In the matter of the petition of

NORTHEAST WISCONSIN VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT

Decision No. 26365-A

To initiate arbitration between said petitioner and

NORTHEAST WISCONSIN TECHNICAL COLLEGE COUNCIL OF AXILLARY PERSONNEL

Appearances - Leigh Barker, Counsultant, for the Union

Robert W. Burns, Attorney at Law, for the Employer

Northeast Wisconsin Vocational, Technical and Adult Education District, hereinafter called the Employer, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged that an impasse existed between it and the Northeast Wisconsin Technical College Council of Axillary Personnel, hereinafter referred to as the Union, in their collective bargaining. It requested the Commission to initiate arbitration pursuant to section 111.70(4)(cm) 6 of the Municipal Employment Relations Act. At all times material herein the Union has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all regular full time and regular part time operational support employees working 18 3/4 hours or more per week but excluding all confidential, supervisory and managerial personnel. The Employer and the Union have been parties to a Collective Bargaining Agreement covering wages, hours and working conditions of the bargaining unit that expired on June 30, 1989.

In February of 1989 the parties exchanged their initial proposals on matters to be included in a new Collective Bargaining Agreement. They met on six occasions in efforts to reach an accord on a new Collective Bargaining Agreement. On January 23, 1990, the Employer filed a petition requesting the Commission to initiate arbitration. On January 17th and 31st, 1990 a member of the Commission staff conducted an investigation that reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the investigator by March 12, 1990. The Commission concluded that the parties have complied with the procedures set forth in the Municipal Employment Relations Act and that an impasse within the meaning of the act exists between the parties with respect to negotiations leading toward a new Collective Bargaining

Agreement. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The parties selected an arbitrator and on May 22, 1990 the Commission issued an order appointing Zel S. Rice II as the arbitrator to issue a final and binding award to resolve said impasse by selecting either the total final offer of the Employer or the total final offer of the Union.

The Union's final offer, attached hereto and marked Exhibit A, proposes that any employee shall be permitted to continue membership in the insurance programs for a period of 18 months after the effective date of layoff as long as the employee remits the full cost of the premiums for such participation in a timely manner. It proposes that an offer of open insurance enrollment to all unit employees shall be made within 30 days following ratification of the agreement with coverage effective July 1, 1990 and that employees who move from part time to full time status shall have the right to enroll in all insurance coverages within 30 days of full time employment. The Union proposes that the emergency leave provision be revised to provide a maximum of 3 non cumulative emergency days per year in the event of the emergency closing of the facility for any reason prohibiting the employee from attendance at work and a maximum of one such day could be used as a personal day. The Union proposes that the 18 month bidding limits are mutually exclusive. It goes on to provide that if an individual bids for and fills a permanent position while holding a temporary position, the Employer shall not be obligated to adhere to the 18 month bidding restriction in cases of reassignment or lay off and that bidding restriction does not apply in cases of reassignment or lay off. The Union proposes that all dates and references in the agreement be adjusted to reflect a two year agreement from July 1, 1989 to June 30, 1991. It proposes a 5 percent increase of each cell for the 1989-90 salary schedule and a 5 percent increase of each cell for the 1990-91 salary schedule. The Union proposes that the longevity pay for 1989-90 be increased to $18.00 per increment and that for 1990-91 it be increased to $18.50 per increment. The Union proposes that the shift premium be increased to $.30 an hour.

The Employer's final offer, attached hereto and marked Exhibit B, proposes that any employee shall be permitted to continue membership in the health and dental insurance programs for a period of 18 months after the effective date of lay off as long as the employee remits the full cost of the premiums for such participation in a timely manner. It proposes that the 18 month bidding limits stated in the Collective Bargaining Agreement are mutually exclusive. It goes on to provide that if an individual bids for and fills a permanent position while holding a temporary position the Employer shall not be obligated to adhere to the 18 month bidding limit in filling the subsequent temporary position vacancy that results. The Employer proposes that the Arthur Young Job Classification Study shall be implemented and jobs having substantially changed under the reorganization act occurring during the summer of 1989 should be resubmitted to Authur Young for review and be retroactively reclassified if warranted. The Employer proposes that reclassification reviews may be requested

by the Union or the Employer and such reviews shall be submitted to Arthur Young following the employees annual review date. Any such reclassification would be retroactive to the annual review date of the employee. The Employer's proposal includes a provision that during the life of the 1989-91 collective bargaining agreement employees who, as a result of the 1989 reclassification study by Arthur Young or subsequent reclassifications, shall have their pay reduced because of movement to a lower classification shall continue to be paid at their prior rate plus a 4.4 percent special adjustment effective July 1, 1989 and an added 4.4 percent July 1, 1990 or on the effective date of reclassification if subsequent to those dates. This clause would be effective only so long as the individual continues to hold the reclassified position. The Employer proposes that all dates and references in the Collective Bargaining Agreement be adjusted to reflect a two year agreement beginning July 1, 1989 and ending July 30, 1991. The Employer proposes that all salaries shall be adjusted 4.4 percent on July 1, 1989 and again on July 1, 1990.

There are issues between the parties with respect to wages, longevity, premium rate, personal day, open insurance enrollment, the right to enroll in insurance programs when moving from a part time to full time bargaining unit position and the implementation of the Arthur Young Job Classification Study. With respect to wages, the Union proposes that each cell of the 1988-89 salary schedule be increased by 5 percent for 1989-90 and each cell of the 1989-90 salary schedule be increased by 5 percent for 1990-91. The Union's proposal results in a 5 percent salary increase each year to each bargaining unit employee. The Employer has proposed to increase each cell of the 1988-89 schedule by 4.4 percent for 1989-90 and increase each cell of the 1989-90 schedule by 4.4 percent for 1990-91. The Employer's final offer includes movement of employees to different pay categories resulting in differing actual salary increases to individual bargaining unit employees if they are reclassified as a result of the implementation of the Arthur Young Job Classification Study. The Association proposes increasing the current longevity payments from 17.50 a month to 18.00 per month for 1989-90 and 18.50 per month for 1990-91. The Employer proposes that the longevity payments remain at the status quo of 17.50 per month for the duration of the agreement. There is an issue with regard to the premium rate. The Association's proposal increases the premium rate paid for certain listed positions from $.25 per hour to $.30 per hour for the duration of the agreement and the Employer proposes that the premium rate remain at $.25. The Association proposes changing the language governing the existing one personal business day so that is becomes one personal day and the Employer proposes no change in the existing language. The Union proposes a one time open insurance enrollment and the Employer's position is that there be no open insurance enrollment. The Union proposes that bargaining unit employees who move from part time bargaining unit positions to full time bargaining unit positions be allowed to enroll in all insurance coverage within 30 days of full time employment and the Employer proposes the status quo that allows enrollment in the group health plan subject to underwriting when a employee changes to full

time employment but does not allow enrollment in the group dental plan upon the change. Both parties have proposed adding a provision to the agreement stating that the 18 month bidding limits in the contract are mutually exclusive and giving the Employer the right to bypass the 18 month bidding restriction in cases of reassignment or lay off. The Union's proposal contains a specific sentence stating that the 18 month bidding restriction does not apply in cases of reassignment or lay off. The Union's final offer retains the status quo classification of positions for pay purposes and provides that decisions to move existing positions into a different pay category would be made jointly by the parties with the parties continuing to determine the effective date of such changes. The Employer's final offer proposes the implementation of the Arthur Young Job Classification Study that would result in a change in pay category for 34 of the 90 employees. The Employer's proposal would provide that all future classification requests be submitted to a third party to determine the position's classification for pay purposes. The Employer's proposal sets the effective date of any future reclassifications as retroactive to the date of the employees annual review date. The Employer's proposal provides that jobs having substantially changed under the reorganization occurring during the summer of 1989 shall be resubmitted to Arthur Young for review and shall be retroactively reclassified as warranted.

COMPARABLE GROUPS

The Employer urges the arbitrator to consider a comparable group consisting of the Fox Valley Technical College, the Lakeshore Technical College, the Nicolet Technical College, the North Central Technical College, the Green Bay School District, the Marinette School District, the Sturgeon Bay School District, the City of Green Bay, the City of Marinette, the City of Sturgeon Bay, Brown County, Door County and Marinette County, hereinafter referred to as Comparable Group A. Comparable Group A includes the VTAEs actually bordering the Employer and the clerical staffs of public employers located in the cities, counties and school districts in which the Employer's three campuses are located. Each of those public employers has clerical employees performing jobs similar to those performed by the bargaining unit members involved in this proceeding and the comparable group provide a reliable foundation for comparasion of final offers because these areas make up the relevant labor market for the Employer's employees. The wages and working conditions of clerical workers in the Employer's labor market in Brown County, Marinette County and Door County are valid and valuable indicators of comparability. When employees are hired locally the local labor market comparables are more significant than statewide comparables that include labor markets that are far different. The factors that are significant in developing wages, hours and conditions of employment in distant labor markets are not always significant in the local labor market. Comparable Group A, as proposed the Employer, includes the contiguous VTAE districts and an appropriate group of public sector employers in the immediate area. The public employers of similiarly situated clerical employees in the immediate labor market area provide a reliable foundation for comparison in this

proceeding because they comprise the relavent labor market for clerical employees in the area. The arbitrator will consider Comparable Group A as an appropriate comparable group.

The Union proposes three comparable groups to make up its comparables. Its primary group consists of the other employees of the employer, hereinafter referred to as Comparable Group B. These so called internal comparables provide a guide by which to judge the offers of the parties in this dispute. However there is a weakness in that the internal comparables do not necessarily consist of employees performing the same type of work. The pattern of settlement varies considerably from occupation to occupation and it is not always realistic to compare settlements of teachers and administrators with settlements of clerical employees. The wages and working conditions of similiar employees performing similiar services in the same area and the salary increases they receive are more significant. In addition to the internal comparables, the Union proposes the other VTAE districts in the state of Wisconsin, hereinafter referred to as Comparable Group C. It contends that the VTAE system, although made up of sixteen individual districts, is one entity governed by the state VTAE board with its own statutes and its own funding formula. The econmic data for the 15 other VTAE districts in the state varies from district to district. It does not operate as one entity. There is a separate board for each individual VTAE district and they have their own local funding. There are important variables such as geographic proximity, size and the effect of urban areas in contrast to non urban areas that reduce the appropriateness of Comparable C as a comparable group. Utilization of Comparable C permits no consideration for the differences between labor markets that do exist. The Employer and the Union give primary consideration to the local labor market in determining the wages, hours and conditions of employment for the employees in this bargaining unit. The Union proposes a comparable group consisting of Brown County, the City of Green Bay and the school districts of Ashwaubenon, De Pere, Green Bay, Howard/Suamico, Marinette, Pulaski, Shawano and Sturgeon Bay, hereinafter referred to as Comparable Group D. The Union contends that Comparable Group D provides balance of other area employees who preform similiar services such as the K-12 school districts, provides balance in terms of location within the district compared to the location of the employees involved herein and provides balance in terms of the size of the other employers compared to the Employer. Comparable Group D is in accord with the recognized comparablity standards, but it is not quite as representative of the area labor market because of the heavy emphasis on school districts and it only gives consideration to the two largest municipalities in the area. Clerical workers are clerical workers and the mere fact that the Employer is involved in education does not necessarily make its clerical employees substantially different from those of municipal employers not involved in education. The arbitrator finds Comparable Group A to be the most appropriate. Comparable Group D is an appropriate group for comparison and will be considered. Comparable Group B is appropriate to the extent that it involves employees of the Employer, although not necessarily the same type of employee. The VTAEs in Comparable Group C do not have geographical proximity with the

Employer and represents too many different labor markets involving crucial variables such as geographic proximity, size and the affect of urban areas contrasted with non urban areas. The arbitrator will not ignore comparisons with Comparable Group B and C, but they will have less significance than comparisons with Comparable Groups A and D.

UNIONS POSITION

The Union argues that the Employer's proposal to implement the Arthur Young Job Classification Study must be rejected. It contends its wage proposal is more reasonable than the Employers wage offer and should be adopted. The Union asserts that its proposal to increase longevity is reasonable and should be adopted. It takes the position that its proposal to increase the premium from $.25 to $.30 is warranted, reasonable and due. The Union argues that its proposal to modify the personal day language is warranted, fair and necessary. It asserts that its proposal for an open insurance enrollment is justified and needed and should be granted. The Union takes the position that the right to enroll in the entire insurance program when an employee moves from part time to full time status is reasonable and fair and should be awarded. It takes the position that its proposal to clarify the 18 month bidding restriction is preferable to the Employers proposal to have the contract remain silent on the issue.

EMPLOYERS POSITION

The Employer argues that its proposal to implement the job classification study addresses a long standing concern of the both the Employer and the Union. It contends that the Unions proposal to include and open enrollment provision is seriously flawed. The Employer takes the position that emergency leave, longevity and premium proposals are clearly excessive and an unjustified attempt to alter the status quo. It asserts that an analysis of overall compensation benefits supports its offer. The Employer contends that the external and internal comparisons support its final wage offer. It asserts that its offer outstrips what the private sector pays for similiar positions. The Employer contends that its offer guarantees increases that exceed increases in the cost of living. It takes the position that its proposal on the 18 month bidding process has no substantive difference from that of the Union.

WAGES

The Employer's proposal of a 4.4 percent wage increase on July 1, 1989 and another 4.4 percent increase on July 1, 1990 is a reasonable proposal. When fringe benefits are added to the wages of the Employer's employees the total compensation is well above the average in Comparable Group A. The Employers wage proposal leaves its employees' relationship to employees in Comparable Group A performing similar tasks about the same as it had been during the 1988-89 school year. Each employee will receive an estimated $1,223.00 increase

in the 1989-90 school and $2,044.00 in the 1990-91 school year. If the Employer paid benefits such as health, dental, life, long term disability, social security and retirement are considered the Employer's total package offer amounts to increases of 6.75 percent, or $1,541.00 per employee, for the 1989-90 school year and 5.91 percent, or $2,982.00 per employee, for the 1990-91 school year. The Employer's total package increase for the two years is 12.66 percent compared to the Union's proposal which provides a total package increase of 11.51 percent. The total compensation package represents the correct measure of the economic package and should be given great weight. The Employer's final offer far surpasses the increases of other counties and cities in Comparable Group A where the Employers campuses are located. Those increases range from a low of 2 percent to a high of 3.5 percent. Even if the VTAE support staff settlements in Comparable Group C are considered, the Employer's offer exceeds the majority of those settlements that range from 2.1 percent to 5.2 percent. The Employer's proposal provides its support staff with superior increases compared to the increases given to public sector comparables.

The Employer's proposals provides its support staff employees with wage rates far in excess of similiar employees in the private sector. In 1988 the wage rates of the Employer's support staff were as much as 44 percent more than the private sector paid for similiar positions.

Because cost of living increases are generally catch up, the increases in the consumer price index during the 12 months preceding the effective date of a contract is usually considered to be relevant when determining appropriate wage adjustments. When a comparison is made of the total cost of the Employer's final offer and the Union's final offer with the increase in the cost of living from February 1989 to February 1990, the Employer's offer is very reasonable. The consumer price index increased 5.2 percent from February 1989 to February 1990 and the total cost of the Employer's offer for 1989-90 was 6.75 percent. The total cost of the Union's proposal was 4.98 precent which was less than the increase in the cost of living. The Employer's proposal provides employees with a 5.91 percent wage and benefit increase for the 1990-91 contract year which is a significant improvement for that period.

The Employer's support staff salary increases have exceeded the relevant increase in the consumer price index over the years and its final offer retains the advantageous position of its employees. Its proposed salary increase over the term of the contract of 8.8 percent with a total cost increase of 12.66 precent is more than reasonable when compared to the Unions proposal of a 10 percent increase in salaries and a total package increase of 11.51 percent for the same period.

The Union argues that its proposal for a 5 percent increase each year is on target with 5 percent increases given to management personnel and unclassified employees for the 1989-90 school year. Management personnel are different from the members of the bargaining unit and are hired from a different labor market.

Their skills are different from the employees in the bargaining unit and the considerations in determining the amounts of their increases are substantially different. The unclassified employees were hired from the same labor market as the members of the bargaining unit and they did receive a 5 percent increase for the 1989-90 year. The unclassified employees received an increase that is not in line with the increases given to the bargaining unit but it was only for one year. Historically the unclassified employees have received higher salaries than the members of the bargaining unit. No evidence was presented that would indicate the Employer's proposed total package increase to the bargaining unit is out of line when compared to the total package increase given to its unclassified employees. It should be pointed out that the Employer's technical employees only received a 3.75% increase for 1989-90, which is less than the Employer proposes for the bargaining unit.

It is entirely appropriate to view the wage offers in terms of total package value to the employees. On that basis the Employers offer is a reasonable one that matches up well with the increase in the cost of living and with the increase given to employees performing similiar tasks in both the public and private sector in the labor market in which the Employer is located. It far surpasses the increase given to the employees of counties and cities where the Employers campuses are located and will provide the bargaining unit with superior increases as compared to increases given in the public and private sector for the same period.

REASSIGNMENT, LAY OFF, RECALL

Both the Employer and the Union have proposed that Article 4 of the Collective Bargaining Agreement be amended to provide that any employee shall be permitted to continue membership in the insurance programs for a period of 18 months after the effective date of lay off as long as the employee remits the full costs of the premiums for such participation in a timely manner. Both the Employers proposal and the Unions proposal have the same meaning and there is no real issue. The Unions proposal specifically states that the employee shall be permitted to continue membership in the health and dental insurance programs while the Employers proposal states that any employee shall be permitted to continue membership in the insurance programs. Because the Unions proposal is more specific and makes direct reference to the health insurance and dental insurance, its proposal is preferable to that of the Employer.

18 MONTH BIDDING LIMITATIONS

The Employer and the Union propose to add additional language to Article 4, page 9 of the Collective Bargaining Agreement relating to the 18 month bidding process. Both proposals state that the 18 month bidding limitations are mutually exclusive and the Employer shall not be obligated to adhere to it in filling subsequent temporary position vacancies when an individual bids for and fills a permanent position while holding a temporary position. Both proposals

are exactly alike except that the Union's proposal specifically states that the 18 month bidding restriction does not apply in cases of reassignment or lay off. The Employer intended that its proposal have exactly the same meaning as the Union's proposal. However the Union's proposal explictly states that the 18 month bidding restriction does not apply in cases of reassignment or lay off. Because of that specific statement, its proposal is more precise and is preferable to that of the Employer.

DURATION

Both the Employer and the Union propose that the duration of the Collective Bargaining Agreement be for two years and there is no issue between the parties. Either proposal is acceptable and neither is preferable to the other.

EMERGENCY LEAVE

The Employer proposes that the language of the emergency leave provision of the Collective Bargaining Agreement remain the same and the Union proposes altering the language to allow one day to be used for any matter the employee deems necessary. What the Union proposes to do is to change a personal business day to a day that can be used for any purpose by deleting the language that qualifies what the day can be used for. Arbitrators are reluctant to change existing language in the agreement unless there is evidence that demonstrates that a legitimate problem exists that requires contractual attention and that the proposal is reasonably designed to effectively address that problem. A fundamental change or the expansion of an existing benefit should be negotiated voluntarily by the parties and not imposed by an arbitrator unless exceptional circumstances prevail. No evidence was presented that would indicate that exceptional circumstances prevail or that there was a compelling need to change the language. The Union did present evidence that some individuals had asked for leaves and were not given them. In each case the individual was able to handle the particular situation and there was no need to change the existing language. The contract language in a majority of the comparables in Comparable Group A clearly indicate that emergency leaves are restricted to specific purposes. The total cost impact of the Union's personal day language would be $11,050.55 over the two year period of the Collective Bargaining Agreement assuming all 79 employees took advantage of the new language. The Union points out that the Employer's teaching personnel receive one personal day per year that is part of and is deducted from emergency leave. That language does have a restriction that the personal affairs for which the personal day is used must be limited to those affairs which are impossible to transact after school hours or on weekends. The Employers technical support staff contract gives them one personal day that they can use for emergency situations that arise and which cannot be taken care of within a reasonable time frame at any other time than regular working hours. The custodial employees are allowed one personal day that can be used for emergency situations that cannot be taken care of within a reasonable time frame at any time other than regular working hours or

other personal business that cannot be performed at any time during regular work hours. The language of each of the internal comparables in Comparable Group B has some restrictive language on the use of personal leave. It is true that the custodial employees do have two floating holidays, but those were bargained as part of the holiday package and are not related to personal leave. Generally arbitrators look with favor on uniformity among internal comparables. The Union's proposal would not establish uniformity between internal comparables but would remove all restrictions on the use of emergency leave while the other internal comparables have some restriction. The external comparables in Comparable Groups C and D are cited by the Union in support of its provision. However most of those contract provisions are more restrictive than the Union's proposal.

The arbitrator finds the Union's proposal to be less acceptable than that of the Employer because it would expand the emergency leave benefit well beyond that of any of the internal comparables and most of the external comparables. There was no evidence of any compelling need that would justify changing contractual provisions and providing expanded benefits for bargaining unit employees. The current language was freely negotiated and is not unlike the internal comparable pattern in Comparable Group B.

LONGEVITY

Currently the Employer offers longevity to the bargaining unit at the rate of $17.50 per month beginning the sixth year of employment and an added $17.50 per month beginning the eighth year and an added $17.50 per month beginning the tenth year and an added $17.50 per month beginning the twelfth year. An employee with twelve years of service would receive $70.00 per month or $840.00 per year. The Union proposes to increase the longevity payments from $17.50 per month to $18.00 for the 1989-90 school year and to $18.50 for the 1990-91 school year. This is an attractive benefit enjoyed by the members of the bargaining unit and is distinquished when compared with the employees in Comparable Group A that perform similiar duties. In Comparable Group A the longevity payments for an employee with twelve years of employment range from nothing to a high of $306.40 per year. While the Employers longevity pay is almost three times more than the highest in Comparable Group A, the Union proposes to increase it $.50 per month in 1989-90 and another $.50 per month in 1990-91. Longevity payments represent a recognition of the length of service by an employee and a benefit that results therefrom to the Employer. Adjustments in such a program are best worked out by negotiations between the parties who are in a position to recognize the benefits and advantages that an Employer enjoys because of the increase tenure of its employees. Longevity isnot designed to provide salary increases at regular intervals, but to encourage employees to remain with the Employer. There is no evidence that the Employer has any problems in retaining employees nor is there reason to believe that an increase in the longevity payments is necessary to encourage employees to continue working for the

Employer. The Union argues that longevity has been constant for five years and the salary schedule has increased yearly along with the cost of living. It takes the position that the parties have a history dating back to 1979 of paying a longevity amount between 1.75 percent and 2.25 percent of base salary. It asserts that the current payment of $17.50 per month represents only 1.63 percent of base salary and its proposal will result in longevity representing 1.6 percent of base in 1989-90 and 1.56 percent in 1990-91. It asserts these percentages are the smallest percentage of base salary in eleven years and even its proposal is not sufficient to reverse the downward trend of longevity as a percent of base salary. Only three other VTAE districts in Comparable Group C pay longevity which is something less than a pattern to be followed. Six of the municipal employers in Comparable Group D make longevity payments to their long term employees in one form or another but none of them comes within 50 percent of the amount paid by the Employer. The additional costs that would result from the Union's longevity proposal is $1,016.50 for 1989-90 and $3,810.00 for 1990-91. While that is not a large amount, there is no evidence that any increase is needed to accomplish the purposes for which longevity is given. Accordingly the arbitrator finds that the statutory criteria support the Employers position with respect to longevity.

PREMIUM PAY

The premium pay has been $.25 per hour for the last six years. Prior to that the premium pay was $.20 per hour for the three preceding years. The Union presented no evidence to support of its proposal to increase the premium pay other than that the total cost impact would only be $342.00. It has submitted no comparability that would support its position and there are no statutory criteria that would justify an increase in the premium pay. There is no evidence of any compelling need to increase the premium pay. The arbitrator is reluctant to change an existing agreement in the absence of a demonstrated need and a proposal that addresses that need. The Union seems to rely on the fact that the rate has remained the same for a number of years and it has a desire to increase it. The arbitrator does not find that to be a sufficient basis for changing the rate of premium pay and finds the Employer's proposal of the status quo to be preferable.

ENROLLING IN INSURANCE PROGRAMS WHEN AND EMPLOYEE

MOVES FROM PART TIME TO FULL TIME STATUS

Currently anyone who becomes a regular part time or a regular full time employee is eligible to enroll in the health and/or dental insurance without proof of insurability. When an employee transfers from a part time bargaining unit position to a full time bargaining unit position and had not previously taken the health and/or dental insurance as a part time employee he or she can only join the group health insurance plan subject to evidence of insurability and cannot join the dental plan at all. A new hire just starting to work full

time for the Employer can join both the health and dental plans and is not subject to underwriting for either plan. The Union takes the position that this results in giving a full time employee who begins work on a part time basis a lesser benefit starting as a full time employee than a new full time employee hired off the street. Its proposal would give bargaining unit employees that the district chooses to hire for full time positions the right to enroll in all insurance coverage within 30 days of full time employment. The Union contends that employees do not enroll in the health and dental programs when they become part time employees because of the cost of the insurance in relation to their part time earnings. Ten of the fifteen VTAE district in Comparable Group C allow enrollment in their group insurance plan when an employee changes from part time to full time status. In fact two districts do not distinguish between part time and full time bargaining unit members in terms of the amount of insurance premiums paid by them. Neither of the parties offered any other evidence with respect to how the employers in any of the other comparable groups treated employees with respect to health and dental insurance when they moved from regular part time to regular full time insurance.

Allowing employees who move from part time to full time status the right to enroll in all insurance coverages within 30 days of becoming employed full time would put them in the same status as any other employee hired off the street who becomes a full time employee. That seems no more than equitable. Although no evidence was offered that would establish that employees were inclined to not take out the insurances when they were part time employees, the Union asserts that is the case and the arbitrator accepts the argument as logical. Under the current agreement part time employees are required to pay part of the premium that the Employer normally would pay as well as the 5 percent paid by employees. It is reasonable to believe that employees might forego the insurance programs when they are part time employees because of the inability to pay part of the Employer's share of the premiums as well as their own. The fact that new full time employees have been part time employees should not place them in a status with respect to the insurance programs that is different from another new full time employee hired off the street. While the Union's position might result in some adverse selection, it would not be substantial and it would be equitable to place all new full time employees on an equal basis with respect to the insurance programs. Accordingly, the arbitrator finds the Union's position with respect to the right to enroll in the insurances when an employee moves from part time to full time status is preferable to that of the Employer.

OPEN INSURANCE ENROLLMENT

Currently 23 of the 90 employees in the bargaining unit are not covered by the group health insurance and 14 of the 90 employees are not covered by the group dental insurance. The Association contends that the primary reason for this is that a number of the employees began as part time employees and did not enroll in the insurance because of the cost of the benefits in relation to their part time earnings. It contends that when they moved to a full time bargaining

position they did not pursue nor were they informed about the option of joining the group health insurance program. An open enrollment would provide the opportunity for those employees to obtain both the group health and dental insurance provided by the employer. Six of the fifteen VTAE districts in Comparable Group C have offered open insurance enrollments with the past five years and two of the ten municipal employers in Comparable Group D offer periodic open enrollments.

The Employer points out that employees can have access to the health insurance program at any time after they are initially employed but they are subject to underwriting. It takes the position that by allowing an open enrollment it could be faced with the risk of allowing individuals into the plan who have a higher usuage ratio. It would permit employees who previously opted out of the plan to now enroll because they have immediate medical needs. Allowing individuals with immediate need to enroll through an open enrollment would result in a group with a larger number of individuals more apt to use the plan. The Employer argues that preexisting conditions must be considered when viewing an open enrollment proposal. The Union's proposal would waive the preexisting conditions that those employees wishing to enroll may have had previously and the current self funded group would have to absorb the risk and liability of those conditions. If the current employees who did not elect insurance when they were first employed were offered insurance without regard to preexisting conditions, the liability for those preexisting conditions is directly passed on to the plan. By bringing employees into the plan who have predictable need and use for a plan, the liability of the plan would increase and the overall cost of the plan would increase. The Employer points out that the Union's proposal to make the open enrollment retroactive to July 1, 1990, makes the Union's proposal even less acceptable because the events have already taken place that the plan would be asked to provide coverage for. The concept of open enrollment is to allow someone access to the plan for what may occur in the future. The Employer asserts that extending that definition to things that have happened in the past is unreasonable and would result in an astronomical risk to the employer and its self funding insurance program. The Union's proposal to allow an open enrollment is a substantial change that would effect the predictablity of the plan usage.

When a party is looking to make a significant change in a major fundamental aspect of their Collective Bargaining Agreement, it is usually accompanied by a proposal that would give the other party some concession that would make the trade off attractive to both parties. In December of 1987, the Employer made a proposal to the Union to allow open enrollment for the entire bargaining unit in exchange for getting its agreement to self funding. The Union elected to reject the offer of an open enrollment rather than agree to the Employer's proposal to self fund the plan. Now it seeks to gain the open enrollment that it previously rejected without offering any quid pro quo in return. While the arbitrator is of the opinion that periodic open enrollments may be desirable from time to time, the majority of the municipal employers in all four comparable groups do

not provide for it. In view of the fact that the Union rejected a proposal to give them open enrollment as part of a trade off only three years ago, it does not seem reasonable to require the Employer to provide it to the Union now without some sort of concession desired by it. Accordingly, the arbitrator finds the Employer's position on the issue of open enrollment to be preferable to that of the Union.

JOB CLASSIFICATION

Under the existing classification/reclassification procedure, requests for reclassification are agreed to between the parties, either at the completion of the negotiations or during the term of the agreement. If there is no agreement, the position's classification remains the same. The parties decide on the effective date of any reclassifications.

The Employer proposes to implement the job classification study and recommendations prepared by Arthur Young. Both the Employer and the Union endorsed and participated in the process of the development of the job classification study. The Employer's proposal for implementation of the study provides that reclassification reviews may be requested by the Union or the Employer and that such reviews would be submitted to Arthur Young. Any reclassification if warranted would be retroactive to the annual review date. Included in the proposal is a provision that during the life of the 1989-91 agreement individuals who would be placed in a lower classification as a result of the reclassification study and have their pay reduced because of that movement would continue to be paid at their prior rate plus a 4.4 percent special adjustment effective July 1, 1989 and an added 4.4 percent adjustment on July 1, 1990 or on the effective date of reclassification if subsequent to those dates. The clause would be effective only so long as the individual continues to hold the reclassified position.

Throughout the bargaining process the Employer has proposed the implementation of a job classification study in some form or another. Both the Employer and the Union have requested a number of reclassifications for various positions in the bargaining unit in recent years. The problems of reclassifications have been in existence for a number of years. Several committees were organized and meetings have taken place over the years relating to the reclassification problems of the Employer but the problems were never remedied. In 1981 a joint committee of the Employer and the Union was formed for the purpose of reviewing existing and potential salary structure formats and constraints. In 1982 the Union made some recommendations to the Employer but did not seem to know what to base the reclassifications on. In 1983 the Employer dealt with the reclassification problem as part of the bargaining process. The Employer was concerned about the lack of an existing standard or benchmark to work from. The entire process became very politicized with supervisors and Union representatives looking more at the individuals in the positions rather than the job duties involved and the proper placement of the positions. The problem did not go away

or improve but continued to evolve over a period of time and was frustrating to both the Employer and its employees. Even though the duties of positions changed, none of them were reclassified downward but only upward. If a reclassification was not agreed upon by the Employer and the Union, the position remained at the same classification even though the duties of it may have changed. As a result, new positions or positions that changed never received a fair and equitable evaluation and no standard from which to work was ever developed. At the beginning of the Arthur Young reclassification study, a Union representative complained that the current reclassification system had resulted in a lot of unhappiness about the classification structure. She complained that it was too political and unfair to be done at the bargaining table. It was her opinion that a tool was needed to do it fairly. Both the Employer and the employees agreed that the current system for reclassification needed to be changed to allow for a fair and equitable system. The problem revolved around the issue of internal alignment and a basic standard from which to start in comparing clerical positions in the bargaining unit.

In order to rectify the problem that had been in existence for several years, the Employer, with the Union's encouragement, hired Arthur Young to perform and internal alignment type of job classification study. Both the Employer and the Union agreed that a study was in order. It instructed Arthur Young that the primary purpose of the new classification system was to arrive at internal equity in the alignment of positions within the bargaining unit.

Arthur Young diagnosed the existing system by interviews, system reviews, reviewing the collective bargaining agreement and job descriptions and developing a strategic plan for the project. Then an advisory committee consisting of employees from the bargaining unit and the Employer's representatives assisted Arthur Young in developing questionnaires that each employee would be asked to fill out. It also developed an evaluation system to evaluate each of the positions. The key objective throughout the whole process was to solicit and maintain bargaining unit imput and involvement. The advisory committee assisted Arthur Young consultants in developing the approach and methodology of the study. The Union had appointed four individuals and an alternate to the committee and indicated that it was pleased to cooperate with the reclassification study. The advisory committee met on November 8, 1988 and discussed the process that would be followed in conducting the job classification study. An orientation study was planned for all bargaining unit employees and their supervisors to acquaint them with the study and the process and procedures to be used. Questionnaires were developed by Arthur Young and reviewed by the advisory committee before being distributed to all employees. Each of the employees completed a questionnaire that was submitted to Arthur Young. After receiving the questionnaires, Arthur Young set up field interviews with the individuals recommended by the advisory committee and those whose questionnaires warranted follow up. The consultants made a personal tour of the campuses in order to get a full picture of the situation at each campus and how it functioned and operated.

In March of 1989 the job classification study was completed and Arthur Young wrote a personal letter to each of the bargaining unit members discussing their particular job and what the outcome of the study would ultimately be for them individually. An appeal process was set up and approved by the advisory committee for those employees who were not satisfied with the way their position fitted into the job classification study results. Appeals submitted by individuals were first given to the advisory committee which determined that Arthur Young should screen them all and determine which ones met the criteria of the appeal process. There were 32 appeals and Arthur Young made the recommendation that 8 of the appeals be changed to a higher level. The final results of the job classification study sorted by grade point value and made available to the bargaining unit for review.

The compensable factors looked at for each position were education, experience, physical effort, mental effort, problem solving, impact on others, impact error, supervision exercise, internal contact, external contact, decision making and social demands. The study gave point values to each compensable factor and a total point value was arrived at for each position.

The Job reclassification study final report included a twelve grade level recommendation. During negotiations the Employer and the Union dicussed making the breaks between the twelve steps proposed by Arthur Young and the current four pay levels. Steps one and twelve in the final report were deleted because no one held positions in those categories at the time. Steps two and three were placed in the pay range of current pay level one; steps four, five, and six were placed in the current pay level two; steps seven and eight were placed in current pay level three; and steps nine, ten and eleven were placed in pay level four. That was the Employer's proposal during the negotiations and it never changed. From that time on, the negotiations between the Employer and the Union were based on phasing the twelve steps in the report into the existing four pay level system. As a result of the classification, 24 of the employees in the bargaining unit went up in classification and only 10 went down. The rest remained the same.

For those individuals whose position level decreased, the Employer specified in its final offer that the individuals would remain at their current rate plus an addition 4.4 percent each year as long as the employee remained in said position. No employee would receive a decrease in pay for the contract period and employees who went up in classification would receive increases from $1,868.00 to $3,736.00 for the contract term. The Union's proposal would give those same employees increases ranging from $881.00 to $932.00 for the contract term. Even those positions that the study would place in a lower classification would still receive increases ranging from a low of $773.00 over the two years to a high of $1,864.00. The changes in salaries that would result from the Employer's proposal to implement the Arthur Young classification study illustrate the inequitable placement of individuals resulting from the current classification system.

The implementation of the study would have a positive overall effect on the existing employees because none of them will receive lower salaries because of the implementation of the job classification study and twenyt four of them will receive increases resulting from the classification as well as the Employer's offer of a 4.4 percent wage increase for each of the two years of the Collective Bargaining Agreement.

The arbitrator holds strongly to the view that basic changes in a collective bargaining agreement, such as a change in a salary schedule or a method of reclassifying employees, should be negotiated voluntarily by the parties unless there is evidence of a compelling need to change the existing language. In such a circumstance the parties seeking the change has the burden of demonstrating not only that a legitimate problem exists that requires contractual attention, but that its proposal is reasonably designed to effectively address that problem. The arbitrator finds that the Employer has met these two burdens with respect to its proposal for the change in the classification system. There is evidence that the parties have been dissatisfied with the existing method of classifying and reclassifying employees since at least 1981 when the first joint committee was created to address the problem. There have been a number of efforts since then to make some change in the method of classifying employees but no changes have resulted. In the meantime the Employer has had the problem of trying to place newly created positions in the proper classification without having a standard for measuring the new positions against those already in existence. When the job duties of an existing position change to a degree that might have justified a lowering of the classification, no agreement could be reached. When the change in a position might have justified an increase in its classification, any change resulted more from who the person in the position was and who he or she knew. The Union complained that there was an awful lot of unhappiness in the bargaining unit about the classification structure because it was so political and unfair when it was done at the bargaining tables. Employees felt that the system needed to be looked at and a new tool created to do it fairly. With the participation of the employees, the Union and the Employer the Arthur Young Job Classification Study has developed a new tool or method for job classification and reclassification. It meets the Employer's need for a standard on which it can rely to place newly created positions in the proper classification and to reclassify positions that change as a result of reorganization or change in the duties of the position. It addresses the complaints of the employees and the Union in that it eliminates the political part of the reclassification process and utilitizes a system that is fair and equitable to all.

The Union argues that the final offer of the Employer would not implement the classification study as provided by Arthur Young. It contends that this flaw is so overwhelming that the Employer's final offer should be rejected without even considering the other arguments. The arbitrator does not have jurisdiction to determine if a proposal is flawed or not flawed. That is a determination that should be made by the Commission. The Employer's final offer

was certified to the arbitrator by the Commission and the arbitrator cannot change it or make a determination that it is flawed and not acceptable. The history of the bargaining between the parties and the final offer of the Employer satisfies the arbitrator that each party understood that the Employer's proposal collapsed the twelve steps recommended by Arthur Young into the existing four salary grades. Apparently the investigator for the Commission who also mediated the dispute, was satisfied with the validity of the Employer's proposal and did not find it flawed. The Union argues that the Employer's proposal with respect to the reclassification of positions strips the Union of any involvement in the reclassification process and represents a major departure from the status quo. The arbitrator agrees that the Employer's proposal is a major departure from the status quo. However it does not strip the Union from any participation in the reclassification system. It has the opportunity to measure whatever classification a new position is placed in or a position is reclassified to against a standard that it helped develop and which is fair and absolute. It eliminates the political considerations of both the Employer and the Union that were part of the procedure for classifying or reclassifying positions in the past. If the Union is not satisfied that the standard created by the Arthur Young job reclassification study is being followed, it has the right to grieve the issue and pursue the matter before an arbitrator if necessary. The Union complains that the Employer's proposal could result in an employee being reclassified downward into a lower salary grade resulting in a cut in pay and loss of wages. While the proposal does not allow for incumbents to remain at their prior classification until the positions are vacated, it does preserve the same salary level for them. It contains a provision that "red circles" existing employees so that they will not receive a loss of wages during the term of this agreement. The Union contends that the vast majority of the VTAE comparables in Comparable Group C have provisions to keep incumbents from being classified downward. As was pointed out, incumbents are red circled under the Employer's proposal. They may be classified downward, but their salary level is preserved for the duration of the Collective Bargaining Agreement. The arbitrator is not in sympathy with the arguments that three VTAE districts in Comparable Group C prohibit the downward classification of incumbents. There is no reason why a position that has a change in duties that justifies a reclassification downward should not be changed. While the comparables seem to support the Union's position with respect to bargaining classifications and reclassifications, the arbitrator is satisfied that the problems that have resulted in this collective bargaining relationship because of the negotiation of classifications and reclassifications need to be corrected and the implementation of the Arthur Young Job Classification Study will do it. The Union points out the Employer has not implemented the Arthur Young classification study with either the unclassified employees or with the employees in the technical bargaining unit. Currently the Employer has an agreement with the employees in the technical bargaining unit and those employees were not part of the study. Twenty of the unclassified positions were part of the study, but the Employer had already agreed to give them a straight 5 percent increase for the

1989-90 school year with no reclassification. No evidence was presented about the status of the 1990-91 salary arrangements with either the unclassified personnel or the technical bargaining unit. In any event, the arbitrator does not find the Union's argument to be convincing. The Union's argues that its offer is more reasonable because it maintains the status quo pay system and results in a more equitable distribution of the increase. The arbitrator finds this to be the weakest argument of all. The status quo system has been critized by both the Employer and the Union since at least 1981 because it was unfair and political and had no basic standard on which either party could rely in determining a classification or reclassification. It resulted in 24 positions being paid at a salary level substantially lower then they should have been and 8 positions being paid at a position even higher then the job duties merited. Such a system is not equitable and justifies the implementation of the Arthur Young Job Classification Study without the agreement of the Union. The Union contends that implementation of the Arthur Young Study is too big a change with no appropriate quid pro quo. There was a quid pro quo and that was the substantial increases given to the 24 employees who were being paid at a level less than they should have been and the "red circling" of 10 employees so that they would continue to be paid at the level of their old classification even though the duties that they performed did not justify a salary at that level. The Union points out that the Employer went through a major reorganization after the Arthur Young study was completed and some of the rankings of the positions are open to question. The Arthur Young Job Classification Study has developed the very tool that is required to address that situation. Without the implementation of the Arthur Young Job Classification Study, those positions that changed as a result of the reorganization would be subject to the old system of reclassification that was objected to by the employees and the Union as being political and unfair. With the implementation of the Arthur Young Job Classification Study the Union will have a basis to determine what classification those positions that have been changed as a result of the reorganization should be placed in. The Union asserts that if the Employer's final offer is selected, it might have to grieve some positions and they will have to be reevaluated. Certainly that is a possibility and the machinery set forth in the Employer's proposal provides for it. The Union argues that Arthur Young is not a neutral party and was hired by the Employer to perform reclassifications prior to the commencement of negotiations. That is true but the employees and the Union played a major role in providing guidance to Arthur Young and developing the new classification system. The mere fact that the Employer paid the full cost of conducting the study does not mean that it has no value. A very good system was followed in developing the job reclassification study and the Union and the employees played a major role in producing a product that is fair and avoids the problems of political influence. It addresses needs that were recognized by both the Employer and the Union and it is fair and reasonable. The Union complains about the administrative handling of the Arthur Young questionnaires that were used in developing the job classification study. There were factual comments or some questionnaires about the qualifications and educa-

tional backgrounds required for some of the jobs. The purpose of those comments was to correct information provided by the employees that was not accurate. The comments did not affect the integrity of the job classification study and the Union's objection is without merit.

The Employer's proposal with respect to the implementation of the Arthur Young job classification study is a solution to a long standing problem of both the Employer and the Union that has been unresolved for a number of years. The Union produced no evidence and made no argument that the study produced a classification system that was unfair or inequitable. Implementation of the study addresses the problems in a fair and equitable manner.

CONCLUSION

On an overall basis the Employer's final offer represents a reasonable approach to the problems that exist between the parties. The job reclassification study is a solution to a long standing problem of both the Union and the Employer. The Union's proposal for an open enrollment has some justification. It is the type of issue that should be resolved in bargaining with tradeoffs. The Union had an opportunity to gain an open enrollment in this manner and rejected it. Under the circumstances there is no basis for the arbitrator to give the Union what may be a very expensive improvement in the collective bargaining agreement. The Union's proposals to delete emergency leave language, limitations, increase longevity and increase the premium pay for selected employees were not supported by the comparabilities and there was no evidence of any existing need for the changes. The Employer's overall compensation package is a substantial one that has a cost in excess of the increase of the cost of living and out strips increases given to external, internal and private sector comparisons.

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

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evalution of the testimony, arguments, exhibits and briefs of the parties the arbitrator finds that the Employer's final offer more closely adheres to the statutory criteria then that of the Union and directs that the Employer's proposal contained in Exhibit B be incorporated into the Collective Bargaining Agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin this 8th day of January, 1991.

Zel S. Rice II, Arbitrator

EXHIBIT 17

NWTC-CAP
PRELIMINARY FINAL OFFER
February 5, 1990

1. ARTICLE IV - REASSIGNMENT, LAYOFF, RECALL, Section B. 3.

Any employee shall be permitted to continue membership in the insurance program(s) for a period of eighteen (18) months after the effective date of layoff, as long as the employee remits the full cost of the premium(s) for such participation in a timely manner.

2. INSURANCE COVERAGE

A. An offer of an open insurance enrollment to all unit employees shall be made within thirty (30) days following ratification of the agreement, with coverage effective July 1, 1990.
B. Add: "Employees who move from part time to full time status shall have the right to enroll in all insurance coverages within thirty (30) days of full-time employment."

3. ARTICLE VIII, SECTION 1-F EMERGENCY LEAVE

REVISE: F. Emergency Leave - A maximum of three (3) emergency days per year, non-cumulative, shall be granted in the event of the emergency closing of a facility for any reason and/or acts of God prohibiting the employee from attendance at work. However, a maximum of one (1) such day may be used as a personal day.

4. ARTICLE IV, page 9, add new 7:

ADD: "The eighteen month bidding limits stated in numbers 1 and 4 above are mutually exclusive. If however, an individual bids for and fills a permanent position under #1 above while holding a temporary position under #4 above, the District shall not be obligated to adhere to #4 above in filling the subsequent temporary position vacancy which results. The eighteen month bidding restriction does not apply in cases of re-assignment or lay-off."

5. DURATION: Adjust all dates and references to reflect a two-year agreement, July 1, 1989-June 30, 1991.

6. SALARY:

1989-90: 5% increase to each cell of 1988-89 schedule
1990-91: 5% increase to each cell of 1989-90 schedule

7. LONGEVITY:

1989-90: $18.00 per increment
1990-91: $18.50 per increment

8. PREMIUM

1989-91: $.30/hour

STIPULATIONS:

ARTICLE IV, SECTION B, 3 (page 7) (attached)
Evaporation of ARTICLE XVII, 6 (page 27)

EXHIBIT B

Final Offer
February 16, 1990

1. Article IV, page 7, Section B, Layoff, No. 3:

Any employee shall be permitted to continue membership in the health and dental insurance program(s) for a period of eighteen (18) months after the effective date of layoff, as long as the employee remits the full cost of the premium(s) for such participation in a timely manner.

2. Article IV, page 9, add new point 7 at end of page

Add: "The eighteen month bidding limits stated in points 1 and 4 above are mutually exclusive. If however, an individual bids for and fills a permanent position under No. 1 while holding a temporary position under No. 4, The District shall not be obligated to adhere to No. 4 in filling the subsequent temporary position vacancy which results."

3. Classification Study

The Classification study shall be implemented as provided by Arthur Young and Associates (Ernst & Young). Jobs having substantially changed under the reorganization occurring during the summer of 1989 shall be resubmitted to Arthur Young (Ernst & Young) for review and shall be retroactively reclassified if warranted.

4. Article XVII Wages, subpoint 4:

Replace the first sentence with the following: "Reclassification reviews may be requested by the Union or the District. Such reviews shall be submitted to Arthur Young (Ernst and Young). Submission shall follow the employee's annual review date. Reclassification, if warranted, shall be retroactive to the annual review date.

5. Exhibit A and B pages 34 and 35:

Add to the bottom of the page: During the life of the 1989-91 Agreement, individuals who as a result of the 1989 reclassification study by Arthur Young (Ernst & Young) or subsequent reclassifications shall have their pay reduced because of movement to a lower classification, shall continue to be paid at their prior rate plus a 4.4% special adjustment effective July 1, 1989 and an added 4.4% July 1, 1990 or on the effective date of reclassification if subsequent to the above dates. This clause shall be effective only so long as the individual continues to hold the reclassified position.

6. Duration:

All dates and references adjusted to reflect a two year agreement dated, July 1, 1989 to June 30, 1991.

7. Salary

All salaries as shown in Exhibit A shall be adjusted 4.4% on July 1, 1989 and again July 1, 1990.

W Evans

- The public interests are best served when the students are supervised by Assistant Coaches.

- Comparable data shows that in the 1989-90 school year, in the Union list of comparables, fifty percent of the districts had Assistant Golf Coaches, 90% had Assistant Tennis Coaches and 60% had Assistant Cross Country Coaches. There is nothing unique in the employment of such coaches.

- The testimony of the Coordinator showed that there is a danger when adolescents in sports are not supervised and that Assistant Coaches could help.

The District Position on Assistant Coaches. The District position summarized includes these points:

- The addition of Assistant Coach positions is not supported by any demonstrated need.

- Participants in Tennis, Golf and Cross County often have had individual instruction and do not require integration as in other sports, and they can operate more independently.

- Even if the arbitrator has authority to add such extra duty positions to the compensation schedule, the evidence is that the additions are not uniformly supported by the schedule or the need for them.

- Contrary to the Union assertion, the District has not acknowledged a need for the Assistant Coaches positions at this time, and should the need arise the District can fill them.

- The present Agreement allows for the assignment of Assistant Coaches if needed at a rate 70% of the Head Coach rate. This provision is consistent with the District's policy to continually assess its athletic programs and the number of students involved, and gives the District flexibility in providing assistance to sports as needed.

- The Union agrees that the District needs to hire people only if there is a "need", even though a job title may exist.

- The District has not ignored the collective bargaining agreement by employing hourly supervisors and using parents as volunteers to avoid hiring Assistant Coaches, as the Union implies. No evidence was presented to suggest that any request for a needed Assistant Coach under the language of the Agreement was not approved.

Discussion and Opinion. The evidence is that the District can provide Assistant Coaches when needed under the Agreement even if the specific job title is not mentioned in the Agreement, and the evidence is that the need for Assistant Coach positions is not uniform in the District. However, the job titles do appear to be quite common in the comparables, and this would weigh in favor

of the Union offer that where such positions are filled, they should be formally listed in the Agreement at a stated percentage of the base pay. The designation of the job title does not necessarily mean the District has to fill the position. This being so, and since a decision to put such job titles in the Agreement does not bind the District to fill the position where not needed, the arbitrator is of the opinion that comparability in the formal existing of such titles among comparable districts favors the Union position. This is a minor weight in favor of the Union offer.

XVIII. ABILITY OF THE DISTRICT TO PAY. The Union asserts that the District can meet the costs of its proposals for the additional and new positions, for the release time for the Athletic Directors and for percentage increases for the Head Coaches and Pom Pon Advisors. The District on its part has not contended that there is an inability to pay, but the District cautions that if the teaching hours of the Athletic Directors are reduced, the District has real concerns about achieving the work of Athletic Directors in a more cost-effective and productive way, because the District will be paying for four full-time teachers whose total teaching collectively taken amount to the time of 1.6 full-time teachers. The District would not be unreasonable in considering alternatives, and the cost implications of the Union offer is certainly relevant. The District also notes that the Principals have not considered Athletic Trainers as important in the priorities of expenditures.

Discussion. Since the District did not directly contend that it did not have the ability to meet the cost of the Union offer, and since no evidence was given that the District could not meet the offer, the judgment here is that the District can meet the costs if the Union offer is included in the Agreement. The warning that the District will have to evaluate the method of handling Athletic Director functions in a different way in order to keep costs down is not improperly made, but the fact remains that the District can meet the costs of the offer of the Union.

XIX. OTHER FACTORS - LANGUAGE CHANGES. The Union proposed certain language modifications as shown earlier in the offers. The Union asserts that the language changes were made for purposes of clarity, but the District did not respond nor address them in anyway, nor give its rationale for refusal to make these changes.

The District takes the position that the language changes were never addressed during the bargaining, and that the District does not necessarily take issue with them.

Discussion. The arbitrator is of the opinion that the proposed modifications of language in the Agreement adds clarity to the Agreement and are reasonable.

XX. CHANGES DURING THE PENDENCY OF THE PROCEEDINGS. No changes were brought to the attention of the arbitrator during the pendency of the Agreement.

XXI. SUMMARY OF CONCLUSIONS. The following is a summary of the conclusions of the arbitrator on the issues presented in consideration of the statutory factors to be weighed:

1. As to the lawful authority of the unit of government to meet the terms of either offer, although the District states it does not have to consider any of the issues raised in the Union offer other than those of rates as the re-opener clause requires, yet the arbitrator is of the opinion that since the Wisconsin Employment Relations Commission did not issue an order modifying the Union offer to eliminate everything but proposed rates, the arbitrator must consider the Union offer without modification.

2. All other matters between the parties have been stipulated to in an Agreement signed earlier.

3. The list of comparable school districts submitted by the Union is the more comparable although the District list of 15 districts has usefulness in comparisons also.

4. The conclusion is that the Union offer for Head Coaches' stipends in the Madison District and for the Pom Pon Advisor is the more comparable.

5. As to the added Assistant Coach positions, if there is a need for such positions, the compensation proposal of the Union is the more comparable.

6. As to the Union proposal for more released time for Athletic Directors, the District offer is the more comparable and reasonable as to compensation and hours of teaching.

7. However, as to the comparison of the conditions of work in teaching load, the Union offer for fewer teaching hours is the more comparable when considered in a national comparison.

8. The parties made no comparison to employees in private employment.

9. The statutory criterion on cost of living changes was not directly referred to by the parties.

10. No comparison on overall compensation of Athletic Directors or opportunities for additional assignments was made by the parties.

11. The interest and welfare of the public with respect to the reduction of release time for Athletic Directors is not injured by the retention of the present three periods of teaching hours presently required.

12. As to the public interest and welfare involved in adding the title of Assistant Coaches for Golf, Tennis and Cross Country, there is a minor weight for the Union offer.