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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of Petition
of

SOUTHERN LAKES UNITED
EDUCATORS

Case No. 14
No. 44303 INT/ARB-5721
Decision No 26826-A

To Initiate Arbitration Between
Said Petitioner and

LAKE GENEVA JOINT SCHOOL
DISTRICT NO. 1

APPEARANCES:

On Behalf of the District: Daniel G. Vliet, Attorney - Davis &
Kuulthau, S.C.

On Behalf of the Union: Ester Thronson, Executive Director

I. BACKGROUND

On April 17, 1990, the Parties exchanged their proposals on matters to be included in an initial collective bargaining agreement. Thereafter the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On July 16, 1990, the Association filed the instant petition requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On October 2 and November 27, 1990, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by March 8, 1991, the Parties submitted to the

Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. Thereafter the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remained at impasse.

On March 14, 1991, the Commission ordered the Parties to select an Arbitrator to resolve their dispute. The undersigned was selected, and his appointment was made by the Commission on May 8, 1991.

A hearing was scheduled and held September 17, 1991. Post-hearing briefs were filed on November 19, 1991. Due to an unusual set of circumstances, the District was given the opportunity to file limited surrebuttal. This was due by January 17, 1992.

II. FINAL OFFERS AND ISSUES

The differences between the Parties are numerous. The final offers and the differences between them are outlined below:

A. Recognition Clause

The Association proposes that the following recognition clause be inserted into the contract:

The employer recognizes the union as the sole and exclusive bargaining agent for all regular full-time and part-time teacher aides and secretaries employed by the employer, excluding professional, supervisory, managerial and confidential employees, as certified by the Wisconsin Employment Relations Commission, Decision No. 26305-A.

The District proposes that the following recognition clause be adopted:

Section 1. The Employer recognizes the Union as the sole and exclusive bargaining agent for all regular full-time and part-time teacher aides and secretaries employed by the Employer, excluding professional, supervisory, managerial and confidential employees, and District office clerical employees, as certified by the Wisconsin Employment Relations Commission, Decision No. 26305-A. (Emphasis added)

The differences in the final offers relate to the words as underlined by the Arbitrator above in the District's offer. They wish to specifically exclude the clerical employees in the District office from the recognition clause.

B. Seniority/Layoffs

The Association proposes the following language on seniority as it relates to layoffs and work opportunities:

- A. Seniority rights shall prevail at all times during the life of this Agreement provided ability and skill are reasonably equal.
- B. Seniority. An employee's seniority shall commence as of the first date of employment by the Employer, and shall be considered continuous unless terminated by:
 - 1. Voluntary quitting which includes, but is not limited to, failure to return from layoff after having been recalled and failure to return from a leave of absence.
 - 2. Discharge.
 - 3. Not being recalled within two (2) years from the date of layoff.
- C. In laying off employees, the employees with the least seniority shall be the first laid off provided those employees remaining are capable of carrying out the Employer's usual operations effectively.

Those employees with the longest seniority will be recalled first provided the employee is capable of performing the available work effectively. Recall shall be for a period of two (2) years from the date of layoff.

While on layoff, the employee will not accrue sick leave or vacation benefits or be paid for any holidays. Upon return to work, the employee shall be granted those benefits which the employee possessed when the layoff commenced.
- D. A seniority list shall be made of the employees showing their names and dates of employment and this list shall be furnished to the Union once a year.
- E. Seniority shall prevail when extra work is available; provided, however, that if a particular job is customarily performed by a particular employee, he shall have the first opportunity to perform said extra work.

The District proposes the following language on seniority as it relates to layoff and work opportunities:

Section 1. Seniority. An employee's seniority shall commence as of the first date of employment by the Employer. An employee's seniority shall be prorated if an employee works less than full-time (1,800 hour/year). An employee's seniority shall be considered continuous unless terminated by:

- A. Voluntary quitting which includes, but is not limited to, failure to return from layoff after having been recalled and failure to return from a leave of absence.
- B. Discharge.

- C. Absent from work for three (3) consecutive work days without authorization from the Employer.
- D. Not being recalled within one (1) year from the date of layoff.
- E. Retirement.

Section 2. Layoffs. In laying off employees, the teacher aide or secretary with the least seniority shall be the first laid off provided the senior teacher aide(s) or secretary(ies) has the necessary skills and ability, as determined by the Employer. Teacher aides and secretaries will be laid off and recalled separately.

The Teacher Aide or Secretary with the longest seniority will be recalled first provided the employee(s) has the necessary skills and ability, as determined by the Employer. Recall shall be for a period of one (1) year from the date of layoff.

While on layoff, the employee will not accrue sick leave, vacation benefits, be paid for any holidays or accrue any other benefits under this Agreement.

Section 3. Seniority List. A seniority list shall be made of the employees showing their names and dates of employment and this list shall be furnished to the Union one a year. Separate seniority lists shall be maintained for the secretaries and the teacher aides.

A review of the proposals shows the following differences:

1. The Association proposes that seniority rights for recall be retained up to two years after a layoff. The District proposes that seniority cease after one year.

2. The District also proposes that seniority also terminates after retirement and after being absent more than three consecutive days without authorization.

3. The Union proposes a general reference to seniority prevailing, provided ability and skill are reasonably equal. The District's offer contains no similar language.

4. In layoffs, the Employer proposed layoffs occur in separate classifications (secretaries and aides). There is no separation in classifications for layoff purposes in the Association's proposal.

5. Both Parties propose that the least senior person be laid off. However, the provisions are different. The Union says the least senior person should be laid off provided the remaining employees are "capable of performing the available work effectively. The District proposes that the least senior

employee be laid off provided the senior employee "has the necessary skills and ability, as determined by the Employer." The same differences relate to recall.

6. The District proposes that the accrual of seniority be prorated if an employee works less than full time (1,800 hours). The Association's proposal does not made such a qualification.

7. There may also be differences with respect to the accrual of benefits while on layoff.

8. The Association also proposes that seniority shall prevail with certain qualifications to the distribution of extra work opportunities.

C. Leaves

1. Sick Leave

The Association proposes the following with respect to sick leave:

Secretaries shall earn, and accumulate when not used, twelve (12) sick leave days with pay each year at the regular rate of pay until a total of one hundred twenty (120) days is accumulated.

Aides shall earn, and accumulate when not used, ten (10) sick leave days with pay each year at the regular rate of pay until a total of sixty (60) days is accumulated.

An employee, if the employee desires, may use available sick leave for absence due to illness or injury until the employee is eligible to receive benefits provided by the long term disability insurance. Once long (sic) term disability insurance benefits are provided, the employee can no longer collect sick leave pay for the days not worked.

Sick leave may (sic) used in advance for the school year. But if said employee should resign or terminate his employment, the unearned portion that has been used up will be deducted at the prorated daily rate of pay.

The Employer proposes the following sick leave language:

Section 1. Sick Leave. Sick leave shall be used only for the employee's personal illness. Sick leave shall be prorated for part-time employees.

(a) **Secretaries:** Secretaries shall earn, and accumulate when not used, twelve (12) paid sick leave days per year up to a maximum of one hundred twenty (120) days.

(b) Aides: Aides shall earn, and accumulate when not used, ten (10) paid sick leave days per year up to a maximum of sixty (60) days.

The material differences are as follows:

(a) Sick leave is prorated under the District's proposal for part-time employees and is expressly limited to the employees personal illnesses.

(b) Under the Association's proposal, sick leave may be used in advance for the school year with a payback provision in the event employment is terminated.

2. Unpaid Leave

The District's proposal provides for reasonable unpaid leaves up to three days per year. It states:

Section 2. Unpaid Leave. With at least three (3) days written notice to the Principal, an employee may request an unpaid leave. The Principal shall grant reasonable requests which do not interfere with the operation of the school. In the event of an emergency, the three (3) day notice requirement may be waived by the Principal. An employee may request up to three (3) days of unpaid leave per year.

3. Personal Leaves

The Association proposes the following language:

With 24 hours advance notice to the Principal or immediate supervisor, personal leave with pay shall be granted.

Personal days will be limited to one per day per contract year, and the days are noncumulative.

Employees shall use this leave in a minimum block of one hour.

The District's proposal reads as follows:

Section 3. Personal Business Leave. With twenty-four (24) hours advance notice to the Principal or immediate supervisors, one (1) personal business day with pay shall be granted. Personal business leave shall be for sound, pressing and unavoidable absences. Employees are limited to one (1) personal business day per contract year. This leave may be used in a minimum block of one hour. The personal business day is noncumulative.

4. Funeral Leave

The Association's proposal on funeral pay is as follows:

Up to three (3) days with full pay will be granted for the purpose of attending the funeral, or attending to the serious illness, of an employee's spouse, sibling, child or parent.

Up to two (2) days with full pay shall be granted for the purpose of attending the funeral, or attending to the serious illness, of a father/mother-in-law, brother/sister-in-law or son/daughter-in-law.

The District's offer is as follows:

Section 4. Funeral Leave. An employee may take up to three (3) days paid leave in the event of the death of the employee's spouse, child and/or parent. An employee may take up to two (2) days paid leave in the event of the death of a father or mother-in-law or brother or sister-in-law. Funeral leave may be used up through the day of the funeral.

Thus, the differences primarily relate to the extension of funeral leave to "serious illnesses."

5. Jury Duty

The District's proposal is as follows:

Section 5. Jury Duty. Any employee covered by this Agreement who serves on a jury shall be paid his regular earnings during the time of said jury duty and the employee shall pay the Employer any monies received for jury duty pay. Employees who report for daily jury duty who are dismissed from serving on duty on any day shall return to school to complete the regular work day.

The Association proposes the following with respect to jury duty:

Any employee covered by this Agreement who serves on a jury shall be paid his regular earnings during the time of said jury duty, and said employee shall pay to the Employer any monies received for jury duty pay. In the event jury duty pay exceeds an employees regular earnings, adjustment will be made so that the employee does not surrender the overage.

The primary differences relate to payback provisions in the event jury duty pay exceeds regular earnings.

6. School Closings

The District proposes the following:

Section 6. School Closing. In the event of a school closing, an employee will suffer no loss in pay if work is available and the employee reports to work. If work is unavailable or an employee does not report to work, the employee may make up the day subsequently if work is available. The District Administrator shall decide if and when work is available.

The Association proposes the following:

On days when schools are closed because of inclement weather or other disasters, there will be no change in the school policy (in effect July 1, 1990) as it affects secretaries. Aides will suffer no loss of pay if they report to work or if they make up the day or hours.

D. Wages

1. Rates of Pay

The District proposes the following schedule for wage rates:

4. ARTICLE ____ - WAGES AND CLASSIFICATIONS.

Section 1. Effective July 1, 1990, the following hourly rates shall apply:

	<u>7/1/90</u>	<u>7/1/91</u>
Secretaries	\$7.45	\$7.85
Aides	6.25	6.65

The Association proposes that employees hired prior to July 1, 1990, will receive an increase of 6.5% in each year of the contract. This will result in a variety of rates because of a lack of uniformity in wages. There are several aides paid at \$4.91 per hour and several aides paid \$5.63 per hour. There is some variation in secretary salaries. One is paid \$11,508 annually (\$7.24 per hour) and three are paid \$10,432 annually (\$6.72 per hour).

2. Probationary Rates

The Union proposes that the probationary rate be \$.20 cents per hour below the regular rate. The Employer proposes it to be \$.50 less per hour.

3. Pay Periods

The Union proposes the following language:

All employees shall be paid on a bi-monthly basis. Each employee shall be provided with a statement of gross earnings which shall set forth straight time and all overtime hours worked and an itemized statement of all deductions made for any purpose.

Employees may elect to have wages spread over 24 payments, unless it is not possible under state or federal wage law.

The Employer proposes similar language:

Section 3. All employees shall be paid twice a month pursuant to existing practices. Employees shall be provided with a statement of gross earnings which shall set forth straight time and all overtime hours worked on and itemized statement of all deductions.

E. Health and Welfare

1. Active Employees

The proposals are as follows:

Association:

Section 1. The employer shall pay the full premium cost of a Long Term Disability Insurance Plan for employees covered by this Agreement.

Section 2. The employer shall pay the full premium cost which is \$_____ per month for the premium of a single dental insurance plan and \$_____ per month for the premium of a family dental insurance plan for employees covered by this Agreement.

Section 3. The employer shall pay for full premium cost which is \$_____ per month for the premium of a single hospital/medical insurance plan and \$_____ for employees covered by this Agreement.

- (a) When a (sic) employee is discharged for cause or voluntarily terminates his employment, the Employer shall only make contribution for the month in which such termination occurred.
- (b) When a laid-off employee is reinstated, the Employer shall make the required contribution for the month in which the employee returns to work.
- (c) When an employee who has been on a leave of absence returns, the Employer shall make the required contribution beginning with the month following the employee's return to work.

- (d) The employee must submit the sufficient monies for the required contribution to the Employer by the 15th day of the prior month in which coverage is to be effective, provided the Carrier agrees.

Section 4. The employer shall pay the full premium cost of the State Life Insurance Plan for employees covered by this Agreement.

District:

Section 1. The Employer shall pay for single dental insurance or family dental insurance for full-time employees covered by this Agreement. The Employer shall pay a prorated amount for employees working less than full-time.

Section 2. The Employer shall pay for single hospital/medical insurance or family hospital/medical insurance for full-time employees covered by this Agreement. The Employer shall pay a prorated amount for employees working less than full-time.

Section 3. For those employees employed prior to July 1, 1989, and currently working less than 1,800 hours, the Employer will provide full health and dental coverage if the employees work at least the number of hours specified below during each of the following school years:

1990-1991 -- 1,100 hours
1991-1992 -- 1,200 hours
1992-1993 -- 1,400 hours
1993-1994 -- 1,600 hours
1994-1995 -- 1,800 hours

Employees working less than these amounts will be entitled to health and dental coverage as provided in this Agreement on a prorated basis. The proration factor for the grandfathered employees will be the number of hours set forth above.

Section 4. The Employer shall pay the full amount for the premium for the State Life Insurance Plan for all employees covered by this Agreement.

Section 5. The Employer shall pay the full amount for LTD coverage.

The major difference relates to the Employer's proposal to prorate health and dental insurance. There are also some differences with respect to the Employer's obligation when employees terminate or are laid off.

2. Retired Employees

The Association proposes the following:

Upon retirement from the district employees shall be eligible to remain in the group insurance plans maintained by the employer unless expressly prohibited by the insurance carrier. All premiums shall be paid by the retiree.

When a retiree dies, a surviving spouse or other eligible dependents may remain in group plans (if allowed by the insurance carrier) by paying the cost of premiums.

The Employer makes no proposal with respect to retirees and health insurance.

F. Zipper Clause

The Employer makes the following proposal:

This Agreement constitutes the entire agreement between the parties and completely supersedes any prior oral or written agreements, whether existing or claimed to exist. The Employer recognizes the right of the Union to request to bargain the impact of changes made during the term of Agreement in areas which are permissive subjects of bargaining; provided, however, that the impact is a mandatory subject of bargaining and is not currently covered by this Agreement.

G. Ancillary Issues

The Parties also have differences over the appropriate external comparable group and over costing of the contract. The external comparables proposed by the Association include schools in the Athletic Conference affiliated with Southern Lakes United Educators (thus geographically proximate) and organized for the purpose of collective bargaining. They are Burlington Custodians, Burlington Secretaries/Aides, Delavan Secretaries/Aides, Lake Geneva Jt. 1 Custodians, Randall Support Staff, Salem UHS Support Staff, Twin Lake Custodians, Union Grove UHS Secretaries and Custodians, Union Grove Jt. 1 Custodians, Waterford UHS Custodians, Wheatland Center Custodians, and Wilmont UHS Secretaries and Custodians.

The District utilizes as a primary comparable pool Badger UHS and its feeder schools (Geneva Jt 4, Genoa City Jt. 2, and Linn Jt. 4). As a secondary pool, it utilizes a group of contiguous and athletic conference schools. They are Burlington, Central UHS, Delavan-Darien, East Troy, Elkhorn, Jefferson, Milton, Union Grove UHS, Walworth UHS, Whitewater, Williams Bay, and Wilmont UHS.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. Recognition Clause

1. The Association

The Association believes that the Board is seeking to gain, in arbitration, what they would not have gained had they proposed that central office staff be identified as excluded when the unit was formed. The central office staff was not excluded in the petition for election and the District's proposal should not limit the right of a nonrepresented group to take advantage of their willful right to choose a representative for collective bargaining. They also note that only 3 of the 11 comparable units have recognition clauses excluding central office staff and of the 6 comparables that include secretaries and aides only 3 exclude central office staff.

2. The District

The District's proposal is meant to further clarify the employees who are excluded from Union membership. On the other hand, the Union's proposal is inconsistent with the Parties stipulation for the unit election. The eligibility list did not include District office clerical employees. Thus, since the Union deliberately decided to exclude this group from the bargaining unit for purposes of the election, it is the Employer's position the Arbitrator should also exclude the group in the recognition clause.

B. Seniority/Layoff

1. Association

The Association notes with respect to recall rights that in the overall comparable group, recall rights are available for 2 years or more in 7 of the 12 units. In the units representing secretaries and aides, 3 locals of 6 have recall rights for 2 years.

Regarding the proposal that seniority should control if qualified, they draw attention to the fact that 8 of 12 locals have agreements where seniority prevails if the employee is qualified to do the work. Regarding classifications for layoff purposes, a comparison of units including secretaries and aides reveals that 3 of 6 are laid off by seniority within a job category and 3 of 6 are

laid off unit wide if remaining employees are able to do the remaining work. In the overall comparable group, 4 of 12 are laid off by seniority but exclusively within their job category.

Concerning extra work, they think it is reasonable that the employee who usually performs the task (regardless of seniority) should have the first chance at extra work. If extra work is still available, seniority is a fair standard, in their opinion, to use for assignment.

2. The District

The District contends that the seniority of aides and secretaries ought to be separate since secretaries and aides each perform different jobs with different duties that merit different wage rates. Separate lists simply acknowledge the fact that an aide cannot perform the job of a secretary and vice versa. They believe it is customary to provide for job or classification seniority when different positions are combined in the same unit. The District's position simply reflects the differences between the two positions and the need to retain qualified employees in the event of a layoff. As a matter of fact, the Union's external comparables do not support its seniority/layoff argument. Of the five comparables which deal with secretaries and/or aides (Burlington, Delaven, Randall, Salem, and Union Grove UHS), three consider these groups based upon category or classification of employees, just as the District is proposing. Only two consider these groups based upon seniority if qualified, as the Union proposes.

The District also emphasizes that seniority and benefits are to be prorated based on 1,800 hours per year. The 1,800 hour per year proration figure is derived from a workday of seven hours for 260 days.

C. Leaves

1. The Association

The Association believes the issues are more similar than different. For this reason they don't think that the final offers for paid and unpaid leave carry enough weight to affect the outcome of this arbitration. Both proposals allow the same number of sick days and accumulation. The Union's proposal to allow the use of sick leave in advance is consistent with the custodian's.

The only difference with respect to personal leave is that the District's proposal comes with strings attached. However, 7 of the 12 noncertified groups have one or more personal days without "strings." Four of the six noncertified groups representing clerical workers have one or more personal days without "strings." Thus, the Union asserts that their language for personal leave is supported by the comparables.

Regarding funeral leave, they contend that its proposal is more reasonable in that it allows use of such days for attendance at a funeral upon the death of certain relatives (as does the Employer) but also allows use of such days during the serious illness of such an individual and a day or days after the funeral should such days be necessary. The Employer limits the use of funeral leave through the day of the funeral, which ignores the fact there will be occasions that an Employee will have matters to attend to or travel the day after a funeral. Only one comparable limits the use of funeral leave through the day of the funeral.

With respect to jury duty, the Association also thinks it is fair that any overage in pay should stay with the employee. They also believe the District's proposal that the employee will return to work if dismissed from jury duty also seems fair, noting that of the nine contracts for noncertified employees that have jury duty language, five require return to work, four do not require return to work.

The last issue in this category is school closings. The Association does not believe that the District Administrator be the sole judge for approval of make-up work due to loss of hours from school closings. In the past, secretaries have enjoyed the benefit of making up hours by school practice. The Union proposes to keep that practice. The Union believes that building principals who make arrangements for make-up for secretaries are also most capable of determining whether aides have work that can be accomplished when students are not present. Of the nine schools where noncertified staff have language related to school closing, only one (Sale Central ESP) allows the district administrator to make the decision affecting make up of lost hours. All of the others may make up time--usually with mutual agreement.

B. The District

The District, with respect to sick leave, notes that the Union agrees with the District on the number of sick days and the accumulation of sick days proposed by the District. However, the Union does not agree with the District

regarding proration and the purpose for sick leave use. The District prorates sick leave and limits its use to the employee's personal illness. It is also their position that the Union's relevant external comparables overwhelmingly support the District's position. Four of the six comparables explicitly state that sick leave must be used for sickness. Half of them either prorate their sick leave or do not allow part-timers any sick leave time at all.

The District also makes a proposal for unpaid leave. They state that this is offered as a quid pro quo for its health insurance proposal, but also for the convenience of its employees. Only one other district, Elkhorn, offers this type of unpaid leave.

The District's proposal for personal leave limits personal leave to sound, pressing, and unavoidable absences. It is only fair that paid personal leave be limited to legitimate personal business reasons. Four of the nine comparables offer no personal business leave at all - Burlington, Central UHS, Delavan-Darien, and East Troy.

It is also the District's position that its proposal is more reasonable. They contend that it simply is not rational to allow employees to use funeral leave for a family member's serious illness. Funeral leave is provided so that employees can take off on occasion in the event of a death of a family member. There are other forms of leave available, such as unpaid leave, for serious illness of a relative. Additionally, none of the District's nine external comparables nor the Union's seven relevant comparables ties funeral leave with the serious illness of a family member.

Regarding the jury duty proposal, it does not seem equitable to the District to allow an employee to realize a windfall for serving on jury duty. On the other hand, it is appropriate to allow the District to offset its loss and costs. Additionally, since the District is, in fact, paying the regular earnings of the employee, it is only fair that, if an employee is dismissed early from jury duty for the day, the employee returns to school to complete the regular work day. Moreover, of the seven districts possessing jury duty provisions, four explicitly require the excused employee to return to work following early release from jury duty (Burlington, Delavan-Darien, Union Grove UHS, and Whitewater). None of the comparables allow employees to keep any overages the jury duty pay may produce over the regular pay.

Last, the District submits that its school closing proposal is the more reasonable proposal. This is because (1) all employees are treated alike and

(2) there may not be work available for both aides and secretaries when school is not in session. The Union's proposal is unreasonable as it would force the District to pay secretaries for work it does not receive, as well as to pay aides for reporting to work even if there is no work available. Moreover, the Union's own comparables do not even support its proposal. Only one district offers the employee no loss in pay in the event of a school closing. All the others either force the employee to substitute another type of paid leave day or allow the time to be made up upon district approval.

D. Wages/Pay Periods/Probationary Rates

1. The Association

The Union believes catch-up should be given great weight in determining wage rates and questions whether the Board should be allowed to increase wage rates more generously for less senior employees.

The Association also costs their final offer at 17.36% total package over the two-year agreement. The average is 8.68% per year. The Association costs the District's final offer at 11.91% total package over the two-year agreement. The average is 5.96%. They compare this to the average increase in the comparables, contending that their final offer is closer to the average. It is also closer to the teachers' package. Additionally, the Association costs their final offer at 13% wages only over the two-year agreement. The average is 6.5% per year. The Association costs the District's final offer at 14.77% wages only over the two-year agreement. The average is 7.385%. However, they question the structure of the District's offer under which experience is not valued. The Board offers more to less senior employees and is very uneven in their offer. Moreover, the actual wage rates are substantially below comparable rates.

Last, the Association contends that the employees be allowed to have their pay divided in 24 installments. The practice leaves the employee with income in the summer. They suggest that the cost to the District to make such a concession would be small indeed.

2. The District

The District proposes a single rate for secretaries and another uniform rate for aides as the majority of comparables do. In fact, the District's proposal was a direct result of the Union's initial efforts to standardize wages. In creating this schedule, the District would not only create uniformity in wages for its secretaries and aides, but it also would raise wages for the majority of its employees on average higher than the Union's proposal of 6.5%. The District's final offer provides an 8.73% aggregate wage increase the first year, followed by a 6.08% increase the second year. They recognize there will always be some inequity when standardizing wages. However, since the other comparable districts have adopted standardized wage schedules, the District's proposal simply follows the trend of paying wages based on the position rather than the individual. In doing so, the units as a whole get more of a wage increase under the District's package than the Association's. This is in part as a quid pro quo for its health insurance proposal.

Regarding pay periods, they note that the Union's proposal would cost the District additional bookkeeping and distribution since it would mean there would simply be more paychecks in the year. Additional staff would also be required to administer the payroll during the school vacation months. All this added expense seems a heavy price to pay for the mere budgeting ease of the District's employees over the summer months. They also believe their probationary rates are more reasonable.

E. Health and Welfare

1. The Association

The Association draws attention to the fact that the District's offer proposes to phase in its proration formula over a five-year period. This is inconsistent with Wis. Stat. 111.70(3)(a)4 that "the term of any collective bargaining agreement shall not exceed 3 years." Therefore, the Board cannot be allowed to establish terms for prorated insurance benefits for 1993-94 and 1994-95 since they would be the fourth and fifth year of an agreement.

Even so, because of the number of hours worked by the secretaries and aides, all employees would have their insurance prorated by 1993. They argue, too, that the comparables do not support such a high threshold for insurance eligibility. Only two of eleven schools require 1,800 hours or more in order to

be eligible for fully paid health and dental insurance. The others range from 787 to 1,440 hours. Such a move is not justified on economics since the cost of insurance is less at Lake Geneva Jt. 1 than for other comparable schools. Lake Geneva ranks near the bottom in premium costs for 1989-90 (base year) and 1990-91. Nor is there any evidence that cost sharing helps in cutting costs. Regarding internal comparables, they note that Arbitrator Stern rejected proration of health insurance for the custodial unit, and the status quo for teachers is for health and dental for those who work more than 50%.

The Association also proposes that employees may remain in group insurance plans maintained by the Employer unless expressly prohibited by the insurance carrier. This is at no cost to the District as the premium is paid by the retiree. They note that all of the comparables have some benefit at retirement. Benefits include sick leave payouts, severance pay, payment toward a supplement to Medicare and group insurance at one's own expense. Moreover, Lake Geneva Jt. 1 teachers have a comprehensive retirement benefit including employer paid insurance for 4-8 years with a first-year cap. When that benefit expires, one can remain with the group insurance at one's own cost.

2. The District

The Employer is proposing to maintain the current practice of prorating benefits for part-time employees. As such, the District is maintaining that it is trying to bring the secretaries and aides in line with the other internal comparable groups. These internal comparables overwhelmingly support the District's final offer, it is argued. These internal comparisons, which are the most relevant criteria to be considered by the Arbitrator, demonstrate that the District's final offer should be selected. It is also designed to cope with runaway health insurance costs. The Employer argues that the Union cannot justify its "hold-out" status on the health insurance issue.

The District also contends that external comparisons favor the District's final offer. Among the secondary comparables, 6 out of the 13 offer no benefits at all to part-time workers. Of the six school districts which offer prorated benefits to their part-time secretaries (five districts offer prorated benefits to aides), all require a part-time worker to first work a prescribed minimum number of hours before benefits will be given. Thus, the District's offer is a very reasonable one and one that is already on the generous end of the pattern established by the external comparables at which other comparable communities have settled.

Regarding the retiree health insurance, the District states that only a minority of the District's external comparables (Burlington, Jefferson, and Wilmot USH) allow retiring employees to remain in the District's group health insurance policy at their own expense. The same is true for the Union's comparables. Only two external groups allow such insurance continuation (Burlington and Wilmot UHS). An individual may choose to exercise his/her COBRA rights and stay in the group for up to 18 months. As a result, an employee can retire at 63½ years old and still have group health insurance until Medicare takes effect at age 65.

IV. OPINION AND DISCUSSION

The nature of final offer arbitration is that often, particularly where there are multiple issues, the Arbitrator must decide which one of two wrongs is right. This case is no exception. Both offers have unreasonable aspects. Consequently, the Arbitrator's job is to weigh the relative unreasonableness of the offers with respect to the individual issues and to weigh the impact of the issues, making, in the process, a judgment in the aggregate. Of course, some of the issues have little impact and the significance of others is paramount. Thus, the Arbitrator, no matter which offer he decides, will impose as part of the Parties' first contract some nonsense. The Parties are left to their devices to fix these defects in future bargaining.

An example of an issue which has little impact is the matter of the recognition clause. While the Association's offer doesn't specifically exclude district office clerical employees, there can be no serious dispute that these employees are not part of the unit. Plainly, they didn't vote in the representation election.

The offers, with respect to leaves, are not dramatically different, yet each have some blemishes. For instance, the Association's doesn't propose unpaid leaves, evidently leaving it to the discretion of the Employer. Obviously an employer can always grant unpaid leave. The District proposes to grant unpaid leaves at its discretion but limits them to three days. This isn't particularly reasonable as there may be circumstances which warrant longer leaves. This is a blemish. On the other hand, the Association's proposal on personal leaves is less reasonable because it is open-ended and, effectively, an extra day of vacation. A similar tarnish is found in the unprecedented proposal to extend funeral pay to "serious illness" and to allow an employee to make money, if that is possible, while on jury duty. On the other side of the ledger, the

District curiously reverses its own status quo policy on school closings for secretaries. If their own policy was good when there was no collective bargaining, why isn't it any good now? Overall, these proposals, on either Party's part, while they have some lumps, are not as significant as other outstanding issues.

Other issues which do not have any dramatic effect are the proposals on pay periods, probationary rates, and the zipper clause. The cost and substantive impact of these issues is nil or nonexistent.

It is no secret that the major issues, the determinative issues, in this case are the insurance and wages issues. On wages the Arbitrator notes that even if he accepts, for the sake of argument, the Employer's comparable group and gives full weight to the non-unionized employees, the wage rates under the District's proposal are significantly less than they are elsewhere. The following reflects this (maximum rates only):

	<u>Secretaries</u>		<u>Aides</u>	
	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>
Average	\$8.43	\$9.37	\$6.96	\$7.32
Board Offer	7.45	7.85	6.25	6.65
Association Offer	7.71	8.21	6.29	6.70

The disparity between the average wage in the Employer's comparable group is most dramatic for secretaries. If the Employer's proposal is accepted, by the end of the contract the hourly rate for secretaries will be \$1.52 less than the average. It would take almost a 20 percent raise to catch-up. The Employer's rate is also appreciably less than the non-union feeder school system. Much the same thing is true for aides in Lake Geneva Jt. 1. They earn less than aides at Badger UHS and less than average. By the end of the contract, if the Employer's offer is accepted, aides would earn 67 cents or 10 percent per hour less than the average.

The Association's offer is more reasonable in that it brings the employees closer to the norm (although not dramatically). Thus, it is clearly most reasonable in this respect. However, the Association's offer is unreasonable since it does not standardize wages within the classification. This is most common in

unionized contracts. Equal pay for equal work is a cornerstone of collective bargaining. If the Association feels longevity should be a factor in compensation, then longevity pay should be proposed.

The other significant item in dispute is the insurance issue. The Employer argues that the internal and external comparables support their proposal. Close scrutiny, however, shows this not to be the case. First of all, not much weight can be given to the non-unionized internal comparables for all the traditional reasons. Unilaterally determined wages are not fully reflective of labor market influences in the unionized sector. This is especially true in this case because the non-union employees are internal employees. However, we note that while these employees may be subject to prorated health insurance, the secretaries and aides at Badger UHS are paid more per hour. Thus, they are in a better position to afford cost sharing of insurance.

Regarding the teachers at Jt. 1, it is noted that only employees who work 50 percent have proration, and they pay 50 percent. Employees less than full time have no paid insurance. Then there is the matter of the custodians' arbitration where Arbitrator Stern said the teachers were the pattern setters on this issue and rejected the District's 1,800 hour threshold for full-time benefits and their proration formula. Thus, it cannot be said, as the District argued, that this unit is a "hold out."

Regarding the external comparables, it is noted that many of them have prorated health insurance for part-time employees. However, the definition of part time/full time is radically different than the District's. The District threshold of 1,800 is clearly in the minority. It, in reality, would eventually result in all employees being considered part time for purposes of insurance. Only two of the Employer's thirteen external comparables have a threshold for full-time benefits higher than 1,560 hours for secretaries and aides. Four are at this level and one is at 1,520 hours. The other four are between 800 and 1,350 hours as a threshold.

In the instant unit one secretary works 1,589 hours annually and three others work 1,552. Aides work approximately 1,323 hours. Thus, the secretaries in this unit, if employed in comparable districts, would receive virtually 100 percent insurance in 10 of the 13 comparables. Aides would qualify for 100 percent insurance in three units and would pay no more than 15 percent of their premium if there was a directly proportionate proration formula in six school districts. Under the Employer's plan, they would pay about 27 percent of their premium by 1994-95.

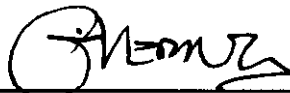
The real problem with the District position isn't the idea of cost sharing or proration, but the fact that the threshold relative to the comparables is just too high. In fact, it is rather arbitrary and bears no relationship to practical reality. An employee who works the whole school day for the whole school year is not a part-time employee. Employment on a school-year basis is unique in employment settings, and an employee so employed is not a part-time employee as that term is generally understood in employment relations generally.

There is nothing inappropriate about a truly part-time employee sharing in the cost of his/her health insurance, but during the school year, the bargaining unit employees essentially make a full-time commitment. The equity of such a situation demands more than the standard full-time/part-time distinction. Other districts have recognized this by having full-time benefits threshold at levels substantially less than the 1,800 hours proposed by the District. Clearly the Association's proposal is more reasonable, especially considering the standard wage rates.

In summary, the negative aspects of the Association's offer--which includes their seniority proposal--are outweighed by the negative aspects of the Employer's offer. To accept the Employer's offer would not only put the employees further behind in wages, but would disadvantage them significantly on a total compensation basis by having them contribute disproportionately--relative to the internal and external comparables--to their health insurance.

AWARD

The final offer of the Association is accepted.



Gil Vernon, Arbitrator

Dated this 5th day of February 1992.