

IN THE MATTER OF ARBITRATION BETWEEN

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ST. CROIX FALLS SCHOOL DISTRICT)
St. Croix Falls, WI "Employer")
)
and)
)
NORTHWEST UNITED EDUCATORS)
Rice Lake, WI "Union")

WERC Case No. 24
INT/ARB 5410
Decision No. 26811-A

NAME OF ARBITRATOR: John J. Flagler

DATE AND PLACE OF HEARING: May 17, 1991; Balsam Lake, WI

DATE BRIEFS RECEIVED: July 5, 1991

DATE REPLY BRIEFS REVIEWED: August 1, 1991

DATE VOLUNTARY FACT FINDING REPORT: September 9, 1991

DATE FACT FINDING REPORT REJECTED: October 7, 1991

APPEARANCES

FOR THE EMPLOYER: Stephen L. Weld
Weld, Riley, Prenn & Ricci, S.C.
715 South Barstow Street
PO Box 1030
Eau Claire, WI 54702-1030

FOR THE UNION: Alan D. Manson
Northwest United Educators
16 West John Street
Rice Lake, WI 54868

Pursuant to appointment by the Wisconsin Employment Relations Commission, Arbitrator John J. Flagler conducted a hearing in Balsam Lake, Wisconsin on May 17, 1991 to receive evidence and argument in the above captioned matter. The School District invoked in this case Sec. 111.70(4) (cm) 6 and 7 of the MCRA "to resolve the impasse between the parties...by selecting either the total final offer of [either party]."

At the hearing, the Arbitrator proposed and the parties accepted a modified form of fact-finding with recommendations in a last effort to settle any and all of the many issues remaining at impasse. The parties subsequently filed briefs and reply briefs. The fact finding and recommendations report was issued on September 9, 1991. After a period to study the report, the parties met in a bargaining session on September 30, 1991. Although progress was made in these negotiations, the parties were unable to reach voluntary settlement.

On October 7, 1991 the parties notified the Arbitrator in a joint submission that, having failed to reach settlement, they now sought a decision based on their original final offers. This present decision and award answers that joint request.

The Statutory Criteria

The Statute requires the Arbitrator to consider several factors. There is no dispute in this case over the (a) legal authority of the Employer or (b) the stipulations of the parties. Factor (c) requires the Arbitrator to weigh the "interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." Although the District argued that the costs of the Union's final offer posed a substantial burden on a relatively weak local economy, it never flatly asserted an inability to pay position. Rather, the District cited federal and state data showing the serious economic problems affecting the agricultural sector in Northwest Wisconsin, with special reference to dairy farming -- a major component of the regional economy. The District further relied on government reports of above state average unemployment rates in the area. The argument urges a cost containment strategy in anticipation of lower state aids and the failure of the economy to recover from the recession triggered in part by rising fuel prices resulting from the Gulf War. In light of these economic realities, the District argues that its final offer worth more than 15% over the life of the new labor contract should be awarded as eminently reasonable.

The Union acknowledges that the area has yet to rebound from the recession and that dairy farming has been particularly hard hit, while unemployment rates persist at a high level. The Union argues, however, that similarly situated school districts through the entire Northwest corner of Wisconsin have been suffering the same economic reverses -- and yet most of these school districts have managed to pay higher wages and benefits than proposed by the St. Croix Falls School District. In this regard, the historical record supports the Union's argument that both arbitrated and voluntarily

settled awards have not paid the level of deference to the economic condition of the school district as asserted by the Employer in this case.

The Union has the better of the argument on statutory factor (c). Interest arbitrators have historically attributed controlling weight to the economic impact on the interests and welfare of public and the financial ability to pay only where the public employer can successfully argue that it lacks the financial resources to provide a reasonably comparable economic package to those afforded to similar employee classifications in like-situated political subdivisions. In this present dispute the School District was unable to make that case. The reason for this turns on analysis of factor (d) which requires arbitrators to weigh "other employees generally in public employment in the same community and in comparable communities."

Factor (e) requires arbitrators to weigh and compare the employees with "...other employees performing similar services..." The parties provided such comparability data and it was factored into the final comparisons.

Except for the settlement in the Amery District, which had no substantial effect on the final comparisons, there were no other noteworthy developments during the pendency of this dispute.

Application of the Statutory Factors to the Positions of the Parties

The analysis which follows groups the 32 issues here at impasse into two composite categories -- the economic package, and the so-called language items. Such a simplistic typology certainly should not be read to mean that the language issues do not have an ultimate cost to the District. Rather, these divisions serve merely as useful departures for purposes of analysis.

The economic package consists of wages and health insurance. A summary of the parties' competing final offers follows.

More than any other criterion, parties to collective bargaining contracts rely on comparable terms and conditions of employment among like situated groups to define what constitutes a fair settlement. Seasoned negotiators recognize, however, that all such comparisons are imperfect.

Customarily, the parties themselves work out some fairly representative sample of like-situated employee groups through the bargaining process whereby those units less similar at either extreme are gradually discarded in favor of those jointly accepted as "comparable." For all its flaws, this process is vastly superior to the imposition of

some set of comparables by an interest arbitrator using esoteric statistical techniques and inferences which may seldom be used by the parties themselves.

It should be observed in this regard that the more complex and diverse the statistical comparison group, the less it reflects traditional bargaining custom and practice. Instead the issue of comparability tends toward aspects of statistical gamesmanship if left to interest arbitration. The ultimate result of deferring this critical aspect of the comparability criterion to arbitration is to burden the process past any reasonable chance that either the parties or interest arbitrators can fashion an expeditious, sensible and low cost resolution of such interest disputes.

In the present case, the parties' positions on the issue of comparables can be compared as follows:

ISSUE - COMPARABLES

Union Position:

The appropriate Comparison Group should consist of:

District Teachers'; Nearby unionized educational support staff of Amery, Cumberland, Frederic, Siren, Unity, Webster; CESA #11; Area Vocational District

District Position:

Local private sector, municipal and county clerical and janitorial units; conference schools plus Amery

Difference:

Parties agree only on Conference Schools plus Amery. District also challenges data contained in Union Exhibit 15 as inaccurate.

Discussion:

A large part of the differences separating the parties can be attributed to the fact that this is the first contract negotiations for this particular bargaining unit. The parties thus have yet to go through the difficult process of selecting some mutually agreeable comparisons and rejecting others at either end of a range until they can achieve some mutually acceptable reconciliation on the comparison group. Where a reasonably long bargaining history marks out some compass points as to comparison communities,

the arbitrator often engages in limited fine tuning to determine the components under factor (d).

Absent such bargaining history on the comparability factor, I choose here to follow the conservative path of only those communities which the parties themselves have previously agreed upon -- the Conference plus the Amery School District. This means that I reject both the Union's proposal to include CESA #11 and Area Vocational Technical comparisons as well as the local private sector, municipal and county comparisons offered by the District.

ISSUE NO. 1 - WAGES - Article 27

Union Position:

1989-90 Wage Rates - Effective 7/1/89

	1	2	3	4
Custodian:	7.15	7.90	8.65	9.40
Night Differential - \$.15/hour		.		

Cook:

Regular	5.80	6.25	6.75	7.25
Head Building - an additional \$.20 per hour with the Dresser and Cushing Head Building cooks being paid for a minimum of 6 hours per day effective 7/1/90.				

Meals prepared and served beyond regular hours will be paid at the rate of \$8.84 per hour.

Aides:

General	5.80	6.25	6.75	7.25
Certified - an additional \$.20 per hour				

Clerical:

Bookkeeper	7.30	8.10	8.95	9.85
Secretary	6.75	7.25	7.80	8.40

Bus Drivers:

Regular Route - \$758 per month for nine months

Long Route - \$824 per month for nine months

Kindergarten Route - \$324 per month for nine months

Barrens Route - \$109 per month for nine months (1/2 Barrens Route - \$54.50 per month)

All other extra driving and time will be paid at \$6.60 per hour. For bus drivers there is a two-hour minimum for extra driving; and weekend and holiday routes will be paid a minimum of four hours.

Mechanic and Grounds Keeper are to be paid custodian wage (Step 1 for Lumsden and ward in 1989-90) rates for all hours worked as mechanic or grounds keeper (rather than as bus drivers).

Effective 7/1/90, custodians who are trained and certified for asbestos removal/containment shall be paid time and one-half for all hours worked on asbestos removal/containment as logged by the District for the state/federal regulation reports.

Employees from this bargaining unit who perform work as extracurricular activity advisors or coaches shall be paid for such work in accordance with the current extra-curricular schedule in the teacher contract; furthermore, employees from this bargaining unit who work as activity advisors under the extra-curricular schedule of the District shall be treated on the same basis as teachers with respect to travel expenses, release time from regular work assignment, and shall be subject to the same rules and regulations applied by the District to coaches and activity advisors from the teacher bargaining unit. Employees from this bargaining unit who perform voluntary extra-duties for the District shall be paid in accordance with the wage schedule established by the District for such work.

The above wage rates are to be effective July 1, 1989 under the following conditions: 1 is the starting salary, 2, 3, and 4 are to be paid at the start of the second, third, and fourth years of employment of the individual employee; all employees who worked the entire year of 1988-89 shall be deemed to have an anniversary date of July 1; all employees who worked for the entire year of 1988-89 shall be limited to a 4 percent increase in wages for 1989-90 except that in no case shall an employee be paid less than the starting wage indicated above, and employees J. Carlson (cook), N. Dorsey (secretary), and B. Grove (custodian) shall have 1989-90 regular wage rates of \$7.23, \$7.80, and \$9.40 in keeping with prior wage progression movement.

For 1990-91 (effective 7/1/90) all the above figures shall be increased by 4 percent and the following conditions shall apply: All employees who worked in 1989-90 all year and who are working in the same classification in 1990-91 shall be limited to a 4 percent individual maximum raise, except those employees who have worked one year at the step 1 wage rate (any such employee would be moved to Step 2 of the schedule after one year at Step 1) except that in no case shall a new employee moving through the above schedule be paid more than any employee who has been employed since February 1989 (a new employee will be paid according to the above schedule, with the senior employees being paid the same amount even if that amount is more than the 4 percent general cap for 1990-91). All employees whose 1990-91 individual wages fall between steps on the wage schedule shall advance to the next

- full step at the end of the 1990-91 year. Those whose 1990-91 wages are on the schedule will move to the next step on their wage anniversaries as described above.

District Position

In each year, the Employer proposes that an individual employee receive a minimum of a 3-1/2 percent annual increase and that said adjustments shall be treated as a red-circled rate until such time as the grid catches up with the individual employee.

Effective 7/1/89

	1	2	3	4	5
Cooks	\$5.10	\$5.63	\$6.15	\$6.67	\$7.20
Head Cooks as designated by the District receive \$0.20 premium					
Aids - general					
library	5.55	5.96	6.38	6.79	7.20
Certified Aides	5.75	6.16	6.57	6.98	7.40
Custodian	6.40	7.15	7.89	8.64	9.37
Bookkeeper	7.00	7.25	7.50	7.75	9.35
Secretary	6.50	6.83	7.16	7.48	7.80
Mechanic	6.60				
Ground Keeping	5.55				
Bus Driver					
Basic Routes	755.00				
Long Routes	820.00				
(3 hours & 65 miles)					
K Route	323.00				
Extra	6.57				

Effective 7/1/90

	1	2	3	4	5
Cooks	\$5.28	\$5.83	\$6.36	\$6.90	\$7.45
Head Cooks as designated by the District receive \$.20 premium					
Aides - general					
library	5.74	6.17	6.60	7.03	7.45
Certified Aides	5.95	6.38	6.80	7.22	7.66
Custodian	6.65	7.41	8.17	8.93	9.70
Bookkeeper	7.25	7.50	7.76	8.02	9.68
Secretary	6.73	7.10	7.41	7.74	8.07
Mechanic	6.85				
Ground Keeping	5.70				
Bus Driver					
Basic Routes	782.00				
Long Routes	849.00				
(3 hours & 65 miles)					
K Route	335.00				
Extra	6.80				

Difference:

The Union proposes a 4% increase to the District 3.5%. The significant difference, however, comes about in the schedule format. The District would require 5 years to reach the maximum 5th step, while the Union provides for reaching the maximum 4th year after 3 years of service.

The parties differ substantially on wages for bus mechanic, grounds keeper, bookkeeper, asbestos removal, and night shift differential for custodians, as well as the Barrens bus route premium and extra curricular pay for working with students. These differences are detailed further in the discussion which follows.

Discussion:

Both proposals have their merits and their flaws. On the Union's side, the proposed progression to the top step in 3 years of service creates an artificial circumstance whereby over half the employees affected are off the schedule for the contract period. A progression schedule of 4 years to the 4th step has more logic and is entirely consistent with practice in comparable school districts.

While the District's 5th year maximum, to be reached in 5 years of service, has its own logic, the 5th year format departs somewhat from the more common pattern among comparable school districts, however, requiring longer to reach the maximum.

As to the special categories of wage adjustment the Union proposals have greater appeal. The evidence supporting the bus mechanic's pay adjustment squares with the demands of the job, while the District's position on this item simply ignores the skill and job knowledge level required to perform the work in question relative to those required of a custodian.

In like vein, asbestos removal work should be recognized as higher skilled and more hazardous. The District's position that the employees volunteered for this work and thus deserve no special wage consideration simply misses the mark. The fact that they volunteered has no relevance to the fact that they bring special skills to bear on a hazardous job performed under burdensome working conditions. Each of these traditional wage determinants support the Union's position.

As to the bookkeeper's wage adjustment, the District presents the better case. The Union failed to refute the District's contention and evidence that the work performed is that of an assistant bookkeeper and thus cannot be compared to the wages paid in other school districts for the more demanding job of bookkeeper. The District also makes the better case for the Barrens bus route wage. The premium proposed by the Union amounts to successive \$109 and \$113 adjustments which are excessive. The \$63 and \$67 adjustments proposed by the District come much closer to the mark.

As to the extra-curricular pay, the Union's position is the more persuasive. The work has an intrinsic value apart from who performs it. If a support staff employee can perform a particular coaching job competently, he/she deserves to be compensated the same as any certified teacher who would perform as well. The jurisdictional concerns raised by the District are a non-issue. Teachers have a priority claim on extra curricular assignments as a matter of contract. The teachers contract, according to the testimony, permits the District to fill extra curricular jobs with support staff or members of the larger community only where no teacher has stepped forward to claim an available extra curricular assignment. Indeed, the payment of a lower scale to support staff for performing such work would more likely to raise jurisdictional questions. There would arise the potential for choosing the lower paid bidder over a teacher, particularly during times of budgetary austerity.

As to the grounds keeper adjustment, placement on the first step of the custodian scale -- the same as with the bus mechanic -- is the more persuasive position, as is the payment of a shift differential to night custodians.

In summary, the positions represent a highly mixed bag where the District scores well on the basic wage schedule format and progression, while the Union has the better of the case on almost every special pay adjustment issue.

ISSUE NO. 2 - HEALTH INSURANCE**Union Position:**

A. Prior to June 30, 1990, the Board will pay the full premium for family and single health insurance coverage for all twelve (12) month full-time employees. Thereafter, the Board will pay 95 percent of the family premium and 100 percent of the single premium for health insurance for twelve (12) month full-time employees. The Board will pay 100 percent of one family premium for an employee whose spouse is also employed by the District and eligible for insurance benefits. The insurance plan will be the March 30, 1990 WEA Plan I with a \$5 drug card. The anniversary date will be July 1. Any change in carrier or coverage will be by mutual consent. (This provision includes Robert Lumsden.)

B. All other employees working twenty (20) or more hours per week may elect to participate in the family or single plan coverage with the Board contributing, on a pro-rata basis equal to the ratio of hours worked or scheduled to be worked by the employee during the year to 1,350 hours, the Board's payments in A. above. This provision shall become effective 6/30/90 or, on the 1st of the month following an arbitration decision, whichever is later; there shall be an open enrollment period of at least 15 days with the implementation of this provision.

New employees who are not scheduled at least 20 hours per week on average, and who actually work an average of 20 hours per week or more during the first semester of the school year will become eligible for insurance beginning with the start of the second semester. For new employees not scheduled for 20 hours or more a week who start work after a semester has commenced, their eligibility will be based on the first complete semester worked, i.e., for employees hired in October, eligibility is determined at the end of the second semester of that school year, when insurance coverage would start if the new employee were eligible.

For those existing employees who are not eligible for insurance as a result of their hours from the last complete school year but who during the subsequent school year actually average 20 hours or more per week, eligibility for insurance commences September 1 of the next school year. And for existing employees, who as a result of their hours worked in the last full school year were eligible for insurance, but who in the subsequent school year do not work an average of 20 hours per week, their eligibility shall cease on 8/30 following the school year in which they do not maintain the 20-hour per week average.

The above procedures will be repeated for each subsequent school year with eligibility or ineligibility changed as the case may be based on the previous year's hours worked. For purposes of this agreement, hours worked shall include all hours for which hourly wages have been received from the District and including paid leave of

any type as provided for under the contract. For purposes of this agreement, summer time hours will not be used in any computations for determining the 20-hour per week average of school year employees.

When an employee's job changes in classification or in scheduled hours to such an extent that his or her new schedule makes that his or her new schedule makes that employee eligible for insurance or ineligible for insurance, as the case may be, then eligibility or ineligibility shall become effective immediately with the change in schedule.

District Position:

A. Prior to June 30, 1990, the Board will pay the full premium for family and single health insurance coverage for all non-probationary twelve month full-time employees. Effective July 1, 1990, the Board will pay 95% of the family premium and 100% of the single premium for health insurance for non-probationary twelve month full-time employees. The Board will pay 100% of one family premium for an employee whose spouse is also employed by the District and eligible for insurance benefits. The insurance plan will be the March 30, 1990 WEA Plan 1 with a \$5 drug card. The anniversary date will be July 1. Any change in carrier or coverage will be by mutual consent.

B. All other employees working twenty (20) or more hours per week may elect to participate in the family or single plan coverage with the Board contributing, on a prorata basis, equal to the ratio of hours worked by the non-probationary employee in the previous year to 2,080 hours. Employees in the first year with the District, working twenty (20) or more hours per week, may elect to participate in the family or single plan coverage by contributing the entire premium.

C. Retirees who wish to maintain health insurance coverage for a period of up to eighteen (18) months following the cessation of employment shall, subject to the rules of the carrier, make the necessary payment to the Board for the full cost of the desired coverages. Failure to make timely payments shall result in immediate termination of the insurance coverage.

Difference:

The final offers on health insurance cost the same for the life of the contract. The main difference is not the level of payment for full-time 12 month employees. Rather, it is the level of payment for those employees who work 20 hours a week or more. The Union proposes to pro rate the Employer's premium contributions on the basis of 1350 hours whereas the District's offer pro rates the premium on a base of 2080 hours.

Discussion:

The Union, in effect, argues that if the health insurance package proves as costly as the District's estimates, this total increase in compensation can be offset by either a wage freeze or a correspondingly lower wage adjustment in the next collective bargaining agreement. The Amery example is cited by the Union as the model for such an adjustment. The problem for the Interest Arbitrator is that I have no authority to bind such an outcome in the present contract for a successor agreement yet to be negotiated.

I must observe, moreover, that the total cost of implementing both the Union's basic wage increases, the categorical wage adjustments for the "special cases" (bus mechanic, groundskeeper, asbestos removal work, etc.) and the health insurance for less than full time employees runs somewhat high. At the same time, the Union's position on a 1350 hour pro ration base better comports with practice within the Conference plus Amery comparison group. Only one other school district provides for the 2080 hour measure proposed here by the District.

The final determination on which is the more reasonable offer must be based on the cost of the total economic package. By my calculation the District's final offer, while totalling about 15% over the life of the contract, still falls short of the mark and actually results in some slight erosion of the employees' relative ranking in the primary comparison group. On the other hand, depending on the assumptions of participation by part time employees in the insurance plan, the Union's proposals could result in the economic package costing as high as 28+%. I believe, however, that the high end assumptions overstates the probable economic impact of the Union's final position.

The elusive factor in these costing estimates, of course, comes from ascribing increased health insurance costs to the 1989-90 year and then repeating them for the 1990-91 year. In truth, these chickens do not come home to roost until sometime in 1991-92 school year when the number of participants will become a known quantity. The Union argues that only then can the parties make an accommodation in the wage bargain for the burden of such costs. The flaw in the Union's argument is that it fails to fully account for the future costs of present economic commitments inherent and inescapable in its final proposal.

By accounting for the future monetary value during the next contract of the present new health insurance benefit and distributing its costs over both contracts, I still find that the total costs of the Union's economic package to be somewhat high. Further, these costs would gain for the employees a position not of equalization among

comparable units but, indeed, of significant improvement. The District's final economic package, however, falls substantially short of that provided by the comparable districts.

On balance, I find for the reasons set forth in the foregoing analysis that the final position of the Union on the composite economic package better comports with the statutory criteria based on the totality of the evidence presented.

Turning now to the language items, I must emphasize that the following analyses focuses primarily on those issues the parties themselves identified as "major." Those remaining of the 32 items at impasse will be afforded summary attention.

ISSUE NO. 3 - EMPLOYEE DISCIPLINE

Union Position:

No employee shall be disciplined or reduced in compensation without just cause nor after the completion of the probationary period, reduced in rank, discharged or suspended without just cause.

District Position:

After completion of the probationary period, no employee shall be discharged or suspended without just cause. In the event job performance or behavior causes problems, disciplinary action may be necessary. The progression of disciplinary action normally is (1) verbal warning, (2) written warning, (3) suspension, and (4) discharge. However, this sequence is not necessary for all cases as the type of discipline will depend on the severity of the problem.

Discussion:

By not including written reprimands, warnings and disciplinary demotions subject to the just cause standard, the District's position falls short of the more common features of disciplinary causes found among comparable school districts. The Union thus, has the better position on Issue 3.

ISSUE NO. 4 - VACANCIES AND TRANSFERS, Article 9 Bus Drivers' Assignments**Union Position:**

C. The parties recognize the desirability of having an adequate number of qualified substitute drivers. To that end the parties agree that the District will advertise for and the regular bargaining unit employees will encourage individuals to become qualified as substitute bus drivers. Those substitute drivers who are qualified and perform regular satisfactory service to the District shall be given first consideration for regular driving vacancies.

D. All regular drivers may sign up to take up to three (3) sports or activities on a seasonal basis using seniority. After all regular drivers have had an opportunity to sign up to take sports or activities, on a seasonal basis, all substitute drivers may sign up to take sports or activities on a seasonal basis using seniority. The driver who volunteers and is assigned to the sport or activity on a seasonal basis shall drive or be responsible for finding a substitute from the list of regular and approved substitute drivers. In the event the extra-activity route conflicts with the regular route, he driver may choose to have a substitute driver drive the regular or extra-curricular route. The District will be responsible for finding a substitute provided 48 hours advance notice is given.

All regular and substitute drivers may sign up for extra-curricular routes not selected on a seasonal basis. At the start of the year, the drivers shall sign up. Extra-curricular trips shall be assigned on a rotating basis, using seniority. In the event a driver has a contemporaneous regular assignment, the driver may choose to drive either the regular or extra-activity route. The District will be responsible for finding a substitute provided 48 hours advance notice is given. The drivers assigned shall drive or be responsible for finding a substitute from the list of regular and approved substitute drivers.

In the event there are less than eight (8) volunteers for extra-curricular trips for a school year, the non-seasonal trips shall be assigned to regular and substitute drivers on a rotating basis using inverse seniority. The least senior driver on a list of regular and substitute drivers who do not have a driving conflict shall be assigned to the trip. The driver shall be responsible for driving or finding a substitute from the list of regular or approved substitute drivers.

District Position:

C. The parties recognize the desirability of having an adequate number of qualified substitute drivers. To that end the parties agree that the District will advertise for and the regular bargaining unit employees will encourage individuals to become qualified as substitute bus drivers. Those substitute drivers who are qualified and perform

regular satisfactory service to the District shall be given first consideration for regular driving vacancies.

D. All regular drivers may sign up to take up to three (3) sports or activities on a seasonal basis using seniority. After all regular drivers have had an opportunity to sign up to take sports or activities, on a seasonal basis, all substitute drivers may sign up to take sports or activities on a seasonal basis using seniority. The driver who volunteers and is assigned to the sport or activity on a seasonal basis shall drive or be responsible for finding a substitute from the list of regular and approved substitute drivers. In the event the extra-activity route conflicts with the regular route, the driver may choose to have a substitute driver drive the regular or extra-curricular route. The District will be responsible for finding a substitute provided 48 hours advance notice is given.

All regular and substitute drivers may sign up for extra-curricular routes not selected on a seasonal basis. At the start of the year, the drivers shall sign up. Extra-curricular trips shall be assigned on a rotating basis, using seniority. In the event a driver has a contemporaneous regular assignment, the driver may choose to drive either the regular or extra-activity route. The District will be responsible for finding a substitute provided 48 hours advance notice is given. The drivers assigned shall drive or be responsible for finding a substitute from the list of regular and approved substitute drivers.

In the event there are less than eight (8) volunteers for extra-curricular trips for a school year, the non-seasonal trips shall be assigned to regular and substitute drivers on a rotating basis using inverse seniority. The least senior driver on a list of regular and substitute drivers who do not have a driving conflict shall be assigned to the trip. The driver shall be responsible for driving or finding a substitute from the list of regular or approved substitute drivers.

Difference:

The District disagrees that a temporary employee should automatically become a regular employee with transfer rights, merely because the employee they're substituting for will be gone for over six months. The District cannot always know how long an employee will be gone. The Union, however, wants the position posted after six months, even though it may only be open for a relatively brief period pending the return of the incumbent.

Discussion:

The District has the better of this position. A reasonable flexibility to accommodate indeterminate circumstances is appropriate. Seniority as proposed by the Union, ought not be the sole criterion for such assignments and transfer rights. This is a

relatively small school district with a considerable geographical spread and the need to respond in a commonsense way to unexpected busing needs should receive greater deference than permitted under the Union's position.

ISSUE NO. 5 - FAIR SHARE

Union Position:

All employees in the bargaining unit who are not dues paying members of the Union must pay a fair share of the costs of negotiating and administering the collective bargaining agreement.

District Position:

Only those persons hired after the date of the certification election pay dues on a fair share basis.

Discussion:

The philosophical aspects of this issue will never be resolved and no useful purpose can be served by extending the debate by weighing in my personal view. Suffice to say that in my 38 years of arbitration experience, the far more common resolution of the fair share argument has gone to the position that all beneficiaries of the fruits of the bargain, must contribute to the costs of achieving the labor contract. This principle clearly favors the Union's position on this issue.

ISSUE #6 - SUBCONTRACTING

Union Position:

In essence, the Union proposes that the District is free to subcontract whatever work it wishes as long as it does not cause the layoff of any employees currently in the bargaining unit.

District Position:

The District, in effect, offers protection against layoff only to those employees who might be able to claim such action as retaliatory for their union preference.

Discussion:

Neither position has any great appeal, although the District achieves the dubious distinction here of being the less unreasonable. The point, however, may well be moot in that the District attests it currently has no plans to contract out any important part of work now being performed in the bargaining unit. Both sides presumably have the opportunity to reconcile their differences on this issue in the upcoming negotiations for a successor agreement.

ISSUE NO. 7 - LEAVES OF ABSENCE

Union Position:

The support staff should enjoy the same extended medical leave consideration as the teaching personnel, including leave for emotional as well as physical disability. In addition, the Union offers the identical teachers' contract language on emergency, funeral, family and medical leave, and personal business leave.

District Position:

The emotional leave provision in the teachers' contract has caused administrative problems which the District seeks to avoid here. The provision is subject to too many uncertainties and capricious outcomes. As for the other types of leave, the support staff should not expect to achieve the same broad basis of consideration at that gained by the teachers over many intervening contracts.

Discussion:

The Union presents the stronger case on this issue. As to extended medical leave for emotional disability, the District may effectively guard against abuse by requiring independent medical authority to establish the validity of any claimed disability relating to an emotional illness. Further, advances in medical research increasingly recognizes the primary or contributory roles of stress factors in so many physical illnesses that the treatment of choice in many cases emphasizes the emotional rather than the symptomatic aspects of the disability.

As to the other types of leave, I find unpersuasive the District's argument that the support staff should wait through successive contracts to work their way up to the teachers' level of benefit.

ISSUE NO. 8 - HOLIDAYS

Union Position:

The days to be celebrated as holidays should be Labor Day, Thanksgiving, and Good Friday. The Union argues that the employees should have the option of selecting the holidays they prefer as long as it causes no additional costs to the District.

District Position:

On the basis of past practice and ease of administration, the holidays to be celebrated should be Memorial Day, Labor Day, and Thanksgiving.

Difference:

Memorial Day (District) versus Good Friday (Union).

Discussion:

The District presents the better position on this issue. The important consideration here is that the support staff ought not to have an option different from that of the teachers as to the particular holiday in question. The very meaning of the title "support staff" connotes that these employees are needed most when the teachers and students are together in the educational activities. It makes little sense for the support staff to be available in force when teachers and students are absent and no bus transport moves, no meals need be prepared, no immediate clean-up provided and less urgent secretarial services required.

Further, the District wanted eligibility for holiday pay to depend on "before and after" reporting for working day assignments. This latter feature is a common requirement in the interest of avoiding the artificial extension of a holiday into a long weekend. The District has the better case on both prongs of this argument as to the Memorial Day designation and the eligibility requirement.

In practical effect the Union offers guarantees there will be three paid holidays while the District's can sometimes result in but two, if the school year ends before Memorial Day. On this aspect of the holiday issue, the Union presents the better view.

REMAINING ISSUES

I can find no substantial differences between the parties on employee rights, the recognition clause, work schedules, vacation scheduling, third day of personal business for the bookkeeper and red-circling of dental insurance for a few employees.

Each and all of these issues should not be the margin at which either side's offer is deemed the less reasonable. It burdens the process unduly to deal with so many minor issues which parties traditionally wash out in last minute trade offs.

Considering therefore only those issues which the parties identified as major leads to the conclusion that the Union put forth the more reasonable positions on the language issues -- when considered as a composite grouping.

SUMMARY

While the District put forward the more reasonable position on several economic and language issues, the final offer/total package form of interest arbitration obviously mandates that the total landscape of issues be so weighed as to determine which is the more reasonable in light of the statutory criteria. In analyzing the evidence and argument against these statutory guidelines, it could not be said that either party put forth an unreasonable position on any of the 32 issues here for resolution. On balance, this analysis persuades to the Union's favor on both the economic package and the language issues.

AWARD

Upon consideration of all relevant evidence and arguments presented, the Union's Final Offer Package in this matter is, hereby, awarded.

11/4/91
Date

John J. Flagler
John J. Flagler, Arbitrator