STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

RACINE EDUCATIONAL ASSISTANTS ASSOCIATION

To Initiate Arbitration
Between Said Petitioner and

RACINE UNIFIED SCHOOL DISTRICT

Case 120
No. 42862 INT/ARB-5393
Decision No. 26509-A

Sherwood Malamud
Arbitrator

APPEARANCES:

James Ennis, Executive Director, Racine Education Association, presented the Association's case at the hearing; on the brief, Hanson, Gasiorkiewicz & Weber, S.C., Attorneys at Law, by Robert K. Weber, 514 Wisconsin Avenue, Racine, Wisconsin 53403.

Frank Johnson, Director of Employee Relations, and Katie McCloskey, Employee Relations Specialist, 2220 Northwestern Avenue, Racine, Wisconsin, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

JURISDICTION OF ARBITRATOR

On September 11, 1990, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to determine this dispute between the Racine Educational Assistants Association, hereinafter the Association or the REAA, and the Racine Unified School District, hereinafter the District or the Employer, through the issuance of a final and binding award pursuant to Sec. 111.70(4)(cm)6.d. of the Wisconsin Statutes. At the request of the parties, mediation was conducted on October 2 and 3, 1990. The matter was not resolved in mediation. Hearing in the matter was conducted on October 18, 1990. Briefs, reply briefs, and a correction to the Association's original brief were submitted through February 7, 1991, at which time the record in the matter was closed. Based upon a review of the evidence and arguments submitted and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a-j.,

Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

SUMMARY OF THE UNION AND EMPLOYER FINAL OFFERS

Both the Association and the District propose two year agreements effective August 24, 1989.

I. *WAGES*

Association Offer

The Association proposes that each "cell" of the four level 13 step schedule identified in the expired agreement as the master salary schedule as levels II-V and steps 3-15 each be increased by 5.3%. For General Assistants and Matron Assistants I-III who are under a different salary structure, the Association proposes that their rates be increased by 5.3%, as well. The Association proposes that the above schedule be increased in the second year of the successor Agreement by 5.3%, as well.

District Offer

The District proposes a 28¢ per hour increase across the board for all employees in the unit in each year of the Agreement.

Under both proposals, an employee will receive the step increment due during the two year term of the Agreement.

II. *FRINGE BENEFITS*

A. Dental Insurance

Both the Association and the District propose the inclusion of a new benefit, dental insurance, in the successor Agreement.

Association Offer

The Association proposes that the level of benefits be comparable to those in effect for the teacher bargaining unit on August 24, 1988. Teachers may choose between two insurance programs for their dental coverage. The Association proposes that Educational Assistants be provided with this same choice of Dental insurance programs. One choice is the District self-insured group plan available to teachers and hourly employees, as described in Plan Specification Booklets, District Exhibit 30 (Teachers), District Exhibit 28 (Custodians), and District Exhibit 27 (Carpenters, Clerical and Painters). The other is the Blue Cross Dentacare program. The Association proposes that participants pay $1.00 per month for single coverage and $3.00 per

month for family coverage.

District Offer

The District proposes that the open enrollment period will be for 30 days after the successor agreement is signed and for 30 days after initial employment. The District proposes to pay the full cost of single coverage under the dental plan. Under the District proposal, the Assistant is to pay the full cost differential between single and family coverage for the dental plan.

The District proposes that Educational Assistants be offered the dental plan provided to other hourly employees, such as clerical and custodial employees. This plan is the self insured dental plan.

B. Prescription drug plan

Association Offer

The Association proposes the addition of a prescription drug program to the District's self-insured Health Insurance plan within 60 days of the issuance of this Award. Participants in the District's Health Insurance plan would pay $10.00 per month for single coverage and $20.00 per month for family coverage, rather than the 85/15 per cent split in effect under the expired Agreement.

The Association proposes that the Prescription Drug level of benefit be set at $4.00. For each prescription, the participant will pay a $4.00 deductible for the prescription. The Association identifies the specifications of the program by providing that it be comparable to the plan in effect for Teachers for the 1989-90 school year.

District Offer

The District makes no proposal for the inclusion of a prescription drug plan in the successor agreement from August 24, 1989 through August, 1991.

C. ELIGIBILITY FOR FRINGE BENEFITS

Association Offer

The Association proposes to reduce the number of hours which an Assistant must be employed, from 705 to 600 hours, to be eligible for fringe benefits.

District Offer

The District proposes to retain the status quo. Eligibility for benefits will continue as provided in Article XVII 1.a. and b. of the expired Agreement. Under the expired agreement, Assistants who work more than half time are entitled to fringe benefits on a pro rata basis.

III. *RECOGNITION CLAUSE*

District Offer

The District proposes that the following language be added to the Recognition clause, Article I, as a second paragraph:

> This provision is set forth merely to describe the bargaining representative and the bargaining unit covered by the terms of said collective bargaining agreement and is not to be interpreted for any other purpose.

Association Offer

The Association proposes to maintain the status quo. It proposes that no additional language be added to the recognition clause.

IV. INSERVICE

Association Offer

The Association proposes the inclusion of the following language in a successor agreement:

> Selection procedures of participating individuals, scheduling and compensation levels/rates for inservicing shall be subject to impact bargaining during the term of this Agreement when or if the District determines inservice will be offered.

District Offer

The District proposes the continuation of the status quo. There is no provision relating to inservice in the expired Agreement.

V. ASSIGNMENT AND TRANSFER

Article XVII of the expired Agreement contains the following language with regard to:

8. Job Openings

After a job opening becomes known and a decision is made to fill such job opening during the next school year, notice of the job opening will be posted in places accessible to employees. Job openings made known after August 1st and before the end of the school year that are filled during that school year will not be posted. Those persons interested in making application for jobs posted must do so before the closing date stated on the notice. Notices will set out general job duties and work location.

District Offer

The District proposes the addition of the following paragraph to the Job Openings language quoted above:

Assistants who have been in their current position at least one school year and who wish to be considered for jobs not posted in the summer, but that may open during the school year, can notify the Personnel Department in writing of their desire to be considered. Assistants must indicate the type of position for which they would like to be considered. The Personnel Department will consider those persons, along with any others, when filling those positions.

Association Offer

ASSISTANT ASSIGNMENT & TRANSFER

1. Job Postings

Job vacancies, whether resulting from termination, transfer or a newly created position, will be made known to assistants through posting. Notices will set out job duties, qualifications, and work location. Those persons interested in making application for jobs posted must do so before the closing date stated on the notice.

2. Vacancy Notices Posted

   Job vacancies will be posted in the central office of each school and one copy sent to the Racine Education Association office.

3. Seniority

   In the event that more than one (1) qualified assistant applies for the vacant position, the District will select from the three (3) most senior applicants.

4. Posting Time Line

   Job vacancies will be posted for a minimum of ten (10) working days.

BACKGROUND

The making of an evidentiary record by each party in support of its final offer and the evaluation of those offers under the statutory criteria by the Arbitrator are difficult tasks, for a number of reasons. The range of the comparables is quite broad. The Association suggests the other four largest districts in the state as the ones most comparable to Racine. The District proposes the other nine largest school districts in the state as comparables to Racine. This is a wide range of comparability, far wider than would be tolerated in cases involving smaller districts. For example, the pupil enrollment in Milwaukee is some 86,217; Madison 21,265; Sheboygan 8,617; with Racine at 20,737. Two of the proposed comparable employers, namely, Eau Claire and Janesville, include other support staff, clerical and/or custodial employees in the bargaining unit representing Educational Assistants.

Most of the proposed comparables employ a variety of salary structures to pay teacher aides or educational assistants. Green Bay pays a single rate for the performance of teacher aide work; Milwaukee has established a short four step schedule for the payment of educational assistants. The balance of the proposed comparables maintain salary schedules ranging from 10 steps to 27 steps, inclusive of longevity. Racine recognizes educational achievement and the knowledge obtained through years of continuous employment in that it provides for movement from Level II (first lane) to Level III for 30 credit hours beyond a high school degree. Levels IV and V of the Racine schedule are attained through further educational achievement (and some work experience).

The job of establishing the range of pay for a beginning employee, an employee in mid-career, and an employee at the top of the schedule becomes even more difficult, because this Employer has not developed any job descriptions for the variety of classifications which are paid under the two salary structures contained in the expired Agreement. The salary structures, the parties agree, will be carried forward into a successor Agreement. Certain position titles, such as Matron Aide I, II and III, do not readily appear in other units. A brief description of the responsibilities of a Matron, presented at the hearing in this matter, suggests that similar positions may exist only in the largest of the comparable units.

The parties focus their arguments on several statutory criteria. Some criteria, although applicable to the determination of this case, were not argued by the parties. For this reason, it is appropriate to establish the role of the Arbitrator in the application of the statutory criteria to the final offers of the parties. In Antigo School District, 25728 (3/89), after quoting extensively from the award of Arbitrator Petrie in Mukwonago School District, 25380-A (Malamud,12/88), this Arbitrator concludes that:

> In the public sector, the interest arbitrator is called upon to apply certain defined and often interpreted statutory criteria. Although these criteria often track the market analysis which might be followed by an interest arbitrator in the private sector, on occasion, the interest arbitrator in the public sector must confront a significant argument concerning the interest and welfare of the public which a private sector interest arbitrator need not address. In this regard, changes in state aid formulas might reflect the increased support of rural school districts at the expense of urban school districts. Such trends may have a significant impact in a particular case and would have to be accounted for and analyzed by the public sector interest arbitrator.
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> However, it is impossible for a public sector interest arbitrator to act as a surrogate, in the manner in which the private sector interest arbitrator would act, and meet the additional challenges so eloquently stated by Arbitrator Petrie in his award in Mukwonago Schools, supra. It is noteworthy, that under the criterion Such Other Factors an Arbitrator must consider what would result from an arbitration analysis in a 'private sector' type case were the Arbitrator to act as a surrogate for the parties. The language of this criterion requires the Arbitrator to consider factors weighed in private sector interest

disputes.

The role of the public sector interest arbitrator is much broader than that of the private sector interest arbitrator. This case provides an excellent example as to why a public sector interest arbitrator cannot serve as a surrogate for the parties by determining what these parties would have included in their collective bargaining agreement in a voluntary settlement. The only clear evidence which this Arbitrator has on record with regard to the collective bargaining process which preceded the appointment of this Arbitrator, is that left to their own devices, the parties did not reach an Agreement. At the conclusion of this Award, this Arbitrator selects the final offer to be included in a successor Agreement, on the basis of the application of the statutory criteria.

This Award is structured in the following manner. After setting forth the statutory criteria to be applied in this case, the Arbitrator groups the many proposals and issues submitted and addresses them as follows. First, the wage issue is addressed through the application of the appropriate statutory criteria. The proposals of the parties on fringe benefits, dental insurance, the level of that benefit, as well as, the split in employer/employee contribution and eligibility are addressed. Each of the language issues, the District's proposed amendment to the Recognition clause, the Association's Inservice proposal, and both the Association's and the District's proposals on job posting and transfer are discussed separately. In the course of the analysis of the parties' offers, the Arbitrator relates the applicable salient arguments of the parties on the particular issue under review. At the conclusion of each major issue (capitalized and bold or shadow heading), the Arbitrator indicates which offer is to be preferred on the particular proposal without regard to any other proposal in this case. The Award concludes with the Arbitrator's consideration of the totality of the final offers of the parties and the selection of the final offer for inclusion in a successor Agreement.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are described in the statute 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:
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> a. The lawful authority of the municipal employer.
> b. Stipulations of the parties.
> c. The interests and welfare of the public and the

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

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

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, 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 or otherwise between the parties, in the public service or in private employment.

DISCUSSION

Comparables

The Association proposes that the four other largest districts in the state, namely Milwaukee, Madison, Green Bay, and Kenosha serve as the comparability base for the determination of this case. Racine is the third largest school district in the state by pupil enrollment and total professional

staff.

In an interest award involving the Teacher unit, District Exhibit 48, Racine Unified School District 21810-B (Grenig, 5/85), Arbitrator Grenig established that the ten largest school districts in the state of Wisconsin, inclusive of Racine, constitute the comparability pool. On this issue Arbitrator Grenig observed at page 4 of his award that:

> In determining which districts are comparables, arbitrators take into account size, geographical location, number of employees, enrollment and equalized valuation. The Employer is the third largest school district in Wisconsin with an enrollment in excess of 20,000 students. In cases involving the ten largest school districts, arbitrators have frequently utilized the top ten school districts for purposes of comparison. The top ten school districts are considerably larger than the remaining Wisconsin districts (even the seventh largest district is half the size of the Employer) and are generally pattern setters rather than pattern followers. See *Madison Metropolitan School District,* Decision No. 33865-B (Stern, 1985).
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> . . .
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> The following school districts are thus deemed to be appropriate comparables for purposes of this proceeding:
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> Milwaukee
> Madison
> Green Bay
> Kenosha
> Waukesha
> Appleton
> Janesville
> Eau Claire
> Sheboygan

It should be noted that the teacher aides in the Waukesha School District had not settled their agreement for the 1989-90 school year. Accordingly, except where specifically noted, the data generated below concerning comparables are to the eight largest school districts in the state excluding Racine and Waukesha.

The Association argues at page 13 of its brief in support of its position

that the comparability pool should be the other four largest Districts as follows:

> It is so obvious as to be axiomatic that the more social problems confronting the community -- crime, unemployment, broken homes -- the more difficult the teaching/learning environment. In this context, Racine is first among worst. Pursuant to the data contained in the County and City Data Book . . . Racine has a significantly higher unemployment rate, crime rate, minority ratio, poverty level, single parent/teenage parent ratio than the bottom five school districts of the big ten, and a higher level in all categories than the top five.

The above data sets out problems to which the District must be sensitive, however, it does not distinguish Racine from the "bottom five". The argument posed with regard to the "bottom five" could be made for the nonuse of Kenosha, a contiguous school district, as a comparable to Racine. This Arbitrator sees no basis for changing the comparability base established by Arbitrator Grenig in his award involving the Teacher bargaining unit.

Wages

The Arbitrator concludes that the factors: the lawful authority of the municipal employer; stipulations of the parties; and the interests and welfare of the public . . ., do not serve to distinguish between the offers of the parties.

d. Comparison of Wages . . . of Other Employes Performing Similar Services

At the hearing in this matter, the parties presented raw data, such as lengthy computer printouts showing the salary for educational Assistants, their names, etc. It is only in their briefs and reply briefs, that the parties compute the costs of the final offers and generate charts comparing the salary schedules of comparable employers. This manner of presentation prevents the exploration of the assumptions underlying the calculations, through questions and answers by the parties and the Arbitrator at the arbitration hearing. As a result, the Arbitrator is cautious in his use of the data generated in the charts and graphs attached to the parties' briefs.

Chart 2 from the District's brief sets out the full time equivalency for bargaining unit employees who are the principal beneficiaries of any increases generated by the final offers of the parties. A copy of Chart 2 is marked as Appendix 1 and attached hereto.

The Arbitrator has used the cast forward method of costing the final offers of the parties. In its presentation at the hearing, the Association points to the inaccuracy inherent in such method. It notes that the cast forward method does not reflect the actual cost of the parties' proposals. I t does not take into account the attrition which normally occurs in any bargaining unit of any size from one year to the next. Nonetheless, the cast forward method does provide a clear picture of the salary increases to be received by employees who continue employment with the District for the duration of the Agreement.

There are 65.38 FTE Educational Assistants in the first 7 steps, step 3-9, at Level II (the first lane of the salary schedule). It is apparent from Chart 13A in the District's brief that employees in lane II rank in the bottom third of the "big ten" when compared to wage rates paid in comparable school districts including longevity for the first nine years of employment. In years 4-6 of employment (steps 6-8 on the salary schedule for Level II), Racine pays the lowest rate to its assistants on this schedule. At steps 6, 7 and 8 of the first lane of the Racine salary schedule as proposed by the District for the 1989-90 school year, the rates range between 79 and 89¢ per hour below the average paid by comparable employers.

There is little data presented concerning the settlements for the second year of the agreement, 1990-91. The salary issue will be determined based on the data presented for the first year of the successor Agreement, the 1989-90 school year.

The Arbitrator concludes from the above data that the Association's proposal for the 1989-90 school year which generates a larger increase for the second through seventh year of employment is to be preferred for those steps of the schedule and for the 65+ assistants affected by those steps.

The District proposal provides a floor which generates an increase of one penny more than the Association's proposal at the starting wage for new employees to the District.

Assistants at mid-career, i.e., after nine years of employment and with 30 credits beyond a high school degree, would be paid 49¢ per hour below the average under the District proposal and 40¢ per hour below the average under the Association proposal for the 1989-90 school year. That differential to the average becomes smaller in the tenth year with a difference of 36¢ per hour below average in that year under the District proposal and 26¢ per hour below average under the Association proposal. At year eleven when employees with ten years of continuous employment at Level II switch to Level III under the salary structure, assuming placement at step 13 of Level III of the salary structure, the Educational Assistant on this schedule would be paid at $7.71 per hour under the District offer and $7.82 per hour under the Association proposal which is below the $7.94 per hour

average of the comparables. The disparity continues at the next to the last step of Level III with the District proposal of a $7.87 wage rate at that level as contrasted to the average of $7.96 per hour. Under the Association proposal, the rate would be $7.99 per hour, 3¢ above the average. It is only at the top step of Level III that both the District and Association proposals exceed the average of $8.01. The District proposal generates an $8.18 rate and the Association an $8.32 rate. Those rates remain above the average through the payment of longevity by the various comparable districts up to the 27 year step provided under the Madison schedule. At 27 years, the average rate among the comparables is $8.16 per hour.[1]

District charts 14C-E, in the District's brief, compare the rates generated at Level V step 9 which is paid on the basis of 90 credits - 15 years of education plus 3 years experience. It is at this level that the District's salary structure generates salary levels far and above the rates generated by the average of the comparables. However, only 27 of the District's employees are at the top step at Level V. These employees do not receive a step increment. There are only two employees receiving a step increment who are in the Level V lane.

The Arbitrator has considered the rates established for the position titles of General Assistant, Head General Assistant, Matron Assistant I-III. The rates for those in the Matron Assistant title series would increase to $8.48 per hour through $9.20 per hour under the District proposal. The employees in these positions enjoy rates above the average paid by the comparables (assuming such positions are in existence in comparable districts). The rate for General Assistant of $6.83 per hour increases to $7.11 per hour under the District proposal and to $7.19 under the Association proposal. Again, the rate for General Assistant appears to be well below the average paid by comparable districts.

The Arbitrator concludes from the above data that the salary structure for Racine Assistants, as proposed by the District, generates salaries for new employees and employees in mid-career well below the average rate paid by comparable districts. It is only Assistants at the top of the schedule who are paid rates far in excess of the rates paid by comparable employers. The Association correctly notes that to achieve these higher rates in Level IV and V, employees must obtain additional credits. There is no credit reimbursement under this Agreement. It becomes difficult for employees to achieve the educational levels necessary to be paid these higher rates.

On the other hand, the District is correct when it notes that employees at the top of the wage schedule are paid wage levels far in excess

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[1]The Racine Assistant tops out after 11 years of employment. The Madison Assistant tops out at 27 years of employment.

of those paid by the average of the eight comparable districts.

On balance, the parties would have been better served through final offers at a lower percent than the one proposed by the Association but with a cents per hour floor above the District's 28¢ per hour which would generate an increase approximating the Association's 5.3% wage increase at the lower steps of the salary schedule and a lower percentage increase at the upper steps of the schedule. However, neither final offer takes that form.

The Arbitrator has considered the compression of the salary schedule argument presented by the Association. In light of the large number of employees who are paid rates substantially below the average of the comparables, the Arbitrator concludes that the issue of salary schedule compression is not as pressing as the matter of bringing those paid at rates below the average closer to the average.

The above discussion compares the salary levels to be paid to Educational Assistants under the District and Association offers to the salary levels paid to assistants by comparable employers in comparable districts. The other matter to be considered when wages are an issue is the level of increase proposed from one year to the next as contrasted with the increases provided by comparable employers to their Educational Assistants.

The District proposal generates an increase with step included of 5.15% as contrasted with the Association proposal which generates a 6.72% increase for the 1989-90 school year. Although the Association argues that the steps should not be considered in calculating the wage increase, the Arbitrator finds that whether one calls the provision of additional pay under a schedule longevity, a step increment, or anything else, the additional salary provided represents monies paid by the District and monies received by the employee. It is only the units where a rate for the job is established, such as the rates established by the parties for General Assistant and employees in the position title series of Matron, if a probationary rate is provided which is less than the established rate, then movement from that probationary rate, which may take three months or six months, to the established rate is not costed by an arbitrator. The elaborate salary schedule present in this case leads this Arbitrator to consider, the step increment paid in Racine, and, longevity paid by some of the comparables, in considering the salary levels and increases proposed by the District and Association in their final offers.

The average increase in wages including increment paid by comparable employers for school year 1989-90 approximates 4.5% (based upon District exhibits 73-81). An approximation must be used since no data was provided as to the cost of the steps or increment for Green Bay Area Public Schools nor was it provided for the Milwaukee Public Schools. The increase proposed by both the District and the Association exceeds that of

the average of the comparables.

Although the Association proposal is substantially above the average increase in wage rates of the comparables, the salary rates paid to Racine Assistants during the first ten years of employment, rates which apply to approximately 35% of the unit (296.24 FTE in the unit and 105 employees so affected) are substantially below the average. The Association's proposed 5.3% salary demand when applied to the substantial number of employees at the top step at level III, Level IV and V, approximately 29% of the unit, increases the differential between the rates at the top in Racine as contrasted to the top rates paid by comparable employers. The Association's offer on salary generates slightly larger increases than those proposed by the District which impact on a larger percentage of employees who are paid rates below the average paid by comparable employers. The totality of the data provided on this criterion supports the inclusion of the Association offer in the successor Agreement, albeit, the preference is quite narrow.

e. Comparison of Wages of Educational Assistants with Employees Generally in Public Employment f. . . . and in Private Employment

The parties provided no data with regard to these two criteria. The application of these criteria provide no basis for selecting one final offer for inclusion in a successor Agreement over that of the other.

g. Cost of Living

This Arbitrator applies the cost-of-living criterion to the total package costs provided by the parties' offers. The total package cost includes factors specifically measured by the Consumer Price Index. Furthermore, it is appropriate to look at the rate of increase in the cost-of-living over the year prior to the effective date of any proposed increase. Accordingly, it is appropriate to review the increase in the Consumer Price Index through August, 1988. The rate of increase for urban wage earners and clerical workers under the United States Index is 4.7%. The total package cost of the District's proposal is 7.44%; and the Association's is 10.03%.

Oftentimes, the measure of the increase in the cost of living is identified through the total package cost increases paid by comparable employers in settlements with employees in comparable units. Even if the data for Milwaukee Schools are excluded from this computation because of the lack of specifics with regard to the total package increase provided to assistants for the 1989-90 school year, the average total package increase among the comparables is just under 6%. The District offer exceeds the average of the total package increases provided by the comparables by approximately 1.5%; the Association's proposal exceeds that average by some 4%.

On the basis of the above data, the Arbitrator concludes that the application of this criteria strongly supports the inclusion of the District offer on wages in a successor Agreement.

h. Overall Compensation

The Arbitrator specifically addresses the issues of cost of premiums for single and family coverage to employees, level of health insurance benefits, such as, dental insurance and prescription drug, under the fringe benefits section of this Award. The Arbitrator has carefully reviewed Association Exhibit 21 which sets forth the overall compensation provided by eight of the comparable districts, including Waukesha. The data generated for Waukesha was not considered by the Arbitrator inasmuch as, those parties have not reached agreement for the 1989-90 school year. The Association excludes Janesville Schools from its analysis. Consequently, only seven of the "big 10" comparables are covered in that exhibit.

Four of the districts, Madison, Green Bay, Appleton and Eau Claire provide long term disability insurance. All except Kenosha provide for the use of sick leave to supplement workers compensation. All the comparables, provide for longevity pay. With regard to paid holidays, Racine with two such holidays equals the number of holidays provided by Milwaukee and Appleton Schools. The other comparables analyzed through Association Exhibit 21 provide a greater number of holidays. The work week/work year of Racine and the other comparables do not differ significantly. There is a different mix of number of hours per week relative to the number of days which must be worked in a work year. With regard to the application of this criterion to the wage issue, it supports inclusion of a slightly higher wage rate. It tends to favor the Association proposal.

i. Changes in the Foregoing

There are no changes in any of the circumstances reviewed during the pendency of this proceeding which would serve to distinguish between the offers of the parties.

j. Such Other Factors

The internal comparability of the offers of the parties with regard to other represented units is considered under this factor. The evidence concerning the percentage increases generated for the five other non-professional organized units of Racine are calculated on the basis of no step increment. Internal wage increases must be contrasted on that basis. The percentage wage increase excluding step increment under the District proposal is 3.73% and 5.3% under the Association proposal. The District achieved voluntary settlements with its Building Service Employees for wage increases of 3.35% in 1989-90 and 1990-91. Increases of 4.1% in each year

were achieved with the unit of Secretary/Clerks. Settlements with the building trades -- carpenters, painters and plasterer - approximated 3.5% in each year. It is apparent from the above data that the District final offer, here, is consistent with the settlements on wages it achieved with the other units of non-professional employees.

The application of this criterion supports the selection of the District offer in a successor Agreement.

Summary and Preference

The comparability criterion, which identifies the appropriate salary levels for Educational Assistants through a comparison of wage rates paid by comparable employers, supports the inclusion of the Association offer in a successor Agreement. The criterion overall compensation provides some preference to the Association offer, as well.

The criteria, the cost of living and such other factors strongly support the inclusion of the District offer in a successor Agreement.

On the basis of the application of the above criteria to the final offers proposed by the parties, the Arbitrator concludes that the Association offer on the issue of wages enjoys a slight preference over the District's for inclusion in a successor Agreement.

FRINGE BENEFITS

Health Insurance Premium Contribution

Under the expired agreement, the District paid 85% of monthly premium cost, and an employee electing insurance coverage paid 15% for single or family coverage. The District proposes to pay the increases in premium engendered by this 85/15 split. It proposes to retain the status quo with regard to the split and to pick up in the first year $86,540 generated by the increase in premium from $196.99 for family coverage to $273.16 and the increase in single coverage from $75.77 to $105.39. In the second year, the District proposal to retain the 85/15 split will generate additional premium costs totaling $82,394 to pay for the increase in premium in family coverage from $273.16 to $346.49 for the 1990-91 school year and for the increase in single coverage from $105.39 to $132.67 during the same period of time.

The Association proposes that Educational Assistants who elect to take family coverage pay $20 per month, and those electing single coverage pay $10 per month for such coverages. The Association proposal would require the District to incur, approximately, an additional $8,000 over and above the increase in costs generated by the 85/15 split in each year of the two year

agreement.

Two criteria serve to distinguish between the final offers of the parties. Under the comparability criterion (d), the benefits received by the Racine Educational Assistants are compared to those benefits received by Educational Assistants employed by comparable employers. Under the criterion Such Other Factors, the parties' offers are measured against the contribution level of the internal comparables.

d. Comparison of Wages . . . of Other Employes Performing Similar Services

From the data presented by both the District and the Association, Milwaukee pays the full premium for health insurance; Madison 90% to a stated dollar maximum; Green Bay 100% for single coverage and 94% for family coverage; Sheboygan 100% for single coverage and 90% for family; Janesville appears to pay the full premium. Its agreement does not specify the manner in which any increases in premium which may occur during the term of the agreement are to be paid. It is unclear from the data submitted as to whether the amount specified in the Kenosha agreement represents 100% of the premium. Similarly, it is unclear whether the premium specified for Appleton and Eau Claire represents 100% or some percentage less than 100 for health insurance coverage. A majority of the comparables, at least five, pay a percentage higher than the 85% paid by the District on behalf of Educational Assistants who elect single or family coverage for health insurance.

The application of this criterion supports the selection of the Association offer.

Such Other Factors

The internal comparables strongly support the Association proposal. The Association proposal mirrors the contribution level found in the Teacher Agreement. However, it is the level of contribution made by non-professional employees which provides the most compelling support for the Association offer. The level of contribution provided for under the Agreement covering Building Service employees is $20 per month for family and $20 per month for single coverage. The Secretaries/ Clerks Agreement provides for a contribution level up to March 1, 1990, of 6.6% for family coverage and 16% for single coverage. Effective March 1, 1990, secretary/clerks pay 7.5% of the monthly premium for family coverage and 18% for single coverage. The agreements covering building trade employee such as carpenters, painters and plasterer provide for District payment of the premium for health insurance coverage.

The Building Service Employees 1987-89 Agreement provides a

contribution level for health insurance of $11.54 per month for family coverage and $10.70 per month for single coverage. It is apparent that other non-professional employees of the District have paid substantially lower dollar amounts (in percentage terms, as well) than the Educational Assistants. The parties submitted into evidence a number of collective bargaining agreements between these very same parties. Inasmuch as this is the first case between these parties to go to arbitration, it is apparent that the prior agreements were the product of voluntary negotiation. Slightly over half the unit elects to participate in the health insurance program; 83 employees elect to take family coverage and 73 single coverage.

In addition, negotiations between this employer and each separate collective bargaining unit reflect agreements on fringe benefits which are not uniform in nature. Arbitrators frequently find that fringe benefit levels are identical for all employees of a particular employer. However, the bargaining history reflected in the collective bargaining agreements achieved by this Employer and its other collective bargaining units and their representatives reflect premium contribution levels separate and distinct from unit to unit. This bargaining history which is considered under the criterion Such Other Factors provides support to the District proposal to maintain the status quo.

In this regard, the Association argues that the level of benefits provided to Administrators should be considered by this Arbitrator in his evaluation of the various fringe benefit proposals of the parties. If fringe benefit levels were consistent from unit to unit, this Arbitrator would agree with the Association argument. However, that is not the case, here. Accordingly, the fringe benefits provided by the District to its Administrators are not considered, herein.

Summary and Preference

Upon consideration of the totality of the evidence on the issue of premium contribution level, including past bargaining history, the Arbitrator concludes that the application of this criterion strongly supports the adoption of the Association offer.

PRESCRIPTION DRUG

Such Other Factors

The Association proposes the addition of a new benefit. It proposes a prescription drug program wherein the employee pays $4.00 for each prescription.

The District proposes that the statue quo be maintained, and that a successor Agreement not include this benefit.

The District provides the benefit of prescription drug to all its other employees, professional and non-professional, at a higher benefit level, i.e., a $2.00 prescription program. Under the $2.00 prescription plan, for each prescription which an employee has filled, the employee contributes $2.00 and the insurance provider must pick up the balance of the cost of the prescription. Under the Association proposal, the provider would pick up less of the cost, in that, the insurance provider would pick up the cost for each prescription over and above $4.00.

This employer self insures. An experience rating for each of the collective bargaining units is maintained. Yet, the administrators of the health insurance plans of the District calculate a rate for health insurance based upon, 1. the prior experience over all participants in the health insurance programs; and 2. premium increases by other health insurance providers nationwide. This same rate is charged to all employees of the district regardless of the level of benefit provided to a particular unit of employees, such as, Educational Assistants.. The Association argues that it pays the same premium as other employees who receive a prescription drug plan, which benefit they do not receive.

The District submitted evidence concerning the increased cost of the prescription drug plan in units in which the prescription drug plan has been in effect during the term of the 1989-91 Agreements.

The District argues that the prescription drug plan went into effect in the most recent agreements achieved with the other units. It argues that each collective bargaining unit paid a price for the inclusion of the prescription drug plan. The District points to the voluntary agreement reached with the Secretary/Clerks unit in which their premium was increased to 7.5% contribution for family coverage and 18% for single to pay for the prescription drug plan. The District argues that although the rating experience for each of the units may differ, this unit is a beneficiary of the decreased usage of the teacher collective bargaining unit. If the premium rate and percentage of contribution were calculated based on the experience attributable to the Educational Assistants, those assistants would be required to pay 15% of a $400.00 premium for 1990-91 rather than the $346.49 premium established for family coverage for all employees. The District emphasizes that the level of contribution towards premium is the product of collective bargaining.

Since this employer self insures, it is sensible that the rate be established over the entire group of employees participating in the health insurance program. However, once a rate is established over the entire group(all participants in the District's insurance program), it is inappropriate to provide different levels of benefits and coverages to the various collective bargaining units, but have the same premium established

for each bargaining unit. The necessary result is that some employees will be paying premium for benefits which they do not receive but which are afforded to other units. The individual breakout of premium by units, although instructive, has nothing to do with the manner in which the District establishes the premium rate for single and family coverage.

The Arbitrator agrees with the District argument that the level of contribution towards premium is a matter of collective bargaining. The level of contribution towards premium by Educational Assistants has been addressed above.

The District argues that the $4.00 prescription plan proposed by the Association is at variance from the one administered for all other employees. Had the District proposed the $2.00 plan, this Arbitrator would find it preferable over a $4.00 prescription drug plan. However, that is not the choice facing this Arbitrator. The District proposes that this benefit not be afforded to Educational Assistants during the term of this agreement. Given this choice, the Association proposal for a $4.00 prescription plan is preferred.

The District argument that the administration of such a plan could only lead to confusion is not supported by any evidence. No one from A & H Administrators, the administrators of the District's health insurance plan, testified at the hearing as to the difficulty it might or might not have in administering a $4.00 prescription drug plan for Educational Assistants while administering a $2.00 plan for all other District employees. It appears to this Arbitrator, that the prescription drug plan card issued under a $4.00 plan would specify that the participant under this plan will pay $4.00 for each prescription. Pharmacists would then know to collect $4.00 rather than any other amount ($2.00) from the participant for any prescription filled by that pharmacist.

Summary and Preference

The Arbitrator finds that the criterion such other factors is the only factor which serves to distinguish between the final offers of the parties. This factor provides strong support for the inclusion of the Association proposal on prescription drug in a successor Agreement.

DENTAL INSURANCE

There are two dimensions to the dental insurance issue. Both the District and the Association propose the inclusion of a dental insurance program in a successor Agreement. There is a dispute as to the dental programs which would be available to Educational Assistants under the District and Association proposals. Secondly, the parties differ as to the contribution level to be paid by employees for this additional benefit of

dental insurance.

The determination of this issue will be based upon the application of the criteria (d) comparability, and (j) such other factors - internal comparables. The Arbitrator finds that the other criteria do not serve to distinguish between the final offers of the parties.

d. Comparability

Seven of the comparable employers (inclusive of Janesville) provide dental insurance to their Educational Assistants. The Arbitrator's review of the evidence indicates that none of the comparables provide a choice of dental care programs to their employees.

With regard to the premium contribution level, none of the comparables include a dollar cap on employee contribution. The Milwaukee agreement contains a dollar cap on the level of employer contribution. Madison's contribution is stated in percentage terms up to a dollar maximum. There is no external comparable with an employee contribution level fixed as low as proposed by the Association. The application of this criterion supports the District offer.

j. Such Other Factors

The Association proposes that the Educational Assistants receive the dental insurance program provided for under the Teacher Labor Agreement. Under that program, teachers may participate in the self insured dental insurance program available to all other employee groups of the District, or they may participate in an HMO type insurance program provided by a Blue Cross dental group called Dentacare. Dentacare coverage is more expensive, $43.40 per month for family coverage, as compared to the District's program with a premium of $26.87 per month. The Association proposes that Educational Assistants contribute $1.00 of the $8.38 premium towards single coverage and $3.00 of the $26.87 premium for the District's dental program. It appears the employee contribution will remain the same regardless of whether the Educational Assistant chooses to participate in the District's dental insurance plan or in the Dentacare program.

The District proposes to pay the full premium for single coverage. Employees electing family coverage would pay the monthly difference of $18.49 for such coverage.

Under either proposal, the Educational Assistants will be entitled to dental insurance under the terms of this agreement. Such insurance will not go into effect until an award is issued in this matter. Consequently, dental insurance will be available to employees under either the Association or the District offers for a brief period of time, during the term of this

Agreement. However, unless deleted or modified in a successor Agreement, the benefit will remain in effect.

The internal comparables do not support the Association demand that Educational Assistants be provided with the option of participating in the Blue Cross Dentacare program.

With regard to the issue of contribution towards premium, the Building Service Employees contribute $4.50 per month for either single or family coverage. The secretaries/clerks contribute $4.50 per month towards single or family coverage. The trade units of carpenters, painters, and plasterer are provided with dental insurance paid for by the District.

The District proposal to pay the cost of the full single premium exceeds the amount of premium contribution that it provides for secretaries/clerks and Building Service employees. Its proposal to limit the choice of dental programs to the one provided to all other employees is further supported by the internal comparables. Therefore, the District proposal concerning the addition of the new benefit of dental insurance is supported by this criterion, such other factors.

Summary and preference

It is the lack of dental insurance benefit which is the missing piece of the benefit package provided to Educational Assistants. As noted above, under either offer, that benefit will be provided in the successor Agreement. For this reason, the criterion "Overall Compensation" was not separately considered in the discussion of this proposal.

On the basis of the above analysis, the Arbitrator finds that the external and internal comparables strongly support the selection of the District offer, on dental insurance program and level of contribution, for inclusion in the successor Agreement.

ELIGIBILITY FOR FRINGE BENEFITS

The Association proposes that the eligibility to participate in the District's fringe benefit programs be reduced from 705 hours to 600 hours. Apparently, this proposal may impact on one employee.

There is no evidence in the record indicating the number of employees who are not eligible to participate in fringe benefits, the nature of their work or the number of hours they work for the District. The District argues that the reduction in hours may require it to assume fringe benefit costs for additional employees in the future. Here, again, the lack of evidence as to the number of employees employed by the District in positions where employment is less than half-time prevents the Arbitrator

from making any reasoned analysis as to the need for this proposal.

c. Interest and Welfare of the Public

The parties presented little or no evidence or argument concerning the applicability of this statutory criterion to this issue. A thorough review of the statute under which this interest arbitration proceeding is held reveals that there is no formal allocation of a burden of proof as between petitioner and respondent, union and employer. Rather, the statute dictates that the interest arbitrator apply the statutory criteria to the matters at issue in the final offers of the parties. Where a criterion serves to distinguish between the offers of the parties, it is to be applied by the interest arbitrator whether or not the parties presented argument on the matter.

In this case, the criterion the interests and welfare of the public, is applicable to the expansion of those eligible to participate in health insurance programs. It is in the interest of the public that employees participate in group health insurance programs rather than go without such health insurance or have that insurance provided by the community at large through other legislated programs. However, the formulation of the Association's proposal is broadly stated. It may extend to benefits other than health insurance. To the extent that the Association proposal applies to benefits other than health insurance, this criterion provides no support to the Association position.

d. Comparability

Little evidence was generated on this issue. The Arbitrator's review of the collective bargaining agreements of the comparable districts provides little information on this area.

j. Such Other Factors

The Agreement covering Building Service employees provides benefits for those employed in excess of 20 hours per week. The Arbitrator could find no provision on this particular issue in the agreements of other non-professionals.

On the basis of the above analysis, the Arbitrator finds little support for the Association proposal to reduce the hours used to measure eligibility for fringe benefits from 705 to 600 hours. In this regard, the District offer to maintain the status quo is preferred.

Summary and preference on the Fringe Benefit Issue

Although the parties have engaged in voluntary collective bargaining over the years, the manner in which the rates for health insurance single

and family coverage are established preclude the provision of a greater level of benefits to any one unit of employees over the other employees who are participants in that group.

The level of premium contribution proposed by the Association is supported by the internal comparables. It is consistent with the contribution levels made by employees in other professional and non-professional units of this employer. The Arbitrator gives greater weight to the health insurance issue, because of the manner in which premium rates are established for this district which self insures its health and dental insurance programs. Were the proposals on fringe benefits, i.e., levels of contribution toward premium for health insurance, prescription drug, dental insurance and eligibility to receive fringe benefits, the sole issue in dispute, independent of the wage issue, the Arbitrator would find that the Association offer on these fringe benefit matters is slightly preferred over the final offer of the District.

RECOGNITION CLAUSE

The District proposes language, which it asserts, transforms the recognition clause in the expired Agreement from a permissive subject of bargaining into a mandatory subject of bargaining. In support of its position, the District cites Dane County Circuit Court Decision of Judge Robert R. Pekowski, Case No. 81-CV-2365 in Teamsters Local 695 v. WERC in which Judge Pekowski sustains the declaratory ruling of the Wisconsin Employment Relations Commission in Sauk County, 18565 (3/81). The Arbitrator is in no position to second guess the Court or the Wisconsin Employment Relations Commission.

However, the statutory procedures governing interest arbitration, specifically, Section 111.70(4)(cm)6.a., provides that:

> Prior to the close of the investigation each party shall submit in writing its single final offer containing its final proposals on all issues in dispute to the commission. Such final offers may include only mandatory subjects of bargaining, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. (Emphasis added)

The Association's final offer was certified by the Commission. If the Association's proposal is indeed permissive, it became a mandatory subject of bargaining at the point in time that the Commission certified the final offer at the close of the investigation. Under the statute, the District's proposal must be dealt with as any other proposal. It must conform to the

statutory standards. The criterion which is determinative of the preferability of this proposal is such other factors.

j. Such Other Factors

This Arbitrator observed in his interest arbitration award in Antigo Educational Support Personnel Association and the Antigo School District, 25728 (3/89) that the party proposing a change to the status quo must meet the following tests:

(1) The party proposing the change, must demonstrate a need for the change.

(2) If there has been a demonstration of the need for the change, then the party proposing the change must demonstrate that it has provided a quid pro quo for the proposed change.

(3) Arbitrators require that tests numbers (1) and (2) be met through the submission of clear and convincing evidence by the party proposing the change.

The District has failed to submit any evidence demonstrating the need for the change. The Board Rights section of the expired agreement specifically provides the District with the right to subcontract work. The District can point to no issue raised in arbitration wherein the recognition clause was used for some purpose other than to identify the bargaining unit and its representative.

The Arbitrator concludes that the District has failed to demonstrate any need for the language change it proposes. The Association offer to retain the status quo is preferred.

INSERVICE

The Association proposes that impact bargaining take place any time that the District plans to select employees and provide inservice to any of the employees in the collective bargaining unit. The Association argues that this proposal is a restatement of the statutory duty to bargain under the Municipal Employment Relations Act.

For its part, the District argues that it is prepared to respond to any proposal on inservice that the Association may submit. It objects to a provision which encourages mid-term bargaining.

There is no evidence in this record that any employees in the unit

have received any inservice training. There is no indication that any inservice training is planned. If inservice training has occurred in the past, there is no indication in this record that any issue has arisen with regard to the manner in which such inservice was conducted, when it was conducted, or how employees were paid or not paid for participation in an inservice session. On the basis of this record, the Arbitrator finds two statutory criteria are dispositive of this issue.

c. Interest and Welfare of the Public

The Municipal Employment Relations Act at Sec. 111.70(1)(a), the definitions section of the Act, establishes that:

> 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment, . . . with the intention of reaching an agreement . . . (Emphasis added)

The statutory purpose of the Act is to provide the parties with the opportunity to meet and confer and to reach agreement on wages, hours and conditions of employment. The purpose of negotiations is to reach an end point, an ageement.

The matter of inservice training is not so complex that it is impossible to anticipate concerns of employees with regard to selection, participation, and pay for participation in inservice activities such that the Association could not formulate proposals in these areas. The Arbitrator finds that the proposal for continuous bargaining on the matter of inservice, a mandatory subject of bargaining in the context of this proceeding, is one not preferred by the statutory scheme established under the Municipal Employment Relations Act.

d. Comparability

The Arbitrator has reviewed the collective bargaining agreements of the eight comparable employers noted above. These agreements do contain provisions of some sort or another on inservice. None of these provisions establish a duty for the Employer and union to collectively bargain before any employee is provided inservice training.

Summary and preference

This Association proposal must fail. It has failed to demonstrate any need for inclusion of this proposal. There is no basis in this record to

change the status quo with regard to inservice training. Furthermore, it does not appear to this Arbitrator that the parties would be served by a proposal which would require collective bargaining before an employee could be selected to receive inservice training of some sort or another. This requirement to bargain before any inservice may be provided may only serve to discourage further training of Educational Assistants.

On the basis of the application of the statutory criteria to this proposal, the Arbitrator concludes that the District's proposal to retain the status quo is much preferred.

ASSIGNMENT AND TRANSFER

The Association and the District propose additional language on the matter of assignment and transfer for inclusion in a successor Agreement. The parties indicate in their briefs that this issue of assignment and transfer is the most important issue to be determined in this arbitration proceeding. This Arbitrator, in the section of this Award entitled "Selection of the Final Offer" gives the proposals on this issue the weight and importance suggested by the parties.

The Association argues that this Arbitrator's test for changing the status quo should not be applied to a situation in which a language change is proposed. The Association argues that this Arbitrator's analysis is applicable to monetary" issues. The Association ignores that the quid pro quo analysis is set forth to justify changes to the status quo. Language changes, especially changes which may have a profound effect on the operation of the District, must have some basis in fact for the suggested change. There must be a need for the change. If positions do not become vacant during the school year or if this is an occurrence that may happen once in two or three years, then the importance of this proposal and the analysis brought to it takes on a much different character. If the occurrence of mid-term vacancies is frequent and that frequency would be increased if the domino effect of filling vacancies within the unit is not stemmed, then there is a need for caution in making such change.

Despite the attestation of both parties to the importance of this particular issue, there is no evidence in the record as to the number of vacancies which occur during the school year in positions filled by employees in this collective bargaining unit. There is no evidence in this record as to the number of job openings which have been posted under the language of the expired Agreement. That language provides for the posting of job openings under very limited circumstances, when the Employer learns of a vacancy for a unit position and it decides to fill that vacancy for the following school year. Job openings which develop after August 1 are not posted under the language of the expired Agreement.

The proposed language changes contained in the final offers of the parties is quoted above in the beginning of this Award. Prior to applying the statutory criteria to the proposals of the parties, it is useful to detail several characteristics and assumptions which the Arbitrator has found in one form or another in the posting, assignment and transfer language found in the collective bargaining agreements of comparable employers.

1. There is an assumption that an assignment to a particular position will continue from one school year to the next. The non-continuance in a position is the exception, rather than the rule. In other words, districts do not shift all their Educational Assistants from school year to school year, from position to position, school building to school building, and job assignment to job assignment.

2. Vacancies are posted. Provisions vary as to the length of time of a posting, the manner in which it is posted, and the manner in which the employee applies for a position pursuant to a posting.

3. There are provisions as to the content of the posting. Some description of the duties of the position to be filled, its location, hours of work, and pay.

4. Some of the posting language of the comparables contain provisions which deal specifically with the problems which may arise from a vacancy which develops during the school year and which must be filled immediately during that school year. The manner of filling those positions; whether the position is to be filled temporarily with a new hire and the identification of the employee to receive that assignment in the following school term or year are issues addressed where the mid-year posting is considered a problem.

5. There are provisions as to how often an employee may post for a position within a specific period of time.

6. The manner in which an employee is to be selected when there is more than one qualified applicant for a position is addressed in these contractual provisions. A preference, if any, for employees already in the employ of the District over individuals who would be new employees to the District.

7. Once an employee successfully bids for a position, some of the comparable employers provide a probationary period in which the employee may elect to return to the position formerly held; a period of time equal to or longer, in which the employer may evaluate the employee's performance in the new position - a probationary period.

In the discussion below, the Arbitrator applies the statutory criteria to

the proposed language of the parties. The analysis below takes into account characteristics which one may expect to find in posting, assignment and transfer language.

c. Lawful Authority of the Employer

The parties presented no evidence with regard to this criterion. However, the Arbitrator finds that there are concerns which arise out of a system in which job vacancies are not posted and made known to employees of the District. The posting of vacancies provides information to all employees who may desire that position. It enhances the possibility that the Employer will have available to it a larger pool of the most qualified individuals to perform the work of the vacant position from which it may select the individual it believes most qualified to fill the position.

The restriction of the knowledge of the existence of vacancies to a small number of individuals limits the number of applicants which the District may receive. It places an undue premium on such knowledge. Neither the District nor the public are well served by the omission of a job posting provision from a successor Agreement.

The District argues that a posting provision covering all vacancies would be burdensome to administer. This argument is more fully considered under the comparability criterion, below.

The failure of the District's proposal to provide for the posting of vacancies, if for no other reason than to make the existence of the vacancies known, weighs heavily against its offer.

d. Comparability

The majority of the comparable employers have some form of posting or assignment and transfer language in their agreement.[2] The District is correct in its assertion that these districts do provide some limitation as to who may apply for a position, the number of times an employee may apply for a transfer within a specified period of time, and as to the selection process (seniority is not the only factor considered in making a transfer). However, comparable districts do provide, in part, for the posting of vacancies, the opportunity for employees of a district to apply for such positions and a standard governing the basis upon which a selection is made.

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[2] The comparable employers which provide greater rights to Educational Assistants in the area of job posting, assignment and transfer than Racine are as follows: Milwaukee, Madison, Green Bay, Appleton, Eau Claire, Sheboygan and Janesville. Kenosha has in its Agreement job application language similar to Racine.

The District's proposal meets none of these criteria. It only provides for the posting of a vacancy which will occur the next school year. There is no standard governing the selection process. There is no explanation provided in the record of this case as to why this District finds a job posting provision burdensome, when so many of the comparables do not. The amendment which the District suggests provides a unit employee with the right to apply for a vacancy in the following year, and it requires that the District retain and consider the application.

The Association proposal provides for the selection of the successful bidder from the three most senior applicants. The length of the time which a posting must be left up under the Association proposal, ten days, is longer than most. Its proposal fails to limit the number of times an employee may seek a transfer. The absence of a probationary period in which an employee may change his/her mind and/or the District may evaluate the employee's performance is an important omission from the Association's proposal. It appears to this Arbitrator that the Association has chosen to include provisions most advantageous to employees without any of the limitations which may appear in provisions of comparable employers. Nonetheless, on balance, the Association proposal is far closer to the kind of assignment and transfer job posting provision which appears in comparable agreements than that proposed by the District.

j. Such Other Factors

Many of the Educational Assistants work in a classroom setting with teachers. Any assignment and transfer language should provide rights to Educational Assistants no greater than those provided to Teachers under the Teacher Agreement. Yet, the Association proposes that mid-term vacancies be filled immediately by unit employees under the bidding process which it proposes. The Teacher agreement provides for the temporary filling of such positions with new employees. The employee who will permanently fill that position is identified. However, that person does not assume that position until the following semester/year. The problem with the Association proposal is that a domino effect may result from filling mid-term vacancies. Its proposal does not address this domino effect. In this regard, the position of Educational Assistants differs from clerical and building service positions. Certainly, mid-term vacancies in building service and clerical positions would be disruptive, but not to the extent a classroom would be disrupted by a change of Teacher or Educational Assistant.

One must recall, that teachers and educational assistants are vested with one of the most important functions, the education of children. An Arbitrator must carefully weigh the District's argument that the Association proposal would cause a great deal of disruption to the educational process. It is with regard to the application of this criterion that the Association proposal fails. It serves as a substantial negative factor in the evaluation of its

proposal.

Summary and preference on the Assignment and Transfer Proposal

Were the job posting, assignment and transfer proposal the sole issue to be determined herein, the Arbitrator would select by the narrowest of margins, the final offer of the District on this matter for inclusion in a successor Agreement. There are two bases for this conclusion. First, the record evidence fails to establish a need for language which may be so intrusive into the operation of the District. Secondly, the Arbitrator finds that the failure of the Association to confront the disruption which would be created by the domino effect of filling mid-term vacancies weighs heavily against its offer. The Arbitrator concludes that the margin of victory on this proposal is narrow because the District's offer perpetuates a system of filling vacancies in which it does not have to inform employees in the collective bargaining unit of the existence of a vacancy, nor does its proposal provide Assistants with an opportunity to apply to fill vacant unit positions.

SELECTION OF THE FINAL OFFER

In the discussion above, the Arbitrator finds that the Association proposals on wages and fringe benefits are slightly preferred. The Arbitrator concludes that the proposals of the Association to add language concerning inservice training and the District amendment to the recognition clause are unnecessary. The Arbitrator finds that the Association proposal on inservice has the potential for raising greater problems than the District's proposal to amend the recognition clause.

The parties identify job posting, assignment and transfer, as the most important issue in this arbitration proceeding. The Arbitrator concludes that the lack of evidence concerning the number of occasions that positions are filled under the existing language, weakens the Association position that there is a need for a change. The proposals of the Association and the District have qualities with equally negative effect. The District fails to make any provision for announcing to all collective bargaining unit employees the existence of unit vacancies, and the Association proposal fails to address the disruptive domino effect that the filling of mid-term vacancies may have on the educational process.

In the summary sections of each major subdivision of this Discussion, the Arbitrator indicates which offer is to be preferred assuming that the individual proposal analyzed is the only issue in dispute. In this section the totality of the final offers of each party is reviewed and analyzed. Simply put, the Association final offer which provides: 1. an additional choice of dental carrier for Educational Assistants; 2. a contribution level for dental insurance below that of any other group of employees other than teachers; 3. inservice training language which would perpetuate year round bargaining on this

particular issue; and, 4. assignment and transfer language, which in many respects is supportable and which tracks provisions which appear in comparable districts, but is defective in one important respect; when taken together with 5. a salary proposal which is above that provided by comparable employers; and 6. together with the reduction in the level of premium and the alteration of the manner in which the premium is to be paid for health insurance, constitutes a package with too many changes for a single two year Agreement.

The Association offer attempts to take Educational Assistants from the back of the pack to the lead without any stop in the middle. The Association has pointed to the deficiencies in the salary schedule for employees during the first eight years of employment in this District. Deficiencies in fringe benefit levels when contrasted to other units have been noted by the Association. However, the Association not only seeks to catch up to the other non-professional units, this proposal attempts to achieve a benefit level equal to the level of benefits achieved by teachers. There is no justificaion for this attempt.

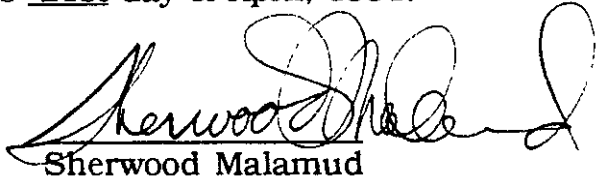
Upon weighing the final offers of the Association and the District, the Arbitrator concludes that the District offer is slightly preferred over that of the Association.

On the basis of the above Discussion, the Arbitrator issues the following:

AWARD

Based upon the statutory criteria found in Sec. 111.70(4)(cm)7.a.-j. of the Wisconsin Statutes, upon the evidence and arguments of the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Racine Unified School District, a copy of which is attached hereto, together with the stipulations of agreed upon items, to be included in the successor 1989-91 Agreement between the District and the Association.

Dated at Madison, Wisconsin, this 21st day of April, 1991.



Sherwood Malamud
Arbitrator

APPENDIX I Chart 2

FULLTIME EQUIVALENCY PRINTOUT AS OF 6-21-89 (V055JS)

	LEVEL II**	LEVEL III	LEVEL IV	LEVEL V
3	28.24			
4	6.83	2.54	2	
5	10.86	2	1	
6	10.62	1	0	
7	0.56	0	0	
8	2.27	0	0	
9	6	1	0	2
10	3	3.5	0	0
11	4	8.07	0	0
12	2	6.5	4.5	0
13	3	4	1.5	0
14		16.54	0.5	0
15	3	61.71	6	27
COLUMN TOTAL	80.38	106.86	15.5	29

TOTAL FTE 231.74

@ 7.5 HOURS	FTE
GENERAL ASSISTANT	22.36
HEAD GENERAL ASSISTANT	2
MATRON ASSISTANT I	10.14
MATRON ASSISTANT II	2
MATRON ASSISTANT III	14

@ 8 HOURS	FTE
GENERAL ASSISTANT	0
HEAD GENERAL ASSISTANT	1
MATRON ASSISTANT I	2
MATRON ASSISTANT II	5
MATRON ASSISTANT III	6

TOTAL FULLTIME EQUIVALENCY 64.5

SOURCE: DISTRICT EXHIBIT NUMBER 62

Racine Unified School District
Final Offer
May 10, 1990

1. Two-year contract beginning August 24, 1989 through the first day returning teachers are scheduled to return to work in the fall of 1991.

2. Retroactive to August 24, 1989, a 28 cents per hour increase in wages for each year of the agreement. Plus a step increment each year of the agreement for those eligible.

3. A new dental plan, effective within a reasonable period of time after the enrollment period has closed, as follows:

   Article XIV

   4. Dental Coverage

      A dental plan comparable to the plan provided to the District's other hourly employees will be made available to those eligible employees who elect such coverage during the open enrollment period. The open enrollment period will be thirty (30) days after this contract is signed by both parties, thirty (30) days after initial employment with the District, and for the first thirty days of any successor agreement that may provide for dental coverage. The Board will pay the full cost of the employee's single dental plan. If an assistant elects family plan coverage the assistant will pay any plan costs above and beyond the single plan cost.

4. A modified posting procedure as follows:

   Job Openings, Article XIV

   1. After a job opening becomes known and a decision is made to fill such job opening during the next school year, notice of the job opening will be posted in places accessible to employees. Job openings made known after August 1st and before the end of the school year that are filled during that school year will not be posted. Those persons interested in making application for jobs posted must do so before the closing date stated on the notice. Notices will set out general job duties and work location.
      (NOTE: from existing Article XVII, Miscellaneous, #8)

   2. Assistants who have been in their current position at least one school year and who wish to be considered for jobs not posted in the summer, but that may open during the school year, can notify the Personnel Department in writing of their desire to be considered. Assistants must indicate the type of position for which they would like to be considered. The Personnel Department will consider those persons, along with any others, when filling those positions.

5. A Recognition Clause modification as follows:

   Recognition, Article I

   For the purposes of negotiations on question of wages, hours, and conditions of employment, the Board of Education of Racine Unified School District recognizes the Racine Educational Assistants' Association as the duly certified exclusive collective bargaining representative of all full-time and part-time assistants excluding supervisors and confidential employees, as described in the certification instrument 14307 ME-610 issued by the Wisconsin Employment Relations Commission on February 25, 1971. When used in this Agreement, the term "assistant" shall refer to all employees as described above, represented by the Association.

   This provision is set forth merely to describe the bargaining representative and the bargaining unit covered by the terms of said collective bargaining agreement and is not to be interpreted for any other purpose.

6. All other contract language to be the same as the 1987-89 contract except where date changes are needed such as in the Duration Clause.