arbitration hearings) outside of the working hours of employees representing the Union (for handling a grievance or the Union's bargaining committee for bargaining sessions) the following shall apply: Employees who are Union representatives will be paid for any work time they miss for the attendance at bargaining sessions or grievance meetings (required within the grievance procedure) with the District representatives."

2 Article IV (B)

"B. The District will not subcontract any bargaining unit work if such subcontracting would result in the lay-off and/or reduction of working hours of any bargaining unit employee."

3 Article VI (F)
add the following to the stipulated language:

" 2. Employees who work forty-one or more weeks in a year shall receive the following paid holidays: New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, Christmas Day and one-half of New Year's Eve Day."

4 Article VI (G)

"G. All employees who work forty-one or more weeks in a year shall receive the following paid vacation:

Years Worked	Weeks of Paid Vacation
After 1 year	1 week
After 3 years	2 weeks
After 10 years	3 weeks

1. In addition to the above paid vacation amounts, such employees will receive additional paid vacation days (bonus days) yearly. Each employee will receive, yearly, one additional day for every year the employee has worked for the District up to a maximum of ten (10) additional days. Such additional vacation days (or bonus days) will be with pay. Bonus days can be sold back to the District if the employee does not wish to have the days off. Such days will be sold back at the regular daily wage for each bonus day sold back.

BD 1/27/90

2. Scheduling of vacation time shall be subject to discussion and agreement between the employee and his/her immediate supervisor. If no agreement can be reached, then the vacation time will be scheduled as per past practice.

3. Vacation must be taken within twelve (12) months of when it was earned and cannot be accumulated unless agreed to by the employee's immediate supervisor."

15 Article VII - Wage Schedule

BD 1/22/90

The following are the wage rates for each position (for less than one year's experience, one year of experience, and more than one year's experience):

		Effective Jan. 1, 1989 through June 30, 1990	Effective July 1, 1990 through June 30, 1991
Head Custodian			
	0	8.47/hr	8.89/hr
	1	9.22/hr	9.68/hr
	2	9.97/hr	10.47/hr
Maintenance [redacted] Custodian			
	0	7.79/hr	8.18/hr
	1	8.47/hr	8.89/hr
	2	9.16/hr	9.62/hr
Custodian			
	0	7.11/hr	7.47/hr
	1	7.74/hr	8.13/hr
	2	8.37/hr	8.79/hr
Head Secretary			
	0	8.47/hr	8.89/hr
	1	9.22/hr	9.68/hr
	2	9.97/hr	10.47/hr
Secretary/Clerical			
	0	5.02/hr	5.27/hr
	1	5.47/hr	5.74/hr
	2	5.91/hr	6.21/hr
(IMC) - Audio-Visual, Health Aide, and Fixed Point of Referral -			
	0	7.39/hr	7.76/hr
	1	8.04/hr	8.44/hr
	2	8.69/hr	9.12/hr
Special Education Aides and Study Hall Supervisor -			
	0	6.51/hr	6.84/hr
	1	7.09/hr	7.44/hr
	2	7.66/hr	8.04/hr
Head Cook -			
	0	5.87/hr	6.16/hr
	1	6.39/hr	6.71/hr
	2	6.91/hr	7.26/hr
Assistant Cook -			
	0	5.35/hr	5.62/hr
	1	5.82/hr	6.11/hr
	2	6.29/hr	6.60/hr
Playground Aide, Office Aide, Teacher Aide, and Day Care ~~Operator~~ Worker -			
	0	4.45/hr	4.67/hr
	1	4.84/hr	5.08/hr
	2	5.23/hr	5.49/hr

BD 1/22/90

BD 1/22/90

6 Article X -Insurance and Retirement

"A. An employee receiving an unpaid leave of absence may remain a part of the group insurances listed below at his/her own expense for the period of time provided by the state and federal law. Such employees will pay his/her premiums to the District bookkeeper monthly while on leave.

B. The District shall provide the following insurances and pay full premiums for all employees who work twenty or more hours per week.

1. Health Insurance (full family or single coverage - whichever is needed by the employee)

The group health insurance coverage shall be equivalent to or exceed coverage in effect during the 1988-89 school year. This means the District can change health insurance carrier or self-fund subject to the preceding requirement. The District shall be responsible to pay any deductible in the same manner that it has done in past years.

2. Dental Insurance (full family or single coverage - whichever is needed by the employee)

The group dental insurance coverage shall be equivalent to or exceed the coverage in effect during the 1978-79 school year. WEA Insurance Trust Dental Insurance Group Policy No. 89122.

3. Long Term Disability Insurance

The insurance plan will have a sixty-day waiting provision, a 90 percent payment of salary provision and will be equivalent to or exceed the coverage and service of the plan provided by the WEA Insurance Trust. Any employee absent for sixty days will be taken off school sick leave as soon as they qualify for long term disability payments.

4. Life Insurance

The insurance plan shall provide insurance equal to or greater than one (1) times the employee's annual salary. Such life insurance plan shall be equivalent to or exceed coverage in effect during the 1988-89 school year. This means the District can change life insurance carrier or self-fund subject to the preceding requirement.

C. The District shall contribute the following percent of each employee's wages to a retirement annuity: (Such plan and carrier shall be those in effect during the 1987-88 year.)

BD 1/22/90

For 1988-89 - Commencing January 1, 1989, 9.2% of all wages earned by employees who work forty-one or more weeks per year and 1.2% of all wages earned by employees who work less than forty-one weeks per year.

For 1989-90 - Commencing July 1, 1989, 9.8% of all wages earned by employees who work forty-one or more weeks per year and 3.2% of all wages earned by employees who work less than forty-one weeks per year.

For 1990-91 - Commencing July 1, 1990, 10.3% of all wages earned by employees who work forty-one or more weeks per year and 4.1% of all wages earned by employees who work less than forty-one weeks per year."

7 Article XIII (A)

"A. Each employee shall be allowed to take up to one (1) personal day and one (1) emergency day per year. Such days will be with pay. Such days will not be accumulative nor will they be deducted from sick leave.

1. Personal leave shall be defined as an circumstance that requires action that cannot be accomplished outside of the normal work hours. Prior to taking personal leave, an employee must submit a signed request to his/her immediate supervisor.

2. Emergency leave shall be defined as an unforseen event or combination of circumstances that requires immediate action. An employee's misuse of emergency leave shall result in the loss of one day's pay."

8 Article XIII (B)

"B. Employees shall be granted twelve (12) days of sick leave per year, cumulative to one hundred (100). Accumulative sick leave days that an employee had prior to the ratification of this Agreement (or receipt of an arbitration award) shall be retained. Sick leave may be used for personal illness of the employee or serious illness of an immediate family member. Immediate family includes spouse, children and parents."

BD 1/29/90

9

Article XIII (C)

"C. Funeral leave, or bereavement leave will be provided and no deduction will be made from the salary or from the sick leave account of any employee for absence due to a death in his/her immediate family; provided such absence does not extend over a total of more then two (2) working days for any one death. Immediate family is interpreted to mean father, mother, brother, sister, husband, wife, child, fatherin-law, mother-in-law, brother-in-law, and sister-in-law."

10

Article XIII (D)

"D. After two years of employment, any request for unpaid maternity leave, childrearing leave (due to a child's illness), or extended personal illness of the employee will be granted by the District up to one year in duration. The District may grant any other requested unpaid leaves it desires."

11

Article XVIII - Duration

"This Agreement shall be in full force and effect from January 1, 1989 to and including June 30, 1991."

APPENDIX "F"

TENTATIVE AGREEMENTS REACHED
FROM FEBRUARY 28, 1989 THROUGH OCTOBER 12, 1989
BETWEEN THE
SCHOOL DISTRICT OF MELLEN
AND THE
CHEQUAMEGON UNITED TEACHERS

BD 1/27/90

KD 1/22/90

Article I - Recognition

A. The Board of Education acting for the School District of Mellen recognizes the Chequamegon United Teachers as the exclusive and sole bargaining representative for all regular full-time and regular part-time employees of the Mellen School District, excluding professional, confidential, supervisory and managerial employees.

Article II - Union Rights

A. The Union and its representatives shall have the right to use the school buildings for meetings pursuant to the District policy that the MEA follows for its meetings, provided such use does not interfere with the normal operation of the school. Custodians who are employed at night may attend Union functions in the evening and make up the work afterwards.

B. The Union may use the District's incoming mail service and employees' mailboxes for communication.

C. The Union and its representatives will be permitted to use school equipment, pursuant to the District policy provided for the MEA, and shall reimburse the District for use of supplies at the pre-determined costs.

Article III - Fair Share

A. The Union, as the exclusive representative of all employees in the bargaining unit will represent all such employees fairly and equally and all employees in the unit will be required to pay their fair share of the costs of representation by the Union. No employee shall be required to join the Union, but membership in the Union shall be made available to all employees who apply consistent with the Union's constitution and bylaws.

B. The District agrees that effective thirty (30) days after the date of initial employment during the months of September through May it will deduct from the monthly earnings of all employees in the collective bargaining unit their fair share of the cost of representation by the Union as provided in Section 111.70 (1) (h) Wis. Statutes and as certified to the District by the Union, and pay the said amount to the treasurer of the Union on or before the end of the month in which such deduction was made. Changes in the amount of dues to be deducted shall be certified by the Union thirty (30) days before the effective date of change.

The Union agrees to certify to the District only such fair share costs as are allowed by law and further agrees to abide by the decisions of the WERC and/or courts of competent jurisdiction in this regard.

1/24/90

C. The District will provide the Union with a list of employees from whom deductions are made with each monthly remittance to the Union.

D. The Union does hereby indemnify and shall save the District harmless against any and all claims, demands, suits, or other forms of liability, including court costs, that shall arise out of or by reason of action taken or not taken by the District which District action or non-action is in compliance with the provisions of this Article, and in reliance on any list or certificates which have been furnished to the District pursuant to this Article; provided that the defense of any such claims, demands, suits, or other forms of liability shall be under the exclusive control of the Union and its attorneys. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this Article through representatives of its own choosing and the Union agrees to pay all reasonable attorney fees.

Article IV - General Provisions

A. The Union shall provide copies of this agreement to present employees and ten copies to the District. The District shall provide copies of the agreement to employees who are hired after the ratification of this agreement.

C. If any provision of this agreement is subsequently declared by the proper legislative or judicial authority to be in violation of the laws of the State of Wisconsin, all other provisions of this agreement shall remain in force for the duration of the agreement and the parties will immediately enter into bargaining for the replacement of the provision that is found to violate the law.

Article V - Discipline Procedure

A. Alleged breaches of discipline shall be reported to the affected employee when they come to the attention of the administration and are judged to be true by the administration.

B. Unless immediate attention is required to protect life and property, an employee shall at all times be entitled to have present a representative of the Union, whenever requested, to meet with the administration when being disciplined. When a request for such representation is made, no action shall be taken with respect to the employee until such representation of the Union is present unless the Association does not provide a representative within three (3) working days.

C. New employees to the District shall serve a probationary period of six (6) working months. After the probationary period is served, the employee shall not be terminated,

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1/22/90

suspended, reduced in compensation or otherwise disciplined without just cause.

D. Employees shall have access to review their own personnel file(s). Employees shall be able to receive upon their own request a copy of any materials in their own personnel file(s). Materials placed into an employee's file will be placed there on a timely basis and no material relative to job performance shall be put in an employee's file unless the employee receives a copy. An employee may append an explanation or rebuttal to any material placed in his/her own personnel file(s).

Article VI - Hours

A. Employees who work more than forty (40) hours during a given week shall receive "time-and-one-half" for time worked beyond forty (40) hours.

B. Until the parties agree otherwise, the working hours per day and the working days per year for each position will remain as they were in 1988-89 unless there is a lay-off (in whole or in part) at which time the order of lay-off will be followed as is prescribed in Article VIII. The application of the following shall remain the same as in past years for each individual bargaining unit employee position.

1. Rate of pay for hours worked beyond eight in a given day.

2. Weekend work for custodians

3. Compensatory time

4. The length of coffee breaks and lunch breaks and if they are paid or not.

5. Inclement weather days

6. Any other applications of wage rates and how they are applied to the scheduled work year and/or work day for each individual bargaining unit position.

The above mentioned past practices will continue unless specifically changed through provisions in this Agreement or through other negotiations.

F. Employees shall receive the following paid holidays:

1. Employees who work just the school year plus up to two weeks shall receive the following paid holidays: Labor Day, Thanksgiving and Memorial Day.

BD
1/27/90

3. If a holiday, as listed above, falls on a Saturday or Sunday, the holiday shall be observed on the nearest weekday that no school is scheduled.

Article VIII - Seniority, Lay-Off And Recall

A. SENIORITY

Seniority shall commence on the last date of hire in the District. It shall be based on actual length of continuous employment minus any time spent on unpaid leave exceeding six (6) continuous weeks. Employees on lay-off shall retain their seniority prior to the date of lay-off; however, no seniority shall accrue to employees while on lay-off status.

Loss of seniority shall be effected if an employee quits, is discharged, fails to report to work within fifteen (15) working days (days the employee is scheduled to work) after having been recalled from lay-off, or fails to be recalled from lay-off after a period of the remainder of the school year in which the lay-off takes effect plus the following school year.

B. LAY-OFF

When the District determines that a lay-off (in whole or in part) shall occur within a department (food service, clerical, aides, and custodians) employees shall be laid-off in inverse order of seniority within the department.

C. RECALL

Rehiring of employees who have been laid-off shall be in reverse order to that of laying-off, provided the recalled employees are qualified to perform the available work. Recall rights shall only apply to positions within the department from which the employee was laid-off. Laid-off employees shall retain seniority rights for the remainder of the school year in which the lay-off took effect plus the following school year. The Notice of Recall for any employee who has been laid-off shall be sent by certified mail to the last known address of the employee. Employees on lay-off shall forward any change of address to their immediate supervisor.

Employees on lay-off status shall be notified of vacancies outside of their department and shall have the same rights under the Job Posting Article as employees who have not been laid-off.

Article IX - Job Postings

When there is a vacancy within the bargaining unit, the District shall notify each bargaining unit member of the vacancy at least ten (10) working days prior to the vacancy being filled. Present

BD 1/22/90

employed employees shall be selected to fill vacancies provided they are qualified to do the work and apply for the position. If two or more qualified bargaining unit members apply for a vacancy, the employee with the most seniority shall receive the position.

Current employees selected for a vacancy or a new position shall serve a trial period of twenty (20) work days in said position. Should the employee not be qualified or should the employee so desire, he/she shall be reassigned to his/her former position without loss of seniority during the trial period.

Article XI - Health Examinations

A. Health examinations required by the District shall be paid for by the District. The District will only provide full payment for the examination required by the physical examination form provided by the District.

B. Employees shall be notified by the District when health examinations are due and shall be provided with forms to be completed by the examining physician.

Article XII - Working Conditions

A. Job descriptions will be provided to all employees.

C. Employees who observe serious and/or repeated student discipline problems during their working hours shall refer them to the administration.

D. Employees shall be paid for time spent doing any job related activities that they are required to attend or do. Any tickets, admission fees or expense costs (per District policy) for such required activities shall be paid for by the District.

E. Employees shall be paid every two weeks. Employees shall have the option of receiving equal sized checks through the calendar year, equal sized checks throughout just the school year (if they are school year employees), or being paid for the hours they worked during the previous two weeks. Overtime hours will be paid on a two week basis for hours worked during the previous two weeks.

Article XIII - Leaves

E. An employee called for jury duty during working hours shall be paid full salary for such time minus the amount that the county, state, etc. pays the employee (not including reimbursement for expenses). If the employee is released from jury duty prior to the end of the employee's work day, the employee shall report to work if at least one (1) hour of the employee's work shift remains.

1/27/90

Article XIV - Management Rights

The management of the school and the direction of all school employees is vested exclusively with the Board of Education and the District Administrator acting as its agent. The Board retains the sole right to direct the employees of the District; to assign work or co-curricular assignments: to select, hire, lay-off, determine job content; to determine hours of work; to determine the process, methods and procedures to be used in managing the schools.

Rights of management shall not be abridged or limited unless they are clearly and expressly restricted by some specific provision of this agreement. The parties agree that the above enumerated rights shall not be construed in a manner which conflicts with applicable statutes.

Article XV - No Strike And No Lock-Out Agreement

It is agreed by both parties herein that there will be no lock outs during the term of this agreement nor shall there be any strikes, slow-downs or work stoppages by employees (within this bargaining unit) against the Mellen School District.

Article XVI - Grievance Procedure

A. Purpose: To enable the Union to express a complaint with the assurance that the complaint will receive prompt attention. Only those grievances involving the administration of this agreement can be advanced to binding arbitration.

B. Definition of Grievance: Any disagreement involving wages, hours and conditions of employment between the Union and the District can be grieved. Only those grievances involving disagreement of interpretation and/or application of a specific provision of this agreement can be advanced to binding arbitration.

C. Procedure: Any party to the grievance may be represented. "Days" shall be defined as Monday through Friday, excluding holidays and days that the employee(s) (for which the grievance is relevant to) are not scheduled to work. The grievance will be placed in writing for each step and signed by a representative of the Union. The written grievance shall give a clear statement of the alleged grievance, including the facts upon which the grievance is based, the issues involved, the specific section of the agreement alleged to have been violated (if any), and the relief sought.

1. Level One:

   The Union shall request a meeting with the immediate supervisor (of the employee's for which the grievance is based) within 30 days after the Union knew, or should have known, about the event giving rise to the

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grievance. The supervisor shall meet with the Union Representative within five days of the Union's request for a meeting. The immediate supervisor shall provide a written response to the grievance within ten (10) days after the meeting.

At the beginning of each year, the District will provide the Union with a list of employees and the name of the supervisor for each employee.

Grievances that involve the entire bargaining unit can be started at Level Two of this grievance procedure. Grievances filed during the summer can be initiated at Level Two if the supervisor is not scheduled to work.

2. Level Two:

If the Union is not satisfied with the disposition of the grievance at Level One, the Union may file the grievance in writing with the District Administrator within ten (10) days after the response is received at Level One. Within ten (10) days after the receipt of the written grievance by the Administrator, the Administrator shall hold a discussion with the Union Representative (at a mutually agreeable time) in an effort to resolve the grievance. The District Administrator shall render a decision in writing within ten (10) days after he/she has discussed the grievance with the Union Representative.

3. Level Three:

If the Union is not satisfied with the disposition of the grievance at Level Two, the Union may, within ten (10) days after receipt of the District Administrator's response, file the grievance in writing with the School Board. Within thirty (30) days after receiving the written grievance, the School Board shall render a decision in writing to the Union. Prior to the School Board's decision, the parties may mutually agree to meet at a mutually agreed upon time for the purpose of discussing the grievance.

4. Level Four:

If the Union is not satisfied with the School Board's response, the Union may appeal for binding arbitration within ten (10) days of receipt of the School Board's response. The District and the Union shall first attempt to voluntarily agree upon an arbitrator. In the event they are unable to agree, the arbitrator shall be selected from a panel of three on an alternate

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basis from a list previously agreed on between the District and the Union. This panel shall be selected from the Wisconsin Employment Relations Commission (WERC) staff. If a panel of three has not been agreed to, then the WERC shall appoint a staff member.

It is understood that the function of the arbitrator shall be to provide a binding decision as to the interpretation and application of specific terms of this agreement. The arbitrator shall not have the power to issue any opinions that would have the effect of subtracting from, modifying, or amending any terms of this agreement.

Each party shall bear the expenses of its representatives and witnesses. The fees and expenses of the arbitrator shall be shared equally by the parties (if there are any).

D. Timelines: Timelines may be waived by written mutual agreement.

Article XVII - Entire Memorandum Of Agreement

This agreement, reached as a result of collective bargaining, represents the full and complete agreement between the parties, and supersedes all previous agreements and past practices between the parties. Any supplemental amendments to this agreement shall not be binding upon either party unless executed in writing by the parties thereto. Waiver of any breach of this agreement by either party shall not constitute a waiver of any future breach of this agreement.

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