

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
NORTHWEST UNITED EDUCATORS

To Initiate Arbitration
Between Said Petitioner and

Case 24
No 44971 INT/ARB-5856
Decision No. 26897-A

LADYSMITH-HAWKINS SCHOOL DISTRICT

APPEARANCES:

Alan D. Manson on behalf of the Union
Stephen L. Weld, Esq. on behalf of the District

On June 25, 1991 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on August 29, 1991 at Ladysmith, WI. Post hearing exhibits and briefs were exchanged by the parties by November 1, 1991. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats the undersigned renders the following arbitration award.

ISSUES:

This dispute is over the terms of the parties' 1990-1992 collective bargaining agreement. Several issues are involved.

Wages--

The Union proposes 4 % increases in each of the two years covered by the proposed agreement, plus a ten cents per hour increase for cooks in each year.

Regarding the Accounts Payable Bookkeeper and Maintenance Engineer positions, the District proposes an hourly rate of \$9.78 in 1990-91 and \$10.20 in 1991-92, while the Union proposes \$9.76 in 1990-91 and \$10.15 in 1991-92.

Although the Board intended a 4.5% increase for the cooks, in formulating its final offer, a miscalculation resulted in a proposed 25.4% increase for cooks in the first year of the District's final offer and a 9% increase in the second year.

Health Insurance--

The Union proposes continuation of the status quo on this issue, i.e., 100% payment of health insurance premiums by the District. The District proposes a 5% contribution toward premium payments from the employees.

Although the Board's final offer does not specifically continue the language of the parties' prior agreement providing for pro-rata benefits for part-time employees, the Board asserts that said deletion was inadvertent, and that it intends to continue providing such pro-rata benefits.

The District's proposal also fails to make reference to the dental insurance benefits contained in the parties' current agreement. The Board asserts that it intends to continue providing such benefits, and that indeed, language in the parties' past agreement assures such continued payments.

Inclement Weather Days--

The District proposes changing the number of paid inclement weather days from five to two. It also proposes that employees required to remain at work after school has been closed, and that employees called in to work on days school is closed shall be paid at one and a half times their regular rate.

Change in Insurance Carrier--

The District proposes language allowing it to change the health insurance carrier, provided substantially equivalent or better benefits are provided.

Assignments/Vacancies/Transfers--

The District proposes changes to provide that transfers within "classifications", rather than within "departments" will be given priority over outside hires.

The Union proposes the following revision:

"An employee, upon being selected for a position in another department or classification within the employee's current department (e.g. -aide for

handicapped, secretary to bookkeeper, custodian to maintenance-custodian) shall receive a trial period of thirty (30) working days." The new language prescribes that the rights contained in said proviso will apply to employees who take assignments to different classifications within their own department.

The District also proposes new language to allow it to add or subtract time to an existing position as long as the additional or reduced time does not exceed one hour.

The District proposes the following new language:

" . . . part-time employees may apply for other vacant part-time positions provided the schedules and duties of the two positions are not incompatible. In the event one person fills two part-time positions and the schedules or duties become incompatible, the employee will be given the choice of which position he/she will retain. In the event an employee who is filling two part-time positions leaves, the District may post the vacancies as two separate positions or as a combined position."

Layoffs--

The District proposes that layoffs be by job classification rather than by department

The District also proposes a change from the current language which requires that layoff notices shall be issued by June 1 for the ensuing year to a 30 days notice proviso

The District also proposes changing the proviso allowing for unlimited recall rights to a proviso which would terminate recall rights after one year

The District's proposal would also require employees on layoff to keep the District apprised of their most current address

The District's proposal deletes current language defining seniority as being based on total continuous employment in the District, and instead defines seniority for purposes of layoff as beginning on the date of an employee's appointment in a classification

The Union proposes modifying the existing layoff language by adding the phrase "providing the remaining employees are qualified to do the work" immediately after the seniority provision of the layoff clause.

Comparability--

The District proposes use of all of the districts in the athletic conference, whether unionized or not and other private and public sector employers in the local labor market.

POSITIONS OF THE PARTIES:

Comparability--

District Position:

The Heart O'North Athletic Conference is an appropriate comparable pool. In fact, both parties include said districts in their list of primary comparables.

The Union however highlights only the organized groups within said districts. In this regard, while all seven districts in the Athletic Conference have an organized support staff unit, only in Cumberland, Maple and Ladysmith-Hawkins are all support staff employees represented by a union.

The District believes that it is appropriate to rely on wage and benefit information for all support staff groups within the Conference, whether represented or not. In fact, to disregard the nonunionized work force results in disregarding 85% of the comparable work force.

In addition, the local labor market--including both private and public sector employers--is another appropriate comparable pool. Non-certified staff employees--unlike certified staff--are drawn from the local labor market. Thus, wage and health insurance data for Rusk County, the City of Ladysmith, contiguous school districts, and private sector employers within the Ladysmith-Hawkins community should be considered. This is especially true in this proceeding since the districts within the Athletic Conference are not geographically proximate to one another. In fact, none of the seven Conference districts are contiguous to Ladysmith-Hawkins, and several are located significant distances from Ladysmith.

Wages--

District Position:

The local labor market should dictate what is a fair wage offer, particularly since the economic situation in the Ladysmith area is not nearly as good as is found in other conference schools. In this regard, the record demonstrates that the District's aid and cost per member far surpass those of the comparables; its equalized value is extremely low; its mill rate is significantly higher than other Conference schools; and its land values are relatively low and in decline.

The record also indicates that the District's wage offer compares favorably with Conference wage rates and increases. In fact, the District's wage proposal exceeds the settlements among bargaining units in the Conference. The fact that the Union is willing to accept a 4% wage increase, which is supported by a majority of the comparables, establishes that the District offer is more than needed to maintain comparability within the Conference

The District's wage offer also compares favorably with wage rates and increases of the local labor market's public sector employers. Among public sector comparables, only in Winter are clerical employees paid as much or more than the Board's offer. Among the counties contiguous to Rusk, only Sawyer County pays more than the Board offer. The District offers the highest wage rate for custodial employees of any local public sector employers. Among the contiguous counties, the custodial wage rates offered by the Board are surpassed only by Sawyer County. Similarly, only in the Flambeau district do aides receive wages exceeding the rates offered by the Board. The District's wage offer for the cooks exceeds all public sector comparables. In fact, in nearly all comparables, the District's wage offer surpasses the wages received by employees in similar classifications. Also relevant in this regard is the fact that at the same time that contiguous counties are receiving wage rates and increases less than those proposed by the Board, all counties require some employee contributions for health insurance

The District's wage offer also compares favorably with wage rates and increases received within the local labor market's private sector employers; in fact, the Board offer greatly exceeds the majority of the wages and increases received by employees in comparable jobs in the private sector in the local labor market

The reason for the Board's relatively generous wage offer is to provide a quid pro quo for its proposed changes to the status quo.

While the Board's wage offer was obviously the result of an unintended miscalculation, it would result in wage increases for employees who needed them most. In this regard, in the prior agreement the maximum cook wage rate was the lowest in the Conference. Under the Board's proposal, the maximum wage rate for cooks for 1990-91 would be only four cents higher than the highest rate paid in the Conference.

The end result is that the Board has sufficient dollars on the table to buy its proposed language changes. The Board's offer would cost the District \$36,288 more than the Union offer, a very significant amount for a 67 member bargaining unit

Union Position:

The Union's wage proposal is consistent with the comparables.

The fact that the District is also proposing an extra increase for the cooks shows that the parties are in agreement that they deserve a wage increase above the norm. In fact, the Union's proposed 5.5% increase for the cooks is significantly below the cook increase proposed by the District.

Relatedly, the District's proposed 25% increase for cooks is a flat out mistake in the magnitude of nearly \$20,000 per year

Health Insurance--

District Position:

The District seeks to parallel the negotiated settlement with the teaching staff by requiring a 5% employee contribution to health insurance premiums

It is common knowledge that insurance premiums and other costs related to medical care coverage have skyrocketed in the recent past. In an effort to reduce the resulting financial burden on the District, the District proposed that both its professional teaching unit and its support staff unit accept a share of the costs associated with their health care coverage. The District's teachers agreed, by way of a consent award for its 1990-92 agreement, to a 5% contribution toward the cost of health insurance. The need for internal consistency with regard to health insurance contributions has thus become a primary need to change the status quo.

There is also an economic need to change the health insurance status quo, since in 1991-92 the District experienced a 36% increase in health insurance costs. Thus, now the District has the second highest premiums within the Conference, and in addition, it has experienced the second highest increase in family premiums for the three year period 1989-1992. This 47.32% increase in three years surely justifies a 5% sharing of health insurance costs

The District's need to control such costs is supported by the following: Rusk County has the highest unemployment rate among counties in which comparable districts are located, the District has the highest school district taxes for 3 of the last 4 years; the highest cost per student since 1987-88; the lowest equalized value per student among the comparables; the highest mill rate among the comparables for 1989-90; the lowest equalized value among the comparables since 1986-87; the District is the only district in the Conference to experience a decline in full value by land classification from 1986 to 1990; and Rusk County was the only county in the State to experience a decline in property values in 1991.

Relatedly, the Board's proposed change reasonably addresses the need. In this regard, arbitrators have recognized that employee contributions to the cost of insurance plans is a valid method of cost containment. (Citations omitted)

In response to the anticipated Union claim that the District's proposal in this regard is an unreasonable burden for support staff personnel, the District is looking into an IRS Section 125 Plan which would allow employees to deduct the 5% contribution before their salary is subject to federal, state and FICA taxes. The District expects to implement such a plan in November, 1991.

The District does not believe that the amount it is asking employees to contribute is an unreasonable burden, particularly when the affected employees are also receiving full dental coverage, life insurance, half the cost of long-term disability insurance, and effective 1/1/91, a contribution of 12.2% of their annual salary to the Wisconsin Retirement System

There is also support for the District's proposal in this regard among the comparables. The emerging trend in the Athletic Conference is a sharing of the health insurance costs by employees. Only two of the five Conference districts which were settled for 1990-91 remained at a negotiated 100% employer contribution. Only three Conference districts are settled for 1991-92, two of which settlements include 100% employer contributions

The area public and private employers overwhelmingly support an employee contribution toward health insurance premiums. Three of six contiguous districts required a contribution from employees in 1990-91, while Flambeau agreed to another cost-saving measure, an expansion of the scope of the deductible from major medical to front-end. Only two of the six districts paid 100% of the premiums. However, in Winter full-time school year employees receive 100% payment for 10 months only, and Phillips full-time school year employees receive 100% of single coverage for only 9 months. In 1990-91, only Flambeau and Lake Holcombe required no employee contribution from both 12 month and school year full time employees.

Only Lake Holcombe and Phillips are settled for 1991-92. Phillips maintains a 90% contribution for family coverage, while Lake Holcombe maintains a 100% contribution.

In fact, the only public sector employer anywhere geographically proximate to Ladysmith-Hawkins School District which does not require an employee contribution for 1991-92 is the Lake Holcombe School District, and in this regard, it is important to note that Lake Holcombe has the lowest wage rates among the public sector comparables.

In addition, only three of 18 local private sector businesses who responded to a District survey provided 100% payment for single and family health insurance in 1990.

In response to the Union's claim that the Ladysmith-Hawkins support staff employees should not be required to pay for health insurance because the teachers received an early retirement provision in exchange for agreeing to pay 5% toward health insurance, there are valid reasons for implementing early retirement for teachers, including teacher burn-out. Furthermore, early retirement may result in cost savings for the District since the District will recoup some costs by hiring replacement teachers at a significant savings to the District. Such is not the case for support staff employees.

Further, there is no support among the Conference comparables for implementing an early retirement provision for support staff employees.

The Board is not proposing the elimination of the proration of health insurance benefits for its support staff employees. The Board's omission in this regard was clearly inadvertent, and the Union would not allow the District to correct this error after final offers had been certified.

While it is true that the District's offer does not include a dollar amount for dental coverage, as it did in the previous agreement, existing contractual language provides that the Board will provide full and prorated payment for dental insurance. It was thus not necessary to refer to dental insurance payments in the District's final offer since existing language already provides for maintaining the status quo with regard to dental insurance.

Union Position

In view of the District's failure to include in its final offer any mention of pro rata insurance payments for part time employees, should the District attempt to prorate insurance payments if no language exists in the contract to authorize such prorated payments, the Union would seek to enforce full payments for such employees

The District's proposed quid pro quo of an additional 1/4% wage increase would generate between \$25 to \$50 per year more income for support staff employees. Even when compounded so that at the end of the second year employees will be earning between \$50 and \$100 more per year, the magnitude of the 5% payment for health insurance is many times larger than this token quid pro quo. In 1990-91, 5% of the annual family premium is over \$160.

The District's proposed quid pro quo amounts to a total of \$1609 for 1990-91 when the cooks are removed from the calculations. The District's health insurance proposal for 1990-91 would, on the other hand, result in employees paying \$6,293 more than they would under the NUE offer.

The quid pro quo the teachers received in this regard was an early retirement plan of considerable substance and the District's agreement to pay 100% of an improved disability insurance plan. Neither of these elements appears in the District's offer in this case.

The District's proposed quid pro quo is simply not reasonable in this case

Although the District asserts that it is considering implementing an IRC 125 plan to reduce the economic impact of its proposal on support staff personnel, it does not explain why it did not include this proposal in its final offer, even though such a plan is in the teacher contract.

If there is to be consistency of benefits for health insurance payments between bargaining units, why shouldn't insurance payments continue under

an early retirement plan, which was an essential part of the change agreed to in the teacher's contract.

Moreover, the District has submitted no evidence to show that the increasing costs of health care and the resulting increases in health insurance premiums will be moderated by having the employees pay a portion of such premiums.

Inclement Weather Days--

District Position:

Of the six Conference districts representing seven bargaining units, only two pay for all inclement weather days. Two districts do not provide any days off with pay when school is closed due to inclement weather. Maple bus drivers and mechanics receive a maximum of two paid days. Cumberland and Hayward (custodians) have no provision in their agreements.

The comparables clearly support the District's offer. In addition, District employees have not received more than two inclement weather days during the past several years.

In addition the District's proposal for time and one half pay for those employees required to work on days when school is closed due to inclement weather is a fair and reasonable internal quid pro quo. In the great majority of years, all employees would be paid for days off due to inclement weather. Those who must work on such days however would be compensated at time and one half. The District's offer is clearly more equitable than paying employees who do not report to work or leave early the same as those who must work.

Change in Insurance Carrier--

District Position:

The Board is proposing a no-risk, cost-containment measure whereby employees are protected from any adverse consequences since the language precludes the possibility of a reduction in benefit coverage.

The same language which is being proposed by the Board is currently found in three of the comparable districts.

The District's offer in this regard is reasonable because it sensibly seeks to establish a policy that facilitates cost saving strategies, while at the same

time protecting affected employees. The proposal guarantees "substantially equivalent" or nearly identical coverage. The District would not be able to reduce benefits to implement a cheaper premium

Union Position:

The District's argument for internal consistency is undermined by its change in carrier proposal which differs from the teacher contract proviso, which provides that "the carrier and coverage of the group policy may be reevaluated as the contract is negotiated and changed by mutual consent "

Assignments/Vacancies/Transfers--

District Position:

The District's language proposal arises from disagreements with the Union over whether the bookkeeper position is within the clerical department and whether the maintenance-engineer position is within the custodial department. The proposal is the result of two grievances, one of which ultimately went to arbitration.

The current language provides "Within each department (secretaries, aides, cooks, custodians, and bus drivers)" employees will be given priority before hiring from the outside.

The District's proposal is in response to the above mentioned arbitrator's decision. It removes any ambiguity in the agreement by removing any reference to "department", providing instead for transfers by "classification". The District would then have the right to hire a qualified applicant for responsible positions without being required to provide a trial period to an underqualified employee from another classification. This proposal would allow the District to fill vacancies, particularly the skilled positions of bookkeeper and maintenance engineer, with qualified employees, and together with the Board's layoff proposal, to keep such qualified employees in times of layoff. The District does not believe that an employee who meets minimum qualifications ought to automatically be the person entitled to promotion/transfer opportunities. The District, by virtue of its wage and benefit package, should have the right to select the best qualified candidate.

The second change proposed by the District would allow the District to add or subtract a maximum of one hour to meet the needs of students. The problem the District faces is primarily in the need to add hours. When

subtracting hours, the District would also have to comply with the layoff clause which specifically addresses partial layoffs (i.e., reductions in hours)

The District's third proposed change is a reasonable provision allowing one employee to hold two part-time positions provided there is no conflict in schedules or duties. If that employee should leave the District, the District would have the expressed right to post the vacancy as two separate positions or continue as the combined position. It simply provides the District with the flexibility to manage while giving a part-time employee an opportunity to hold two part time positions where there is no conflict in schedules or duties.

Union Position:

By specifically referencing the positions of bookkeeper and maintenance-custodian, the Union's proposal affords the District the right to give employees placed in said positions a trial period, with the opportunity to return unqualified employees to their former positions. This should adequately address the District's concerns, without making undue changes in the existing department structure, which includes, for example, a department including both custodians and the maintenance-custodian position. Under the current departmental structure, the maintenance-custodian position was filled by the promotion of an individual from a custodian position, and there have been no problems. The Union simply wishes to preserve the right to such promotional opportunities for members of the support staff.

The District's proposal that it should have the right to add to or subtract time from the employee's workday lacks a clear rationale for the need for such a change, and is totally unsupported by the comparables. In fact, if adopted and applied over a period of sequential work schedule adjustments, the District's proposal in this regard could result in the total layoff of an employee, without an acknowledged linkage to the seniority-based layoff clause.

Layoffs--

District Position:

Layoff by seniority in job classification is a reasonable means of assuring that the District will have employees with the skills it needs while giving employees the protection of seniority based layoffs.

The District's primary concern regarding layoffs pertains to the June 1 notice deadline currently in the parties' Agreement. While such a deadline may work for a teacher unit, there is no rational way a June 1 deadline can be justified for a support staff unit. The District's needs for the ensuing year are often not determined until the beginning of the school year, sometimes later. The District should be able to add or subtract aides based on need. Under current language it has no right to do so.

In addition, there is no support among the Conference comparables for maintaining a June 1 notice timeline for support staff employees. The maximum advance notice required within the Conference is the 30 days proposed by the Board. In fact, five of the seven Conference units have no deadline--they are free to lay off employees whenever the necessity arises.

Similarly, there is no support among the Conference comparables for unlimited recall rights.

Current language puts the burden on the District to try to locate laid off employees. The District's proposed language requiring employees on layoff to keep the District apprised of their most current address is far more reasonable.

Union Position:

Although the District has had no problems to date with seniority layoff interrupting its ability to fill all positions with qualified employees, the Union recognizes that the inclusion of the maintenance-custodial position in the custodian department and the bookkeeper position in the secretary department should be accompanied with contractual assurances that balance the interests of the employees in being able to seek promotions to higher classifications with the need of the District to make sure that internal applicants must be qualified to perform the work. The Union's proposed change in the layoff language applies to all departments, and extends to the District an additional degree of protection and authority when layoffs are made.

This, like the other Union language proposal, has been carefully drawn to modify current language only to the extent necessary to provide relief requested by the District. The Union's proposal does not do unnecessary damage to the established rights of employees to transfer or maintain employment through seniority bumping rights in a layoff situation.

Regarding the District's proposal to restrict recall rights to one year, no negative experience exists relative to layoffs in the past which justify this proposal.

The Employer's revision of the layoff clause eliminates the previous definition of seniority, which currently provides that "seniority shall be based on total continuous employment in the District". This omission creates a potential for disputes in the future.

The District has proposed significant reductions in job security without any quid pro quo.

DISCUSSION

The undersigned will first discuss each of the issues in dispute individually, after which the relative merits of the parties' total final offers will be addressed.

On the wage issue, the only question the undersigned needs to address is whether the .25% wage premium the District has proposed for most employees, and the 21% premium for cooks which the District has proposed constitutes a reasonable quid pro quo for the health insurance and language changes which the District has also proposed. That issue can more appropriately be addressed in the discussion of the relative merits of the parties' total final offers.

The parties' dispute over health insurance primarily is based upon the District's request for a five percent premium contribution by employees. Utilizing the standards set forth by arbitrator Vernon in Elkhart Lake-Glenbeulah School District (Dec. No. 26491-A, 12/24/90) to determine whether a change in the status quo is justified--which standards the undersigned believes can be appropriately applied to many of the disputed issues in this proceeding--the undersigned is persuaded that the record demonstrates that based upon the District's legitimate desire to achieve some form of health insurance cost containment, and its legitimate desire to achieve a uniform policy in this regard, there is a demonstrated need for the type of cost sharing that it has proposed. Furthermore, though the undersigned is not persuaded that cost sharing of premiums is necessarily the best way to go to achieve meaningful savings in this area, it cannot be said that such an approach does not reasonably address the District's needs in this regard. Thirdly, it would appear that there is a relatively clear trend among the District's comparables supporting the District's cost sharing efforts on this issue. Lastly, clearly the most controversial issue with respect to the

District's cost sharing proposal is whether a reasonable quid pro quo has been offered by the District. Again, in the undersigned's opinion the quid pro quo issue can most fairly be addressed when the total packages of the parties are given consideration. Therefore, setting aside that issue for the time being, the undersigned believes that the District's cost sharing health insurance proposal is more reasonable than the Union's status quo position on this issue under current circumstances.

Other issues related to health insurance also need to be addressed:

In view of the fact that the District's final offer mistakenly failed to make reference to pro-rata benefits for part time employees, in spite of the fact that the District has made it explicitly clear in this proceeding that it does not intend to change said benefit, the undersigned must conclude that the Association's final offer on this issue is clearer, and therefore is more reasonable than the District's.

On the issue of dental insurance coverage, again, although it is clear to the undersigned that the District's final offer contemplates continuation of such coverage, the District's proposal is less clear than the Association's regarding how part time employees will be covered by said benefit, and therefore, the undersigned deems the Association's proposal in this regard to be clearer and thus more reasonable than the District's.

On the issue of the District's right to change insurance carriers, in view of the fact that the District does not have said right under the teacher's contract, and in view of the fact that though such a change would clearly be desirable from the District's perspective, no need for such a change has been demonstrated. The undersigned therefore deems the District's proposal in this regard not to be substantiated either by internal comparability nor by demonstrated necessity, and therefore, the Association's position on this issue is deemed to be more reasonable than the District's.

Although the District's inclement weather days proposal is not supported by demonstrated need, said proposal does represent a reasonable approach to bring the District into line with the practice in comparable districts. Furthermore, the District in this regard has proposed what appears to be a fair and reasonable quid pro quo in the form of premium pay for work performed on such days. Based upon these considerations, the undersigned deems the District's proposal on this issue to be both reasonable and preferable to the Association's status quo position on this issue.

The District's proposal to determine employee transfer, promotion and layoff rights by classification rather than by department does, in the undersigned's opinion, reflect an attempt by the District to address a legitimate concern namely, to assure that it has the right to select qualified persons to fill vacant positions. The problem with the District's approach on the transfer and promotion language is that it fails to give recognition to the fact that it is neither uncommon nor unreasonable for employers to give priority consideration to current employees who are qualified to fill vacancies which would result in promotional opportunities. This problem is particularly evident in this matter since currently employees have such rights, and the District has offered nothing reflecting any willingness to continue giving current employees any priority consideration. While it is understandable that the District may wish to select the most qualified individual to fill a vacancy, it cannot reasonably expect to take away rights employees currently have in this regard without offering a meaningful and relevant quid pro quo in exchange.

On the other hand, the Association's position on this issue fails to give adequate recognition to the District's legitimate need to fill positions with qualified individuals, instead requiring that employees be given a 30 day trial period in positions for which they may not be qualified. In the undersigned's opinion, said position, though contained in the parties' current agreement, is simply not reasonable.

Based upon the foregoing, the undersigned believes that at least with respect to the filling of vacant positions, neither party's position in this proceeding is particularly reasonable. Having so concluded, the undersigned will not give significant weight to this issue in deciding this matter.

With respect to the issue of whether layoffs should be by classification or department, again neither party has taken the conventional and reasonable approach which is often utilized to accommodate competing interests in such situations, namely, layoffs by job classification, with at least some bumping rights into classifications which individuals are qualified to fill. Instead, the District's approach would unfairly prohibit qualified individuals from exercising any bumping rights. Furthermore, the District's proposal would result in significantly diminished seniority rights of employees during periods of layoffs without any articulated or persuasive reason. On the other hand, the Association's position would almost certainly result in conflict and confusion if and when layoffs became necessary. Based upon the foregoing analysis, the undersigned again believes that both parties' proposals are not reasonable, and therefore, the undersigned will again not give significant weight to this issue in deciding this matter.

With respect to the issue as to whether the District may add or subtract time to the workday of bargaining unit personnel in view of the fact that the District's proposal creates potential problems when construed in the context of the parties' procedure for partial layoffs, i.e., reductions in hours, and in view of the fact that the District has not persuasively demonstrated that there is a need for it to have the discretion it requests in this regard, the undersigned believes that the Association's position on this issue is more reasonable than the District's.

Since no objections have been raised to the District's proposal regarding the rights of part time employees to fill part time positions, the undersigned finds no reason to conclude that the District's position on this issue is not meritorious and reasonable.

The District's proposed 30 day layoff notice addresses a legitimate District problem, namely, its inability to adjust the size of the support staff workforce based upon need, and it does so in a manner consistent with the practice in comparable districts. The undersigned therefore deems the District's proposal to be more reasonable than the Association's on this issue subject again to consideration of the question whether the District has proffered a reasonable quid pro quo for this significant loss of job security protection that it is proposing.

While comparability evidence might support reduction of recall rights to one year, the District has not demonstrated any need for this proposed change. Absent evidence supporting the need for such a change, and absent evidence of a relevant quid pro quo for this requested change, the undersigned believes that the Association's status quo position on this issue is more reasonable than the District's proposed change.

The District's proposal which would require employees on layoff to keep the District apprised of their most current address is both reasonable and meritorious

As indicated above, the undersigned is persuaded that the District's proposals for employee contributions toward health insurance premiums and for 30 days notice of layoffs are meritorious on their face, subject however to consideration of the question whether the District has offered a reasonable quid pro quo for such changes. In this regard, while the undersigned believes that the cooks have been provided a reasonable quid pro quo for such changes, the remainder of the bargaining unit has not. This conclusion is based upon the fact that while the District has offered teachers the quid

pro quo of an early retirement benefit, including continuation of health insurance benefits under certain conditions, not only has it not offered employees in this unit an early retirement option, which perhaps is arguably justifiable, it has offered no explanation why it did not choose to provide the continuation of benefits opportunity it has provided teachers, nor has it offered any alternative related benefit arrangement. Relatedly, the District, though expressing an intent to implement an IRC 125 plan to reduce the impact of its proposed health insurance change on bargaining unit personnel, has failed to commit itself to such a change in its final offer in spite of the fact that such a change is clearly a mandatory subject of bargaining. No persuasive explanation has been offered why the District's intent in this regard has not been incorporated into the District's final offer. In addition, the District, though proposing significantly diminished job security protection to members of this unit, has not offered any meaningful inducements to employees to address their legitimate concerns about the loss of job security which the District proposes. Instead, the District, in its final offer, has further diminished job security protection by proposing unjustified changes regarding when employees will begin to accumulate seniority for purposes of layoff. Based upon the foregoing considerations, the undersigned is of the opinion that the District has not offered a reasonable quid pro quo for the otherwise meritorious changes it is seeking, and therefore, the undersigned is of the opinion that the Association's positions on these issues are more reasonable than the District's.

The foregoing conclusion, together with the fact that the undersigned has concluded, for reasons set forth above, that the District's positions on health insurance for part time employees, on dental insurance, on the District's right to change insurance carriers, on the District's right to add or subtract time to the workday, and on employee recall rights are less reasonable than the Association's positions on said issues compels the undersigned to conclude that the Association's total final offer is more reasonable than the District's, even though the Association's positions on several issues, particularly with respect to layoff, transfer and promotion rights, are not particularly meritorious nor reasonable.

Based upon all of the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The Association's final offer shall be incorporated into the parties 1990-92 collective bargaining agreement

Dated this 15th day of November, 1991 at Madison, WI.

Byron Yaffe
Byron Yaffe
Arbitrator