EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of	
TOMAH AREA SCHOOL DISTRICT NON-TEACHING EMPLOYEES LOCAL 1947-B AFSCME, AFL-CIO	Case 51 No. 43273 INT/ARB-5486 Decision No. 26700-A
To Initiate Arbitration Between Said Petitioner and	
TOMAH AREA SCHOOL DISTRICT	

Appearances:
Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for the Union.
Lathrop & Clark, Attorneys at Law, by Ms. Jill Weber Dean, for the District.

On April 2, 1991, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator ". . .to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act, to resolve said impasse by selecting either the total final offer of the. . .(Union) or the total final offer of the. . .District."

A hearing was held at Tomah, Wisconsin, on June 18, 1991. No transcript of the proceeding was made. At the hearing both parties had the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties' reply briefs on August 26, 1991.

The dispute in this case covers the period of July, 1989 through June, 1991. Thus, at the time of writing of this Award, the period covered by it has already expired.

In making his decision the arbitrator is required by the statute to give weight to the factors enumerated there. In this dispute there are no issues with respect to some of them: (a) lawful authority of the Employer; (b) stipulations of the parties; that part of (c) pertaining to the financial ability of the unit of government to meet the costs of any proposed settlement; (f) comparisons with employees in private employment; (i) changes in circumstances during the pendency of the arbitration proceedings. The remaining factors have been cited by the parties, and have been considered by the arbitrator in his decision: that part of (c) pertaining to the interests and welfare of the public; (d) comparisons with other employees generally in

public employment in the same community and in comparable communities; (e) comparisons with other employees performing similar services; (g) the cost of living; (h) overall compensation and (j) other factors normally or traditionally taken into consideration in arbitration.

Comparables

The parties are in disagreement about which other school districts to utilize for purposes of making comparisons. The Union proposes that the districts used be the other districts in the Mississippi Valley Conference: (Holmen, LaCrosse, Onalaska, Sparta). The District urges that other districts be included as well, and that emphasis be placed on some of them more than others.

Until 1990-91 Tomah and Sparta were part of the South Central Athletic Conference. The District argues that these districts should be utilized because they were the focus of the parties' bargaining in the period which led to the now-expired prior Agreement. The District notes that there has never been an arbitration involving this bargaining unit, but there have been three prior arbitrations involving Tomah's teachers. In each of those the districts of the then-South Central Conference were used by the arbitrators (Adams-Friendship, Baraboo, Mauston, Nekoosa, Portage, Reedsburg, Sparta and Wisconsin Dells). The arbitrators also used three districts with similar size, geographic proximity and economic characteristics to Tomah: Black River Falls, Elroy-Kendall and Pittsville.

The District argues that primary emphasis should be given to the relationship between Tomah and Sparta, since they have been in the same conference, have moved together from one conference to another, and they are very similar in their economic characteristics and their geographic location. The District urges also that comparisons to LaCrosse not be given much weight. Even though LaCrosse is now in the Mississippi Valley Conference with Tomah, the District argues that LaCrosse's much greater size and financial resources make it inappropriate for comparison purposes.

It is the arbitrator's view that at this period of very recent realignment of districts in athletic conferences, there is merit to the District's argument that for this round of bargaining the comparisons continue to include the South Central Athletic Conference and geographically proximate districts which were used in the recent past, to which should be added the districts of the Mississippi Valley Conference. The arbitrator agrees also that the comparison with LaCrosse should be made cautiously and not emphasized, because of its significantly different size and economic characteristics.

Issue #1 - Health Insurance

The parties are in disagreement about the amount of health insurance premium that the District should pay for employees who have family coverage. The Union proposes that the District pay 90% of the premium. The District proposes the following language in place of the language of the 1986-1989 Agreement:

> The Employer shall pay the cost of regular full-time employes' own coverage (one hundred percent (100%) of the single premium); and eighty percent (80%) or $2602 annually, whichever is greater, for 1989-90, and eighty percent (80%) or $3435 annually, whichever is greater, for 1990-91 of the family premium of the hospital and surgical care insurance. . . .

The parties' final offers would replace the following language of the 1986-1989 Agreement:

> The Employer shall pay the cost of regular full-time employes' own coverage (one hundred percent (100%) of the single premium; and eighty percent (80%) or $1785 annually, whichever is greater, for 1986-1987; and eighty percent (80%) or $1875 annually, whichever is greater, for 1987-1988; and eighty percent (80%) or $2235 annually, whichever is greater, for 1988-1989 of the family premium of the hospital and surgical care insurance. . . ."

Each party view the proposal made by the other as a change in the status quo. Clearly, the Union's final offer is a change in the status quo since the Union offers a percentage amount each year, unlike the prior contract language which was for either a percentage or a dollar amount, whichever was greater. Moreover, the Union has changed the percentage amount from the 80% in the old Agreement, to 90%. The Union argues in response that it has not significantly changed the status quo, because if one calculates the amounts actually paid during 1988-89 and coverts them to percentage terms, the percentage actually paid during that period was 91.3%. Viewed in these terms, the Union argues, its proposal of 90% payment is a reduction in the District's obligations, whereas it views the District as changing the existing 91.3% to 82.4% (the percentage resulting from conversion of the District's offer in dollars to percentage terms).

It is the arbitrator's opinion that the Union's proposal is a significant departure from the status quo, and the District's is not. The District maintains the same language format, including the same 80% figure as in the prior agreement. It has only changed the dollar figures. The Union has abandoned the language and the dollar alternative, and has opted for a percentage which is much higher than the figure in the prior Agreement. The arbitrator is not persuaded by the Union's argument that its offer should be viewed only in relationship to the actual percentage paid by the District in 1988-89.

It is noteworthy, as the District points out, that historically over the last ten years the application of the contractual formula has resulted in District payment on average of 82.41% of the premiums, not the 90% which the Union seeks based on looking only at the period 1988-89. The. District's proposed dollar figures for health insurance are based on the historical average of 82.41%.

In the arbitrator's opinion, the Union has the burden of showing why the arbitrator should agree to the change in the status quo which it proposes. The Union's arguments are premised on its contention, which the arbitrator has not accepted, that what the District has proposed is a decrease in the percentage of health insurance payment by the District.

The parties presented data for health insurance payments by the comparable districts. The arbitrator has shown these figures below. The data are incomplete. Also the figures used in some districts are averages because there is variation within districts, depending upon the job category of employees. All of the categories shown in the table are covered by the Agreement in the present dispute.

Board % Family Premium

	Clerical		Custodial		Aides		Food Service	
	89-90	90-91	89-90	90-91	89-90	90-91	89-90	90-91
Adams-Friendship				100				
Baraboo	90		100		100			
Black River Falls		90	90	90		90		90
Holmen	80	80	90		80	80		
LaCrosse	90	90		90	79	90	100	90
Mauston					75	75	80	80
Nekoosa			80	80				
Onalaska	80	80	80	80	80	80	80	80
Pittsville	90	90	90	90	90	90	90	90
Portage	80	92		92				
Reedsburg		73 or 100		92		32 or 44		32 or 44
Sparta	80	80	80	80	80	80	80	80
Wisconsin Dells	85	85	80	85	85	85	85	85

It is noteworthy that among the present Mississippi Valley Conference districts which the Union advocates for comparison purposes, Holmen, Onalaska and Sparta pay 80% of the family premium (except that Holmen pays 90% for custodians, apparently). LaCrosse pays 90%, but as explained above, the arbitrator does not give that comparison as much weight as the others.

Using the District's preferred comparisons, it is clear that the employer payments vary between 80 and 90%. These data do not persuade the arbitrator that there is a compelling need for the District to change its percentage payment to 90%.

The Union argues also that internal comparisons favor its position, because the District pay 90% of health insurance payments to its teachers. The District's exhibits show that it is not at all uncommon for school districts to have different health insurance arrangements for teachers than for support staff. More importantly, however, the District presents data going back to 1967 to show that it has had different health insurance payment agreements for teachers than for support staff. The District shows also that the 90% payment to teachers has been the arrangement since 1984-85, and it is only in the current dispute that the support staff bargaining unit has sought to have the same arrangement.

The arbitrator is persuaded that the Union is seeking to change long-standing contractual language without adequate justification, and there is also not compelling justification for increasing the percentage to 90%. The arbitrator has put less weight on internal comparisons in this dispute, both because the other arguments are more persuasive and because there has been a history of separate health insurance arrangements for teachers and the support staff.

In conclusion, it is the arbitrator's opinion that there is more justification for him to support the District's final offer with respect to health insurance than to support the Union's final offer.

Issue #2 - Bus Driver Payments

In the prior Agreement, "Appendix A" included a schedule of payments for bus drivers. For each year of the Agreement there was a monthly dollar figure for each of the following categories:

15 mi. or under, 1-way
20 mi. " " "
28 mi. " " "
34 mi. " " "
38 mi. " " "
42 mi. " " "
Over 49 mi. 1 way

(Includes driving time, waiting time in loading area, cleaning and inspection and servicing time)

In its final offer, the Union proposes, effective July 1, 1990, to change the "Over 49 mi. 1 way" category to "53 mi or under, 1 way" and add a new category "Over 53 mi. 1 way - .15 per mile for each additional mile."

The District proposes no change in the categories of the bus driver payment schedule.

At the hearing, Union witness Habelman, a regular bus driver, testified that he believes that the Union proposal will affect four or five drivers. He testified that the change proposed by the Union to change the "Over 49 mi. 1 way" category to "53 mi. or under, 1 way," will cost the District nothing, since there is no change in the monthly payment proposed for that category. The only increase in cost to the District will be payment for miles in excess of 53-1 way.

District Business Manager Fassbender testified that he did not know the cost of the Union's bus driver proposal. He testified that an earlier Union proposal for bus drivers (not part of the Union's final offer) would have resulted in a .3% increase, and the District responded that it wasn't interested in giving such an increase without there being a reduction of a like amount somewhere else in the budget.

The Union views its bus driver proposal as not being determinative of the outcome of this case, and as of minimal cost. The Union presented no justification for the proposal. It takes issue with District arguments that this is a substantial change.

The District cites the lack of justification supplied by the Union for its proposed change, and notes that it would affect approximately 10% of the drivers.

Since the Union has proposed this change, but has not justified it except to cite its minimal cost, the arbitrator does not have a sound basis for supporting it. The Union appears to be correct that the cost is minimal, and the arbitrator agrees that the proposal will not determine the outcome of this case. On this issue, the arbitrator favors the District's final offer.

Issue #3 - Wages & Wage Classification

The parties have agreed to a 4.5% increase for the year beginning 7/1/89. The Union proposes an increase of 4.5% for the year beginning 7/1/90 also.

The District proposes that the second year increase be 5.5%. It links this proposal to a revision of the Wage Classification Schedule.

Under the 1986-1989 Agreement there was a single wage rate paid to each classification. The District proposes to change that arrangement such that for each classification there will be a "Start" wage and a "Step 1" and a "Step 2" wage. The proposed "Step 2" rate for 1990-1991 is derived by taking the 1988-89 rate and applying the two annual increases to it for 1989-90 (4.5%) and 1990-91 (5.5%). The District's proposed "Step 1" rate is set at $.75 below the Step 2 rate. The "Start" rate is set at .$75 below the Step 1 rate.

The District proposes that employees hired prior to January 1, 1991 be placed at Step 2 of the new wage scale. Employees hired after that time would be placed at the Start rate. Employees would increase from one step to the next after "completing 12 calendar months in a given classification."

The last element of the District's wage proposal is the following language:

> Employes hired prior to January 1, 1991, who change classifications will be placed at the lowest step of the new classification that exceeds the rate of pay of the employe's old classification or, if no step of the new classification exceeds the rate of pay of the employe's old classification, at Step 2 of the new classification. Bus drivers hired prior to January 1, 1991, who post into the wage classification schedule will be placed at Step 2. Employes, including bus drivers, hired on and after January 1, 1991, who post into the wage classification schedule or change classifications will be placed at Start of the new classification.

Fassbender testified about the District's reasons for proposing its wage schedule. He estimated that over the life of the new Agreement the District could save $12,000 based on the history of job posting and job movement during the previous two years. Moreover, he testified, the new language would reduce the amount of internal transferring by employees to other job categories and would thereby reduce costs of training, testing and bookkeeping.

Fassbender testified that there are lots of applications for District jobs, and that few employees leave the District to take jobs elsewhere. There are lots of transfers within District employment, he testified. He stated his view that if an employee has longer experience on a particular job, the employee will be more efficient and will do a better job.

Fassbender testified also that during bargaining the Union was not receptive to implementing a salary schedule with lanes. The District ultimately offered an additional 1% (up to 5.5%) wage increase as incentive for the Union's acceptance of the schedule. Fassbender testified that the District initially offered as a quid pro quo, 90% health insurance payment, but the Union took the position that it already had that as the status quo.

Fassbender also testified that during the negotiations, the Union made a proposal which included lanes. He acknowledged, however, that the Union membership had not approved any District offer which included a salary schedule with lanes, and in fact the membership rejected a District offer, in December, 1990, which included such a provision. He testified that a previous District offer including lanes, was rejected by the Union. Fassbender acknowledged that the 5 1/2% wage offer, included as a quid pro quo, was never offered to the Union prior to the submission of final offers.

In addition to the reasons for the District's proposal given by Fassbender in his testimony, the District argues that the proposed cost savings are important ". . .in light of the legislature's recent enactment of cost controls on school district expenditures. . . ." The District adds, in its brief:

> The period covered by the bargaining agreement at issue in this arbitration precedes the date when cost controls will go into effect, and the final form controls will take has yet to be worked out between the houses of the legislature. Nevertheless, school administrators have been bombarded by news about impending controls for many months. . . It would be imprudent indeed for a school board and administration to ignore the prospect of cost controls and to refuse to plan accordingly. . . .

The District argues further that cost savings are necessary in light of the national recession and the difficult economic circumstances in Monroe County. The District argues that Monroe ranks seventh of the eight counties in which the comparable districts are located. The per capita income (8,102) is below the median per capita income of the other seven counties (10,352).

The District argues that the existing single wage per classification system is leading to a situation in which taxpayers are overburdened ". . .in order to maintain a level of compensation that exceeds what is necessary to compete effectively in the marketplace."

As evidence of the relatively favorable wage position of the bargaining unit, the District cites the fact that in relationship to the thirteen comparison districts, Tomah's rank, using the average maximum rate for classifications in each of the following categories, is as follows:

Aides -			
	1988-89	Maximum	2nd
	1989-90		3rd
	1990-91		2nd
Food Service -			
	1988-89	Maximum	1st
	1989-90		1st
	1990-91		1st
Maintenance -			
	1988-89	Maximum	1st
	1989-90		1st
	1990-91		2nd
Custodial -			
	1988-89	Maximum	4th
	1989-90		1st
	1990-91		2nd

Clerical -			
	1988-89	Maximum	3rd
	1989-90		5th
	1990-91		5th-Union Offer
			4th-District Offer

These figures show that both final offers maintain the high ranking of the bargaining unit in comparisons with other districts. (The arbitrator has some reservations about using the average maximum rates calculated by the District, without knowing the number and distribution of employees in the job categories, but these are the only figures available).

The District has done a similar analysis of the rankings at the minimum and the midrange if its offer is implemented.

Aides	1988-89	Minimum	2nd	Midrange 2nd
	1989-90		1st	2nd
	1990-91		1st-Union offer	1st-Union offer
			2nd-District offer	2nd-District offer
Food Service				
	1988-89	Minimum	1st	Midrange 1st
	1989-90		1st	1st
	1990-91		1st-Union offer	1st
			2nd-District offer	
Maintenance				
	1988-89	Minimum	1st	Midrange 1st
	1989-90		1st	1st
	1990-91		2nd-Union offer	2nd-Union offer
			5th-District offer	4th-District offer
Custodial				
	1988-89	Minimum	3rd	Midrange 3rd
	1989-90		1st	1st
	1990-91		2nd-Union offer	2nd-Union offer
			4th-District offer	2nd-District offer
Clerical				
	1988-89	Minimum	2nd	Midrange 2nd
	1989-90		2nd	3rd
	1990-91		2nd-Union offer	2nd-Union offer
			6th-District offer	3rd-District offer

These figures show that the District's proposed wage schedule has very little effect on the District's wage position when compared to the other districts. There are some significant differences in ranking of Custodial, Maintenance and Clerical employees at minimum and midrange rates which would affect new employees. The rankings remain in the top half of the comparison districts, in all cases.

The District demonstrates also that most of the comparable districts have salary schedules with lanes for their support staffs. This is the case with all of those with unionized support staff. The District notes also that Tomah City employees, who are represented by AFSCME also, agreed to a salary schedule with lanes in 1989.

The Union does not argue against having a wage schedule with lanes. Its argument is against the particular proposal made by the District. First it cites the January 1, 1991 implementation date and notes that if any employees have been hired since that time, those employees would have their wages cut if the District's proposal were implemented.

The Union views the District's proposal "as a means to limit job posting rights via a 'backdoor' mechanism." The Union notes that the Agreement contains a job posting provision, but the District's final offer, by introducing the possibility of an employee having to experience a wage reduction when posting to another classification, limits the employee's rights.

The Union has put into evidence the job transfer language from the districts which it views as comparable. It states that it "cannot find any language that would support the District's position of wage reductions for transfers to promotional positions."

The District argues in reply that the Union has not presented any evidence that any employees have been hired since January 1, 1991, and the Union presented no evidence of such hires at the arbitration hearing. With respect to the Union's argument about the potential of wage reduction for a new hire who subsequently transfers, the District argues:

> . . .The situation the Union describes. . .cannot occur until 1) a person is hired after 1 January 1991, 2) works in a given job category for at least 24 months, and 3) subsequently decides to post for a position in another category.
>
> Even then, only a few types of transfers will result in a reduction in pay. . . . Assuming that transfers into higher paying categories are prevalent, it is clear that a substantial majority of transfers will involve no reduction in pay whatsoever.

In addition, the District argues that its proposed language "is not particularly distinctive." It notes that of the nine bargaining units used by the Union for comparisons, only three have transfer provisions. All of those provisions, as well as the City of Tomah, the District argues, " . . .require employees to remain in the same lane when transferring across job categories. . . . Employees in these units are not completely insulated from transfer-related wage reductions."

The District argues also that there is no restriction imposed by its language on the right of employees to transfer, and in only a small number of cases will the result be that employees experience a temporary reduction in wages.

In its reply brief the Union again emphasizes its view that the District is limiting employee's transfer rights ". . .by introducing lower wages for a position that is an advancement. . . ."

The District appears to be correct that wage schedules with lanes are commonplace among support staff bargaining units, but it is not lanes in and of themselves which are controversial in this case. There is also nothing controversial about placing existing employees at the maximum rates of a new schedule, and placing new employees at the beginning step. There is also nothing controversial about the District's proposal in its treatment of pre-January 1, 1991 employees who change classifications since, if the arbitrator understands the proposal, such an employee is to be placed on the schedule at the lowest step that exceeds the rate of the employee's old classification. In other words, the employee will not suffer a loss of pay upon transferring to another classification unless the classification is one whose top rate is below the employee's wage rate in the old classification. In that case, however, the employee is not in any worse position than would have been the case under the 1986-89 Agreement if the employee transferred to a lower paying classification.

The only controversial aspect of the District's proposal, in the arbitrator's opinion, is in the treatment of employees who are hired after January 1, 1991 and who then transfer, since they may have a resulting reduction of wage rate. This result will not occur during the term of the agreement being arbitrated here, since any employee hired after January 1, 1991 would be in the "Start" lane and would remain there. If by chance there were a vacancy in another classification, it is doubtful that this new employee would succeed in a transfer request because of the employee's low seniority. Selection is made by seniority if the applicant is qualified and available. The impact of this proposal will be felt in subsequent agreements, unless the parties bargain modifications to this arrangement.

For the sake of argument the arbitrator is willing to hypothesize that new employees have achieved Step 1 or Step 2 under the District's schedule. If they then transfer into another classification, few such changes will result in a loss of wages which would not also have resulted in a loss of wages under the 1986-89 schedule. There are some significant exceptions. Under the old agreement, for example, a custodian transferring to a Maintenance Helper position would have received a $.45 increase. Under the District's final offer such a move would result in a reduction of $1.06 and there would not be an increase above the old rate until the employee was on the new job for 24 months.

The arbitrator does not endorse a schedule that allows an employee to seek a "promotion", but cuts the employee's wages for the first twenty-four months of the promotion. In addition, the arbitrator is reluctant to put into

place barriers to promotion, and it is not even clear to him that such an arrangement is in the District's long-term best interests. If this were the only issue, the arbitrator would support the Union's position. Moreover, the arbitrator views the District's proposed change as a major departure from the language of the prior Agreement. In his view such language changes should be bargained, if possible, rather than imposed through arbitration.

The arbitrator is not persuaded that the reasons for the proposed changes are so compelling as to require their imposition through arbitration at this time. There is no indication that the District has been trying for a long period of time to bargain such a change. In fact, the bargaining history of the current attempt to reach Agreement, introduced by the District, would indicate that there were tentative agreements reached, including agreement on a schedule with lanes, although not including the feature most objected to by the Union as it appears in the District's final offer. This suggests to the arbitrator that a bargained schedule is certainly a possibility in future negotiations. It is the case that the District has shown that support staffs commonly have schedules with lanes. It is also clear that as new employees are added to the schedule, the District's relatively high wage costs will be lowered for the first two years of the employee's employment. However, the District is not able to point to any comparable districts which require a transferring employee to go to the starting rate of the new classification with the possibility of having a wage reduction thereby.

As mentioned above, the parties are in agreement on wages except for the additional one percent offered by the District as a quid pro quo for acceptance of its wage schedule. Comparisons with other districts and with cost of living figures make clear that there is no reason for the District to offer additional wages except to achieve implementation of the wage schedule. If wage and benefit increases are considered, both offers exceed the increase which has occurred in the cost of living. Without consideration of the quid pro quo the arbitrator would have no preference between the parties' wage offers because they would be identical.

The District has offered an additional one percent wage increase across-the-board in order to get the Union's agreement to the proposed wage schedule. Since it appears that if the new schedule were to be implemented, there would be few, if any, situations during the life of the Agreement in which employees would suffer a wage reduction, and perhaps only a small number of instances subsequently, the additional one percent paid to all employees would appear to be adequate compensation for the change.

The Union argues that this additional one percent wage increase results in a District wage offer which exceeds the cost of living and also results in wage rates which are too high in relationship to the comparables. The arbitrator has already noted that the wages paid by the District are relatively high in relationship to the comparisons, but he does not view the payment of the additional one percent as a reason for rejecting the District's offer. Similarly, the arbitrator is not persuaded that the fact that the

District's wage offer exceeds the change in the cost of living is a reason for rejecting it. Moreover, as already indicated, when wage and benefit cost increases are considered, both final offers exceed the cost of living increase.

In the discussion to this point the arbitrator has not commented on the interests and welfare of the public factor. It is the arbitrator's view that the District's final offer serves the public interest more than the Association's because it has the effect of maintaining health insurance arrangements rather than increasing their cost, and because it establishes a wage schedule with lanes which allows the District to pay less than it does now to new employees while remaining competitive.

The arbitrator has also not commented on the "total compensation" factor. He prefers neither final offer from this standpoint. Although the Union has pointed to the fact that unlike some districts, the District does not provide dental insurance to its support staff, there is no showing that the total compensation received by the bargaining unit is below that of other employees doing similar work in the comparison districts.

Conclusion

The arbitrator has concluded that both parties have provided inadequate justification for their significant proposed changes of the status quo. His preference, therefore, would be to not implement either of the changes. That is not an option, however, because the statute requires the arbitrator to select one final offer in its entirety.

In the arbitrator's judgment, there is more reason for him to maintain the health insurance arrangements and change the wage schedule, even with its controversial "back to start" provision, then there is to maintain the existing form of the wage schedule and change the existing health insurance language. In thus supporting the District's position, the arbitrator also necessarily implements the additional one percent in wages to employees, the District's quid pro quo, which softens the potentially adverse impact on employees of the District's proposal.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The District's final offer is selected.

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

Edward B. Krinsky
Arbitrator