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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

IN ARBITRATION BEFORE  
ROBERT J. MUELLER

In the Matter of the Interest  
Arbitration Between

HOWARD-SUAMICO SCHOOL DISTRICT

and

HOWARD-SUAMICO BOARD OF EDUCATION  
EMPLOYEES UNION, LOCAL 3055,  
AFSCME, AFL-CIO

DECISION & AWARD  
Case 42 No. 45747  
INT/ARB-6037  
Decision No. 26977-A

APPEARANCES:

Godfrey & Kahn, S.C., Attorneys at Law, by MR. ROBERT W. BURNS, for the District.

MR. JAMES W. MILLER, Staff Representative, for the Union.

INTRODUCTION:

The above-entitled matter came on for hearing before the undersigned who was selected as the sole arbitrator from a panel furnished by the Wisconsin Employment Relations Commission. The parties were present at the hearing and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. Post-hearing briefs and reply briefs were filed with the arbitrator.

STATEMENT OF ISSUES:

1. Wages.

Employer Offer:

Effective 7/1/91, 30 cents across the board.  
Effective 7/1/92, 30 cents across the board.

Union Offer:

Effective 7/1/91, 30 cents across the board.  
Effective 7/1/92, 32 cents across the board.

2. Subcontracting Language.

Employer Offer:

Add Subparagraph "N" to Article II as follows: To contract out for goods and services so long as no existing employees are laid off, terminated or reduced in hours as a result of such contracting out.

Union Offer:

Add Subparagraph "N" to Article II as follows: To contract out for good and services not within the scope of employee job descriptions.

3. Paid Holidays.

Employer Offer: Status quo.

Union Offer: Increase paid holidays to cover those holidays that fall within the housekeeping work year.

4. Personal Days.

Employer Offer: Status quo.

Union Offer: One (1) paid PTO day.

5. Housekeeping Hours.

Employer offer: Status quo.

Union Offer: Housekeeping employees to fill hours for those employees who are off from work for any reason if available.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4) (cm)7, Wis. Stats., as follows:

- "(7) 'Factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
- a. The lawful authority of the district employer.
  - b. Stipulation of the parties.

- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the district employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the district employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the district employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- g. The average consumer price for goods and services, commonly known as cost-of-living.
- h. The overall compensation presently received by the district employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment."

1. WAGES:

While the parties refer to a different set of external comparables in the presentation of their case, and argued in their briefs as to which districts should be viewed as the comparable group, resolution of that dispute by the arbitrator is not essential to resolution of the issues hereunder.

The district proposes a list of comparables consisting of geographically proximate and similarly sized districts consisting of eight in number. The union selected four districts located in Brown County, which included Green Bay. The district had excluded Green Bay on the basis of its size.

Because the union utilized the employer's exhibits which consists of data from its set of comparables, but excluding Green Bay, I find it unnecessary to resolve the arguments as to the amount of weight that should be assigned to any one or group of comparables. Suffice it to say that I would find the Green Bay School District to have some effect on the wages, hours and conditions of employment at the contiguous districts by virtue of it being the center of the area labor market and the central shopping area for such districts.

It appears from ER.EX 20 that all of the listed districts are relatively comparable concerning the rates of pay with the exception of Pulaski. The rates in such district are substantially lower than all others. (no explanation is in evidence) Even if one includes such district, the data favors the union' 2¢ per hour higher second year offer. (ER EX 20 is attached hereto).

ER EX 24 contained data showing the settlements in cents per hour or percent at the comparable districts. (ER EX 24 is attached hereto). While only one district is shown as being settled for 1992-93, and that settlement being slightly in excess of 25¢, such exhibit indicates that the levels of settlement at the comparable districts for 1991-92 ran higher than the 30¢ per hour offer of both parties

HOWARD-SUAMICO SCHOOL DISTRICT  
HOUSEKEEPERS

COMPARABLE SETTLEMENTS

	<u>1990-91</u>	<u>1991-92</u>	<u>1992-93</u>
ASHWAUBENON	5.6%	5.7%	N/S
DENMARK (N-U)	\$.30 -.35	\$.30 -.35	.25
DE PERE	5%	5.1%*	4.8%**
LUXEMBURG-CASCO (N-U)	\$ 30	\$.40	N/S
OCONTO FALLS	\$ 40	N/S	N/S
PULASKI	\$ 42	\$.26	N/S
SEYMOUR (N-U)	\$.25	5%	N/S
WEST DE PERE (N-U)	5%	5%	N/S
HOWARD-SUAMICO	\$ 25 Plus 20 to top step only on 4/1/91	N/S	N/S
	BD	\$.30	\$ 30
	UN	30	32

\* All employees except those at maximum rates received 5.4% increases in 1990-91. Those at maximum received 5.4% of minimum rate for employee's job class.

\*\* All employees except those at maximum rates received 5% increases in 1991-92. Those at maximum received 5% of minimum rate for employee's job class.

COMPSET

HOWARD-SUAMICO SCHOOL DISTRICT

HOUSEKEEPERS

<u>DISTRICT</u>	<u>1990-91</u>		<u>1991-92</u>		<u>1992-93</u>		<u>Union/Non-Union</u>								
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>									
ASHWAUBENON Cleaning	6.66	7.61	7.10	8.08	N/S		Union								
DENMARK Light Duty Cleaner I	6.05	6.05	6.40	6.40	N/S		Non-Union								
	5.25	5.25	5.55	5.55											
DE PERE Custodian III	5.08	7.54	5.08	7.81	5.08	8.06	Union								
LUXEMBURG-CASCO Cleaning	6.83	6.83	7.23	7.23	N/S		Non-Union								
OCONTO FALLS Cleaning	6.00	7.80	N/S		N/S		Union - Initial Contract								
PULASKI Custodian I	4.54	4.74	4.80	5.00	N/S		Union								
SEYMOUR Housekeeper	6.22	7.27	6.53	7.63	N/S		Non-Union								
WEST DE PERE Housekeeper	6.50	7.06	6.50	7.41	N/S		Non-Union								
<table border="0" style="width: 100%;"> <tr> <td style="width: 20%;">AVERAGE.</td> <td>5.90</td> <td>6.68</td> <td>6.15</td> <td>6.89</td> <td>5.08</td> <td>8.06</td> <td></td> </tr> </table>								AVERAGE.	5.90	6.68	6.15	6.89	5.08	8.06	
AVERAGE.	5.90	6.68	6.15	6.89	5.08	8.06									
HOWARD-SUAMICO Housekeeper	5.45	6.50	N/S		N/S		Union								
		BD	5.75	6.80	6.05	7.10									
		UN.:	5.75	6.80	6.07	7.12									

HOWARD-SUAMICO SCHOOL DISTRICT  
HOUSEKEEPERS

INTERNAL SETTLEMENTS

	<u>1990-91</u>	<u>1991-92</u>	<u>1992-93</u>
CUSTODIANS	\$ .35	\$ .35	N/S
OFFICE SUPPORT/AIDES	.20	.25	.25
FOOD SERVICE (N-U)	.20	20 -.25	N/S
HOUSEKEEPERS	.25 Plus .20 to top step only on 4/1/91	N/S	N/S
		BD. .30	.30
		UN 30	32

INTSET

herein. A slightly higher increase is therefore justified for the second year in view of the first year slightly lesser settlement amount.

It appears that the district offer is supported by the cost of living increase.

ER. EX. 23 (attached hereto) sets forth internal settlements. Based on such sparse information, it would seem that the level of internal settlements favors the district's final offer.

## 2. SUBCONTRACTING LANGUAGE:

The union argues that the same language as it has proposed in this case, is in the Custodial and Maintenance contract that exists between this same union and the district. Two locals represented by the same union should have the same language to administer.

The district argues that their proposal affords current employees protection against subcontracting of work. Under the district's proposed language the district's flexibility is maintained to contract out at some future time if the circumstances change. They contend the district has no intentions to subcontract out the housekeeping work in the near future. The district's proposal was a compromise attempt on their part to afford protection to the employees and to retain some flexibility at the same time.

They argue that the positions of custodian and maintenance require a much higher technical and skill level than do the housekeepers. There are no private agencies which provide the type of on-going on-site services required of the maintenance and custodial employees. There are a number of private services available, however, that can provide general housekeeping and cleaning services.

The district also points out that the housekeeping jobs are not full year jobs. They are filled only during the school year. They state at page 37 of their brief,



"The limited and part-time nature of the positions may result at some point in the future of a scarcity of individuals willing to take such jobs. Or the District may wish to react to attrition by subcontracting the cleaning services at only one building to transfer staff there to fill slots at other buildings. Any such scenarios are precluded under the Union's restrictive language. Under the District's proposal, the options for management are preserved while protecting unit employees from displacement."

The district contends the external comparisons also favor the selection of the district's offer on the subcontracting issue.

The very fact that the work of housekeeping requires the least technical knowledge and skills of the various classifications of employees employed by the district, serves to make it the most expendable and easy to replace by means of subcontracting. Such fact alone makes it more important for the union to have a subcontracting clause in their contract so as to preserve the existence of the bargaining unit. Because there is no existing threat of replacement of custodians and maintenance employees due to the non-existence of any private services available to provide similar service, there is less need for a no subcontracting clause. The threat of replacement by subcontracting is much greater for this bargaining unit and the need for contractual protection is therefore much greater.

While the proposal of the district provides protection for those employees currently employed, it does not protect against erosion of the bargaining unit by engaging in subcontracting of those positions left open by attrition.

Neither offer herein is unreasonable. Each one is reasonably designed to afford protection against subcontracting, one is simply a bit more restrictive. Internal comparison would favor the union proposal while external comparisons would seem to favor the district's offer. Standing alone, this issue is not one that will

control the selection of one final offer over the other. Rather, the selection will be based on an evaluation of the total final offer of each.

### 3. PAID HOLIDAYS:

The union argues that its proposal is simply designed to gain parity with other employees of the district. they contend other employees of the district receive more holidays. The union does not want more holidays than others receive, they only want to be treated equally. They contend fundamental fairness calls for part-time employees receiving all the holidays of full-time employees pro-rated. They further argue that it is not a new benefit, but a catch-up.

The district argues that the union's proposal is critically flawed in that it fails to specify which holidays it proposes to add to those currently received by the housekeepers. Currently they receive three holidays -- Thanksgiving, Christmas and New Year's Day. The holidays paid to other school year employees of the district varies considerably. Food service workers receive three paid holidays but they are different from the three received by the housekeepers. They receive Memorial Day, Labor Day and Thanksgiving Day as their paid holidays. Teachers' Aides receive four paid holidays -- Christmas Day, Memorial Day, Labor Day and Thanksgiving Day. Secretaries receive more holidays than do teacher aides, but they work through school recesses and breaks. The others do not work when school is not in session. From a review of holidays received by the various other groups, there are a possible six additional holidays that could be included in the union's proposed language. The question would remain as to which days or half days would be celebrated and paid. Additionally, it would elevate the housekeepers so as to receive one full holiday more than the full time full year secretaries and within one half day of the number received by the custodians and maintenance employees. Such result is not reasonable

I find the district's position to contain the greater

merit as to this issue.

#### 4. PERSONAL DAYS:

The union contends the internal comparables support their offer of one PTO day. The custodial employees receive two PTO days; food service employees receive two; and clerical, support staff and aides receive three. They contend their offer simply seeks to start a catch-up to parity with the other employees.

The district argues that about one-half of the external comparables do not provide PTO days for their housekeeping employees. The union's offer is also flawed similarly to their offer on holidays. Their proposal makes no mention of whether it would accumulate if not used or what restrictions, if any, would be associated with its use. Each of the other internal groups of employees are subject to specific restrictions associated with the use of PTO days. For example, restrictive provisions reduce the benefit by 50% for secretaries, aides and food service workers if a substitute must be hired. There is no similar restriction proposed by the union, rather it has proposed language requiring the district to fill hours for absent employees with other housekeeping employees. That would result in not only paying the employee taking the personal day, but paying another unit employee additional hours to fill the void.

Additionally, all other employees are required to obtain prior approval for use of a PTO day. The union proposal herein does not contain any similar notice requirement. The district contends that for bargaining unit employees who work only three and one-quarter hours daily, beginning in the late afternoon or early evening, a paid personal day off is unnecessary.

It seems to me that the need for a PTO day for housekeeping employees who work but a short part-time schedule, is much less essential than it is for full-time employees. The request for a PTO day without restrictions

similar to those in effect for other employees, in my judgment, makes the union offer less supportable than that of maintaining the status quo.

5. HOUSEKEEPING HOURS:

The union contends such provision is common sense. Trained in house employees do a better job than substitutes. It makes sense to use experienced help to do the work and it does not tie the district's hands. It only requires that incumbent employees be first offered available work and because they are part time, the extra work would not be paid for at overtime rates.

The district contends it has been the district's practice to use existing personnel to fill in for absent employees and only on occasion to use substitutes. They contend the union proposal would result in increased long term costs to the district and additional work hours for the employees. That in turn would result in the earning of additional sick leave days. They point out that no other unit has any similar provision. Further, there has been no showing of a need for such provision or that a problem exists that such provision would correct. They contend such provision would result in requiring employees to travel between job assignments as work is performed at different locations.

I am not persuaded by the district's arguments that such proposal would be a burden or result in additional measurable costs. The proposed language of the union's offer conditions the use of incumbent employees "if available." If other employees are working elsewhere during the hours the opening occurs, it follows that they would not be available and clearly no attempt would be required to contact them and offer the work. Clearly an employee cannot be in two places at one time.

It also appears that where travel to various locations is necessary, some employees may advise the district that they would not wish to be called and offered available work

in one or more locations. In any event, most, if not all extra work provided to incumbent employees would be at straight time rates. I can see no additional costs to the district under such scenario, except for possible savings from hiring a sub at a lower rate.

It seems to me that this provision is a reasonable one and one that would serve to afford some additional protection from erosion of the bargaining unit.

CONCLUSIONS:

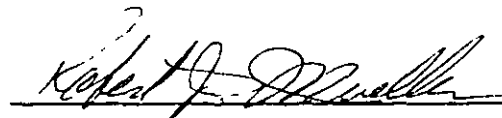
When one considers and evaluates the total proposal of the parties, It appears that more of the district's proposals are supported by the statutory criteria than are those of the union. No one issue is subject to dominant consideration or controlling weight. The ultimate consideration is controllable by consideration of the total final offers. The union's final offer is not unreasonable. I find only that the total final offer of the district is entitled to slightly greater support under the statutory factors. The indefiniteness of the union's proposals on issues numbered 3 and 4 raise cause for concern.

I therefore conclude that the district's total final offer is entitled to greater support for adoption than is that of the union. It therefore follows that the decision and award be as follows:

AWARD:

The final offer of the district is selected and is to be incorporated into the parties agreement accordingly.

Dated April 20, 1992.

  
Robert J. Mueller