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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

WEST CENTRAL EDUCATION ASSOCIATION

To Initiate Arbitration Between said Petitioner

-and-

RIVER FALLS SCHOOL DISTRICT

Decision No. 26995-A

Appearances - Jeffery L. Roy, Executive Director, For the Union
Richard J. Ricci, Attorney at Law, For the Employer

West Central Education Association, hereinafter referred to as the Association, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that an impasse existed between it and the River Falls School District, hereinafter referred to as the Employer, in their collective bargaining. It requested the Commission to initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission's staff conducted an investigation in the matter and sumitted the results to the Commission.

At all times material herein, the Union has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all regular full time and regular part time paraprofessionals including teacher aides, classroom aides, media aides, playground aides, reading aides, physical education aides, office aides and computer aides but excluding special education aides and health aides as well as professional, managerial, supervisory and confidential employees. The Association and the Employer have not been parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees in the bargaining unit.

On June 20, 1990, the parties exchanged their initial proposals on matters to be included in an initial collective bargaining agreement. Thereafter the parties met on four occassions in efforts to reach an accord. On March 29, 1991, the Association filed its petition requesting that the Commission initiate arbitration. The investigation conducted by a member of the Commission's staff reflected that the parties were deadlocked in their negotiations. By August 22, 1991, the parties had submitted their final offers to the Commission and the investigator notified the parties that the investigation was closed.

The Commission concluded that an impasse within the meaning of Section 111.70(4)(cm)6 of the Municipal Employment Relations Act exists between the parties with respect to negotiations leading toward an initial collective bargaining agreement covering wages, hours and conditions of employment. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties.

Upon being advised by the parties that they had selected Zel S. Rice II as the arbitrator of the dispute, the Commission issued an order appointing him as the arbitrator and directed him to issue a final and binding award to resolve the impasse by selecting either the total final offer of the Association or the total final offer of the Employer.

The Association's final offer, attached hereto and marked Exhibit 1, proposed a provision with respect to seniority. It provided that in the event it became necessary to lay off employees, lay offs should be accomplished through normal attrition to the extent feasible and the least senior employee on a unit wide basis would be the first employee laid off with the provision that the remaining employees must be able to do the work. The seniority provision provided that recall would be achieved by rehiring of employees that have been laid off in the reverse order to that of lay off and that laid off employees would retain seniority rights for a period of one calender year from the date of lay off. The Employer's final offer, attached hereto and marked Exhibit 2, contained no provision with respect to seniority. The Association proposed that the article in the collective bargaining unit on leaves contain a provision that a temporary unpaid leave of absence could be arranged through the supervisor provided there was a two week advance notification with the approval of the supervisor. It also included a provision that paraprofessionals retiring after ten continous years of service to the Employer would be granted an amount as a separation grant computed by dividing the number of hours of accumulated sick leave by eight hours to convert those hours to days and then multiplying the number of days by $25.00. The Employer's final offer contained no proposal with respect to leaves. The Association's final offer provided paid holidays for all paraprofessional employees on Labor Day and Christmas Day for the 1990-91 school year and in the 1991-92 school year Memorial Day would also be a paid holiday. Hours paid for holidays would be the same as normal hours worked and if the holiday fell on a weekend, the corresponding Friday or Monday would be considered the paid holiday. The Employer's final offer proposed that all paraprofessional employees would receive paid holidays for Labor Day, Christmas Day and Memorial Day in the 1991-92 school year and if any holiday fell on the weekend the corresponding Friday or Monday would be considered the paid holiday. The Association proposed a fairly complicated compensation schedule. It provided for two separate pay schedules for the 1990-91 school year and two separate increases for the 1991-92 school year. The 1990-91 pay schedule for the first half of the year would have ten steps ranging from $4.90 per year at the first step to $7.65 per year at the tenth step. In the second half of the 1990-91 school year, the pay schedule would provide ten steps ranging from $5.10 per

hour at the first step to $7.85 per hour at the tenth step. The Association proposed two schedules for the 1991-92 school year. For the first half of the year the schedule provided for seven steps with salaries ranging from $5.90 per hour at the first step to $8.05 per hour at the seventh step. For the second half of the 1991-92 school year, the Association's proposal provided a seven step schedule ranging from $6.00 hour at the first step to $8.25 per hour at the seventh step. The Association's proposal on compensation also contained a provision for placement of employees on the salary schedule. Employees on step seven and in their eighth year of employment on the 1989-90 salary schedule would be placed on step eight of the new 1990-91 schedule. Employees on step eight and in their ninth year of employment on the 1989-90 schedule would be placed on step nine of the new 1990-91 schedule. Employees on step nine and in their tenth year of employment on the 1989-90 schedule would be placed on step ten of the new 1990-91 schedule. Employees on step ten and in their eleventh year and beyond on the 1989-90 schedule would be placed on step ten of the new 1990-91 schedule. In the 1991-92 school year, employees who are on steps one through three of the 1990-91 schedule would be placed on step one of the 1991-92 schedule. Employees on step four would go to step two on the 1991-92 schedule. Employees on step five would go to step three on the 1991-92 schedule. Employees on step six would go to step four on the 1991-92 schedule. Employees at step seven would go to step five on the 1991-92 schedule. Employess at step eight would go to step six on the 1991-92 schedule and employees at step nine would go to step seven. Employees at step ten on the 1990-91 schedule would go to step seven on the 1991-92 schedule. The Employer's final offer contained a proposal on compensation that provided for ten steps during the 1991-92 school year ranging from a low of $4.85 per hour to a high of $7.16 per hour. Employees would be placed at the appropriate place on the schedule corresponding to the number of years that they were employed by the Employer. Any Employee with more than ten years of employment would remain at step ten. For the 1991-92 school year, the Employer proposed a seven step salary schedule ranging from $5.74 per hour at the first step to $8.00 per hour at the seventh step. The proposal contained no language with respect to how employees would be placed on the 1991-92 schedule. However it would appear from the manner in which the compensation proposal was presented and compared to its 1990-91 schedule that employees with one to four years of employment would be on the first step of the 1991-92 schedule and employees with five years, six years, seven year, eight years, nine years, and ten or more years of employment with the Employer would be placed at the second, third, fourth, fifth, sixth and seventh steps of the 1991-92 schedule. The Association proposed that the agreement would be in full force and effect from July 1, 1990 through June 30, 1992 and the Employer proposed that the agreement would be in full force and effect from the date of ratification by the membership of the Association through August 14, 1992.

COMPARABLE GROUPS

The Association urges the arbitrator to consider the Big Rivers Conference schools, hereinafter referred to as Comparable Group A, as the most comparable group. The Conference consists of Chippewa Falls, Eau Claire, Hudson,

Menomonie, Rice Lake, and the Employer. The Employer first entered the conference in the 1989-90 school year. It proposes that three schools from the Middle Border conference, hereinafter referred to as Comparable Group B, be considered as a secondary comparable. The three school districts that would make up Comparable Group B are New Richmond, Ellsworth and Baldwin/Woodville. River Falls is in the same geographical of those three school districts and competes in some of their athletic programs. The Association points out that throughout the bargaining process, Comparable Group A was used as the comparable and the Employer cited it as a comparable group in an arbitration involving its secretaries. The Association asserts that the Employer has been in the Big Rivers Conference for three years and there is a possibility of a realignment to include New Richmond which is one of the school districts in Comparable B.

The Employer urges the arbitrator to consider the Middle Border Conference, hereinafter referred to a Comparable Group C, as appropriate for comparison with the Employer. The school districts in the Middle Border Conference that the Employer considers making up Comparable Group C are Amery, Baldwin/Woodville, Durand, Ellsworth and Mondovi. Bloomer is a member of the Middle Border Conference, but the Employer has not placed it in its Comparable Group C because it was not a member of that conference when the Employer was. The Employer points out that in two recent arbitration awards between the Employer and the Union, an arbitrator used both Comparable Group A and Comparable Group C as appropriate comparable groups. The Employer proposes another comparable group for consideration consisting of three nearby school districts that belong to the Dunn-St. Croix Conference and border on the Employer. These three school districts, hereinafter referred to as Comparable Group D, are Prescott, St. Croix Central and Spring Valley. It contends that its comparables provide a cross section of schools within the vicinity of the Employer, providing a balanced socio/economic profile of the area and they include all the school districts that are contiguous to the Employer. It points out that the Employer has the smallest enrollment in Comparable Group A. It urges consideration of Comparable Group D because it was considered in a 1986 arbitration involving the Employer's teachers.

The arbitrator finds some merit in each of the comparable groups. Comparable Group A consists of six schools and four of them have approximately the same enrollment as the Employer. Only Eau Claire and Chippewa Falls are substantially larger.

The cost per pupil in Comparable Group A in the 1990-91 school year ranged from a low of $4,050.95 in Menomonie to the Employer's high of $4,617.43. The school aid per pupil in Comparable Group A ranged from a low of $1,362.42 at Hudson to a high of $2,269.53 at Chippewa Falls. The Employer had the next to the lowest school aid per pupil in Comparable Group A with $2,085.29. The 1990-91 mill rates for levying taxes in Comparable Group A ranged from a low of $16.52 per thousand in Rice Lake to the Employer's high of $19.06 per thousand. The taxes on a $50,000.00 home in Comparable Group A ranged from a low of $826.00 in Rice Lake to a high of $953.00 for the Employer. The Employer seems to fit with

Comparable Group A in every respect except for the number of pupils and that is distorted because of Eau Claire and Chippewa Falls.

Comparable Group B has enrollments ranging from a low of 1,202 at Baldwin/Woodville to a high of 2,210 at New Richmond. With an enrollment of 2,630 the Employer is a much larger school than any of them but it is in the same geographic area. The school aids per pupil in Comparable Group B range from a low of $2,525.28 at Ellsworth to a high of $2,684.00 at Baldwin/Woodville. The Employer received school aid of $2,085.29 per pupil in 1991, which was substantially less than the other school districts in Comparable Group B. The 1990-91 mill rates in Comparable Group B range from a low of $17.02 in Ellsworth to a high of $18.80 in Baldwin/Woodville. The Employer's mill rate was $19.06. The school taxes levied on a $50,000.00 home in Comparable Group B in the 1990-91 school year ranged from a low of $851.00 at Ellsworth to a high of $861.50 at New Richmond. The Employer's taxes on a $50,000.00 home that year were $953.00. In some respects the Employer is comparable to the school districts in Comparable Group B, but basically it is a much larger school. Except for the fact that the schools in Comparable Group B are located in the immediate geographic area, it would not be considered an appropriate comparable group.

Comparable Group C had 1990-91 enrollments ranging from a low of 1,023 at Mondovi to a high of 2,210 at New Richmond. With an enrollment of 2,630 the Employer is much larger than any other school district in Comparable Group C. The aid per pupil in the 1990-91 school year in Comparable Group C ranged from a low of $2,392.89 at Amery to a high of $2,684.25 at Baldwin/Woodville. The Employer's aid per pupil was $2,085.29. The 1990-91 mill rate in Comparable Group C ranged from a low of $16.46 per thousand at Mondovi to a high of $18.80 per thousand at Baldwin/Woodville. The Employer's mill rate in the 1990-91 school year was $19.06. The taxes on a $50,000.00 home in Comparable Group C during the 1990-91 school year ranged from a low of $823.00 at Mondovi to a high of $940.00 at Baldwin/Woodville. The Employer levied taxes of $953.00 on a $50,000.00 home. All of those factors would indicate that the Employer is a substantially different school than almost every school district in Comparable C except New Richmond. Comparable Group A is a much more appropriate comparable group to be compared to the Employer than Comparable Group C.

Both parties seem to agree that Comparable Group A is an appropriate comparable group for consideration by the arbitrator and it is the one on which he will rely. The school districts in Comparable Group A were used by the parties as comparables during the negotiation process and there is no reason why the arbitrator should not utilize the same comparisons in making his decisions that the parties used in reaching their decisions at the bargaining table. The athletic conference in which a school district competes has generally been considered the most appropriate comparable group for wage determinations. In terms of the factors normally considered in determining the appropriate comparable group, there is no reason for not relying upon Comparable Group A. Comparable Groups B, C and D have some features about them that make them

somewhat comparable, but on an overall basis, Comparable Group A is the most appropriate. The Employer has been a member of the Big Rivers Conference since 1989 and was placed there because the school district was more like the school districts in that conference than it was with the Middle Boarder Conference. After three years, the Employer has been completely assimilated into the Big Rivers Conference and there is no reason why any other comparable group should be considered in making the determination in this proceeding.

SENIORITY

Both parties are in agreement with the language proposed for the date that seniority starts, how it is to be used in conjunction with an open position and loss of seniority. The dispute is the language in regard to lay off and recall. The Employer's final offer makes no proposals with respect to the application of seniority to lay off and recall. Even though the Employer states that it intends to follow past practice with respect to lay off and recall, its final offer would not bind it in any way. The Employer's past practice has been rather haphazard and it has made all decisions with respect to lay off and recall on a unilateral basis with no restraint placed upon it other than that which it chose to exercise. The Union proposes that the least senior employee on a unit wide basis shall be the first employee laid off with the caveat that the remaining employees must be able to do the work. That language gives the Employer the flexibility that it needs to retain employees who can perform the duties that fall within the scope of the bargaining unit. The Employer's special education assistants have lay off and recall rights and the language in their agreement is the same as that proposed by the Association. The Employer's secretarial unit has lay off and recall language similar to that proposed by the Association. The Employer has agreed to specific language for those two bargaining units. In Comparable Group A, Chippewa Falls, Eau Claire and Rice Lake all have language providing for a contractual method of reducing personnel and recalling them. The Association's proposal on lay off and recall is supported by the internal comparables and by the language in the collective bargaining agreements of three of the four other school districts in Comparable Group A.

The whole concept of a labor agreement contemplates that conditions of employment should be included in the collective bargaining agreement to assure that those procedures will be followed. The Employer's proposal does not offer any language that assures what procedure it will follow with respect to lay off and recall. It asserts that it intends to follow past practice, but its proposal contains no language that would require it to do that. One of the basic thrusts of collective bargaining representatives is to obtain security and tenure for those employees with long service. The Association's proposal provides for an exception from seniority if the most senior employees are not able to do the work, thus assuring the Employer of qualified employees. The Employer's proposal provides no protection for senior employees with respect to lay off or recall and would permit the Employer to do as it saw fit in those situations. In view of the pattern in the internal comparables as well as the pattern in

Comparable Group A, the arbitrator finds the language of the Association with respect to seniority to be more acceptable than the Employer's proposal that includes no reference to the application of seniority to lay offs and recall.

The Employer argues that because of the variety of tasks performed by members of the bargaining unit, it cannot make lay offs based on years of service only. It asserts that it must look at the type of skills needed at the various locations. The language proposed by the Association provides the Employer with the right to retain less senior employees if necessary to insure that it has employees capable of doing the work. The Employer takes the position that the Association's proposal does not look at the skill areas of an employee or the specific needs of a program or building. The language proposed by the Association assures the Employer that the employees that it retains or the employees that it recalls, will be able to do the work. Just because an employee performs a certain task in one building does not necessarily mean that he or she cannot perform a different task in a different building. However if there is a need for a specific skill in a specific building, the Employer need not follow seniority if that is the only way that it can assure that that skill will be available. The Employer is critical of the Union's layoff and recall language because it did not include qualifying language such as it has in its agreement with the special education assistants for positions that relate to unique students or programs. Perhaps if the Employer had proposed the same type of language that is in the special education assistants' language in its final offer the Association might have agreed to it or the arbitrator might have found its language preferable. However, it elected to propose no language, thus giving it the unilateral right to proceed in situations of lay off or recall as it saw fit and without any consideration of seniority. Limited to the choice of no language with regard to the application of seniority to lay off or recall and the Association's proposal, the arbitrator finds the proposal of the Association to be most acceptable.

LEAVE

The Association's proposal on leaves contains two provisions. One would provide a contractual provision that a temporary unpaid leave of absence may be arranged through the supervisor provided there is a two week advance notification with the approval of the superintendent. The other proposal is that paraprofessionals retiring after ten years of service would be granted an amount as a separation grant computed by dividing the number of accumulated sick leave hours up to the maximum by eight hours to convert the hours to days and then multiplying the number of days by $25.00. The Employer's final offer contains no provisions with respect to either of these issues. The Association's proposal for the temporary leaves spells out in specific language the past practice that has been followed with respect to temporary leaves. Three of the agreements in the other four school districts in Comparable Group A contain specific language with respect to temporary leaves. The Employer has not proposed any language on temporary leave of absence and it asserts that it would continue the status quo regarding these leaves. Continuation of the past prac-

tice would apparently achieve the same results sought by the Association with its proposal. Since the Employer has proposed no language whatsoever in its final offer with respect to temporary leaves it would have no duty or obligation to provide temporary leaves to its employees if its final offer was adopted by the arbitrator. Since the past practice has been to give employees temporary leaves, codifying that practice by placing it in the collective bargaining agreement with specific language would insure continuation of it.

The second issue included under the leave article pertains to a stipend to be paid employees who retire from the Employer after at least ten years of service. The Employer has two support staff bargaining units that have collective bargaining representatives. Only one of those bargaining units receives the stipend upon retirement. The bargaining unit represented by the Association in this proceeding has never received this benefit nor has the special education assistants' bargaining unit. However, the custodial employees and the food service employees do receive the stipend. The special education assistants, the bus drivers and the bargaining unit represented by the Association are the only *employee groups of the Employer that do not receive such a stipend.* Only two of the school districts in Comparable Group A pay such a stipend to employees similar to those in the bargaining unit represented by the Association. A review of both the internal and external comparables indicates that such a stipend is not a usual or customary benefit received by employees performing work similar to members of the bargaining unit represented by the Association. This change is not supported by the comparables and the arbitrator finds no compeling reason to initiate this new benefit for this bargaining unit.

The Association's proposal for specific language with respect to temporary leaves requires continuing the past practice. It is preferable to the Employer's proposal of no language on temporary leaves. Its proposal to initiate a new benefit in the form of a retirement stipend is not preferable. The retirement stipend would be an additional cost to the Employer and it would be providing a benefit that only one of the Employer's support staff bargaining units represented by a collective bargaining representative has been able to get through bargaining. Under the circumstances the arbitrator finds the Employer's proposal with respect to leaves preferable to that of the Association.

HOLIDAYS

Currently these employees do not received any holiday pay. The Association's proposal would initiate two holidays in the 1990-91 school year and an additional holiday in the 1991-92 school year. The Employer's proposal would not initiate any holidays the first year of the agreement but would provide three holidays during the 1991-92 school year. The cost of providing three holidays in the first year is a large cost item. By phasing in the holidays over two year periods, the Association's proposal would reduce the cost somewhat. Since the Employer has reduced the staff for the 1991-92 school year, the cost of the holidays sought by the Association is reduced even further. The Employer's proposal would not give any holiday pay to those employees who worked

during the 1990-91 school year. Most paraprofessionals have had the number of hours they worked reduced so the cost of the proposed three holidays for the 1991-92 school year is substantially reduced. The gradual phase in of the holidays is a desirable way of introducing the new benefit at a reduced cost for the Employer. The Employer's food service employees have four paid holidays and its custodial employees receive 10 paid holidays. The special education assistants' bargaining unit has received 3 paid holidays since the 1989-90 school year. The secretarial employees have received at least eleven paid holidays since the 1989-90 school year. The bus drivers and the bargaining unit represented by the Association are the only support staff employees of the Employer that are not receiving at least three paid holidays during the period covered by the proposed agreement between the Employer and the Association. Equity requires that the members of the bargaining unit represented by the Association be placed on a level playing field with other similar employees. The special education assistants' bargaining unit has been receiving three paid holidays for a number of years and there is no reason why the employees in this bargaining unit should not receive them too. The Employer's proposal would deny any holiday pay to those employees who worked during the 1990-91 school year and were given lay offs for the 1991-92 school year. That would be a substantial cost saving to the Employer but it would be unfair to those employees who worked during the 1990-91 school year and are now on lay off because they would be denied the same holiday pay that similar employees doing similar work received for the period during which they worked.

COMPENSATION

The Association proposes to put into place a series of catch up steps which it contends are necessary to get close to the wages that are being paid to paraprofessionals in Comparable Group A. It proposes an increase in wages every one-half work year for the 1990-91 school year. An employee at step one would be increased from $4.85 an hour to $5.10 per hour or an increase of 5.15 percent. That increase would be for one-half year and would reduce the actual cost to the Employer for that one-half year to 3.9 percent. The same would be true for an employee on the other steps. In 1991 an employee on step ten would increase from $7.60 per hour to $7.85 per hour which is an increase of 3.29 percent. Since the $7.85 rate does not increase until the second half of the year, the actual cost to the Employer of the 3.29 percent increase to the employee would be 1.97 percent. In the 1991-92 school year, an employee at the top step would increase from $7.85 per hour to $8.25 per hour which is an increase of 5.09 percent. However, since the $8.25 rate would not go into effect until the second half of the year, the Employer's cost would only increase 3.82 percent. The Association's proposal would provide wages during the 1990-91 school year ranging from $4.90 per hour at the bottom step to $7.85 per hour at the top. The Employer's proposal would provide wages for that period ranging from a low of $4.85 at the bottom of the scale to a high of $7.60 at the top. The average wage for aides in Comparable Group A range from a low of $7.32 per hour to a high of $8.59 per hour. The proposals of both the Employer and the Association are substantially below the average for aides in Comparable Group A. There is

only a $.05 per hour difference between the two proposals at the bottom step but there is a $.25 per hour difference at the top step. The Association's proposal would provide an average wage at the first step of the salary schedule during the 1991-92 school year of $5.90 per hour and it would be $8.25 per hour at the top step. The Employer's proposal would provide an average wage of $5.74 per hour during the 1991-92 school year at the first step and $8.00 per hour at the top step. The average wage for aides in Comparable Group A during the 1991-92 school year ranged from a low of $7.58 per hour at the first step to a high of $8.87 per hour at the top. Again the proposals of both the Employer and the Union are substantially below the average wage for aides in Comparable Group A. The Association's proposal would provide $.16 more per hour than the Employer's at the first step and $.25 per hour more at the top step. The Association's final offer for the 1990-91 school year is $2.42 per hour behind the average first step wage for Comparable Group A and is $.74 per hour behind the average top wage. The Employer's final offer for the 1990-91 school year is $2.47 behind the average first step wage for Comparable Group A and is $.99 per hour behind the average top wage. The Association's final offer for the 1991-92 school year is $1.68 behind the first step for Comparable Group A and is $.62 behind the average top wage. The Employer's final offer for 1991-92 is $1.84 behind the average first step for Comparable Group A and is $.87 behind the average top wage. Obviously the final offer of the Association comes closer to the average wage in Comparable Group A but is still well below it. Even though the Association's proposal would result in a large increase in both percentage and dollars for the members of the bargaining unit, their wages would still be substantially below that of the average wage paid to aides in Comparable Group A.

In the 1990-91 school year, the Employer paid its special education aides wages ranging from a first step of $6.05 per hour to a top step of $8.20 per hour. Its secretary unit received wages ranging from a first step of $6.20 per hour to a top step of $9.63 per hour. Its food service employees received wages ranging from a low of $6.30 per hour to a high of $8.30 per our. Custodians received wages ranging from a low of $8.30 per hour to a high of $10.10 per hour. The bus drivers received wages ranging from a low of $9.75 per hour to a high of $10.86 per hour. The Employer's 1990-91 average wages for support staff ranged from a low of $7.32 per hour to a high of $9.42 per hour. The Union's proposal would provide 1990-91 average wages ranging from a low of $4.90 per hour at the first step to a high of $7.85 per hour. The Employer's final offer would provide average wages of $4.85 per hour at the first step and $7.60 per hour at the top step. The Association's proposal is only $.05 per hour more than the Employer's proposal at the first step, but at the top step there is a $.25 differential. The Employer's average wage for its support staff for the 1991-92 school year is $6.38 per hour at the first step and $8.50 per hour at the top step. The Association's proposal for the 1991-92 school year would provide an average wage of $5.90 per hour at the first step and $8.25 per hour at the top step. The Employer's final offer would provide an average wage of $5.74 per hour at the first step and $8.00 per hour at the top step. Both the Employer's final offer and the Association's final offer provide wages well

below the average wage paid to the Employer's support staff who are not members of this bargaining unit. The Association's proposal for the 1991-92 school year is $.16 per hour higher than the Employer's proposal at the first step and $.25 per hour higher at the top step. The Association's final offer for the 1990-91 school year is $2.42 per hour below the average first step received by other members of the Employer's support staff and $1.57 below the average top wage. The Employer's final offer for the 1990-91 school year is $2.47 behind the average first step wage received by the Employer's other support staff and is $1.82 behind the average top step. The Association's final offer for the 1991-92 school year is $.48 behind the average first step wage received by the other support staff employees and .25 behind the average top step. The Employer's final offer for the 1991-92 school year is .64 an hour behind the average first step of the other support staff and is .50 per hour behind the average top step. The Assciation's proposal would still leave the wages for the bargaining unit well below the wages of all other members of the Employer's support staff. Beginning employees would be at least $1.15 per hour below any of the Employer's other employees during the 1990-91 school year and the top step would be at least $.45 per hour lower. Perhaps the members of the bargaining unit should receive wages lower than most of the other support staff employees, but the existing differentials are far too great. The Association's proposal establishes a more equitable relationship between the members of this bargaining unit and the other support staff employees. The Employer's proposal would place the members of the bargaining unit in a substandard wage situation when compared to the internal comparables or the external comparables.

The Employer points out that the arbitrator is required to consider the parties offers in light of the cost of living. It contends that the total package cost of the parties offers is the most appropriate measure to use in comparison with inflation indices. During the 1989-90 school year, the consumer price index increased 4.69 percent. The Employer points out that its 1990-91 offer provides a total package increase of 6.16 percent while the Association's proposal would result in a 9.62 percent total package increase. In the 1990-91 school year, the consumer price index increase 5.33 percent while the Employer's 1991-92 offer would require a total package increase of 10.97 percent increase and the Union's proposal would result in a 10.16 percent increase. The Employer takes the position that the Union's offer for the 1990-91 school year is more than double the increase in the consumer price index in the preceding year. It contends that its offer is generous when compared to the consumer price index and more closely meets the criteria to be considered by the arbitrator. It points out that its offer exceeds the increase in the consumer price index by 1.47 percent in the 1990-91 school year and 5.64 percent in the 1991-92 school year while the Association demands an increase above the increase in the consumer price index of 4.93 percent in the 1990-91 school year and 4.83 percent in the 1991-92 school year. The figures that the Employer points out are accurate except that there is some distortion because the number of employees that it estimates will be receiving the health insurance benefit far exceeds the number of bargaining unit personnel who have elected to take health insurance in the past. The Employer has kept the wages of this bargaining unit so far behind

its other support staff employees and so far behind the wages of paraprofessionals in Comparable Group A that equity demands a total package increase that would cost well above the amount that would normally be provided by a total package increase comparable to the increase in the cost of living. It provided this bargaining unit with no holidays prior to the 1990-91 school year and does not propose to offer it any during the 1990-91 school year. That particular benefit alone requires a substantial outlay of cash just to place the members of the bargaining unit on a equitable basis with other support staff employees of the Employer. The Employer provided next to nothing in the way of health insurance benefits in the past and the total package increase includes improved health benefits comparable to those received by the Employer's other support staff employees. The Employer made no comparison of wages and working conditions of this bargaining unit with other support staff of employees. The average wage rate for other support staff employees of the Employer is $2.42 more per hour for the 1990-91 school year and $2.47 per hour more for the 1991-92 school year than the Employer's proposal would provide this bargaining unit. Ordinally fringe benefits such as health insurance and holidays are very similar for all employees doing similar work. The members of the bargaining unit are entitled to holidays, health insurance benefits, long term disability, life insurance and wages that are at least similar to those received by other support staff employees of the Employer, even if it requires a total package increase that is well above the increase in the cost of living.

The arbitrator finds that the Association's proposal would bring about a more equitable relationship between the members of the bargaining unit and the Employer's other support staff employees. That certainly is a desirable result. The arbitrator is satisfied that the members of the bargaining unit need some catch up in wages in order to achieve equity. The Association's proposal tries to achieve that goal in the least painful way for the Employer by implementing the rather large increase in four steps over the two years. That would result in some reduction in the actual cost to the Employer, but it would still be a rather large chunk for the Employer to swallow in a two year period. When one considers the equity that would result from the Union's wage proposal as compared to the Employer's wage proposal the Union's proposal is more acceptable because it results in wages that are closer to those received by support staff employees in the comparable group and the Employer's other support staff employees. When only the large increase in the total package cost that results from the Association's wage proposal is considered, the proposal of the Employer becomes more acceptable. It is closer to the increase in the cost of living and it does provide some movement toward equity with the support staff employees in Comparable Group A and the Employer's own support staff employees who are not members of this bargaining unit. Each of the compensation proposals has defects and each of them has attributes. On an overall basis, neither one is more acceptable than the other and the arbitrator finds that the criteria set forth in the statute does not support one proposal over the other.

Accordingly the arbitrator does not find either compensation proposal to be more acceptable than the other when compared to the statutory criteria.

DURATION

The Association's final offer on duration is clear and unequivocal and provides that the new collective bargaining agreement shall be in full force and effect from July 1, 1990 through June 1, 1992. The Employer's proposal provides that the collective bargaining agreement will be effective from the day that the membership of the Union ratifies the agreement and will continue through August 14, 1992.

Acceptance of the duration period proposed by the Employer would eliminate any retroactivity. This would include back pay, holidays and even some of the holidays proposed by the Employer. The new schedule of steps on the salary schedule would not have to be implemented until the date of ratification of the collective bargaining argeement. The Employer points out that the Association's proposal would give employees two wage increases in the 1990-91 school year, one at the beginning of the school year and one during the middle of the school year. It would require the Employer to determine the retroactive wages to be given to employees for that period of time. Twenty-two of the employees employed during the 1990-91 school year were given lay offs or resigned. The Employer contends that it would be a burden upon it to compute the retroactive pay of the those employees and then locate and pay them. It would also be required to compute and pay to the employees the holiday pay for the 1990-91 school year. It asserts that a great deal of time and money would be expended by its accounting department in determining the back wages and attempting to locate its employees. The arbitrator is satisfied that the burden of determining the back wages and locating the employees is not much. In these days of computers the problem of determining back wages is not too serious and the Employer should have no problem with it. As far as locating the employees is concerned, the Employer has just sent out a form W-2 for each employee who worked in 1991 and it must have been able to locate them in order to do that. It could just as easily send them any retroactive wages or pay for other benefits to which they were entitled for the 1990-91 school year.

The Employer argues that it has proposed that employees receive a wage increase in the 1991-92 school year. It is true that its final offer does propose a 1991-92 salary schedule with the appropriate wages set for each of the steps in the schedule. However its proposal for Article XXI-Term of Agreement states as follows "this agreement shall be in full force and effect from the date of ratification by the membership of the Union through August 14, 1992". By the very terms of that duration provision, the collective bargaining agreement is in full force and effect from the date of ratification by the membership of the bargaining unit. No other meaning can be given to those words. The Employer argues that it has communicated to the Association that it had every intention of paying back wages and holiday pay for the entire 1991-92 school year as set forth in the compensation and holiday articles included in its final offer. However it did not state that in the final offer and that requirement is not part of its final offer. The Employer argues that the parties have agreed by stipulation that certain items would not be effective until

the date of ratification. These included the insurance, long term disability and life insurance. That is true but there was no agreement about when the compensation provisions or holiday provisions of the collective bargaining agreement would become effective except as set forth in the duration clause that was included in each of the final offers.

The language of the Employer's final offer with respect to duration is clear and unambiguous. It states that the collective bargaining agreement becomes effective on the date that the contract is ratified. That is the Employer's final offer and the arbitrator is tied to that. The mere fact that the Employer now indicates that it intended that its wage proposal and vacation provisions would be effective at the start of the 1991-92 school year, does not change the final offer. The arbitrator must adhere to the proposals set forth in each party's final offer in making his determination. He cannot rely on some nonbinding intention that the Employer now expresses and which it failed to include in its final offer.

At the hearing on November 5, 1991 the Employer attempted to get the Union to agree to let it change its final offer with respect to duration. However the Union would not agree to such a change. Section 111.70, Wisconsin Statutes provides that unless both parties mutually agree upon modifications, the final offer of neither party shall be deemed withdrawn. Accordingly the arbitrator has no authority to change the language of the Employer's final offer just because it now states that it intended something else.

The Employer's proposal on duration would preclude any back wages, holidays or other benefits provided by the collective bargaining agreement. None of the employees who worked during the 1990-91 school year and who were part of the bargaining unit during part of the period covered by the negotiations between the Employer and the Association and were given lay offs for the 1991-92 school year would receive any benefits as a result of these negotiations. They would be denied some benefits even if the arbitrator changed the Employer's final offer to include its now expressed intent to provide wage increase and holiday pay for all employees who worked during the 1991-92 school year. Collective bargaining in municipal employment differs from that in the private sector because the employees do not have the right to strike unless they meet certain criteria. As a result most of the benefits of a collective bargaining argeement are ordinarily retroactive to the start of the period covered by the negotiations. The arbitrator is convinced that the statutory criteria support selection of a final offer that covers the entire period that is the subject of bargaining. Accordingly the arbitrator finds the Employer's final offer with respect to duration to be flawed because it provides no benefits of any type to any employee until the agreement is ratified by the bargaining unit.

CONCLUSION

The Union's proposal is more acceptable than that of the Employer. It comes closer to meeting the internal and external comparability criteria of the statu-

tes and it is clear and concise with no speculation about its intentions. It spells out exactly what it means with respect to seniority, leaves, holidays, compensation and duration. The Employer's final offer does not include any language that assures what procedure it will follow with respect to seniority in regard to lay off and recall. It contains no language with respect to the manner in which leaves will be handled. Its duration clause limits the effective date of the provisions of the agreement to the date of ratification. The mere fact that the Employer now says that it intends to follow seniority with respect to lay off and recall and that it intends to follow past practice with respect to leaves and that it intends to make the wage and holiday provisions of its final offer effective during all of the 1991-92 school year does not change its final offer. The fact that the Employer now states that its intentions are different from what it spelled out in its final offer is not binding on it. The language set forth in a final offer is binding if it is selected by the arbitrator. The Association's proposals with respect to seniority and holidays are more acceptable and more closely meet the statutory criteria than that of the Employer. The Employer's proposal with respect to leaves is more acceptable than that of the Union. Each of the proposals with respect to compensation has its defects and the arbitrator finds neither to be preferable to the other. The Employer's proposal with respect to duration is flawed and not acceptable. Almost all collective bargaining agreements provide benefits for the entire period for which the negotiations are being conducted. The Employer would have the arbitrator consider intentions that it now states which it did not spell out in its offer. It now states that it intends to follow seniority in cases of lay off or recall, but its final offer contains no such provision. It now states that it intends to follow past practice with respect to leaves, but its final offer contains no provision that would require it to do that. It now states that it intended the 1991-92 compensation proposal and holiday proposal to be effective from the beginning of the 1991-92 school year even though its final offer states that the agreement would become effective on the date of ratification of the agreement by the members of the collective bargaining unit. Those intentions that it did not include in its final offer, but which it now says it intends to follow would not be binding upon it. The provisions spelled out in the final offers are binding upon the parties if they are selected by the arbitrator. Under the circumstances the arbitrator has no option but to select the final offer of the Association.

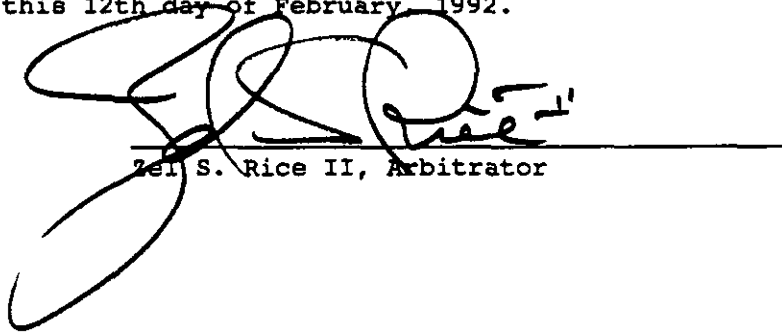
It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, arguments, exhibits and

briefs of the parties the arbitrator finds that the Association's final offer more closely adheres to the statutory criteria then that of the Employer and directs that the Association's proposal contained in Exhibit 1 be incorporated into the collective bargaining agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin this 12th day of February, 1992.



Zel S. Rice II, Arbitrator

WISCONSIN EDUCATION ASSOCIATION COUNCIL

33 Nob Hill Drive
P.O. Box 8003
Madison, Wisconsin 53708
(608) 276-7711 • (800) 362-8034

EXHIBIT No. 1

RECEIVED
JUL 18 1991
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

July 16, 1991

Mr. Edmond J. Bielarczyk, Jr.
Investigator
Wisconsin Employment Relations Commission
P.O. Box 7870
Madison, WI 53707-7870

Re: River Falls School District
Case 22 No. 45551 INT/ARB-6010

Dear Mr. Bielarczyk:

Enclosed please find the final offer for the WCEA-River Falls Paraprofessional Unit. A copy of this final form has been mailed certified to the District. In compliance with your letter of July 12, 1991, the Association will expect the District's final offer no later than one week after receipt of our offer.

If you have any questions, regarding this offer, please feel free to contact me.

Sincerely,

Jeffrey L. Roy
Executive Director
West Central Education Association

enc.

C: Jean Smith
Bernie Curti
Skip Brenden
Judith Caflisch
Paul Peterson

JLR/jlr

RECEIVED
JUL 18 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

FINAL OFFER
WCEA-RIVER FALLS PARAPROFESSIONAL UNIT
TO THE
DISTRICT OF RIVER FALLS
JULY 16, 1991

ARTICLE IX - SENIORITY

D. In the event it becomes necessary to lay off employees, in whole or in part, the following procedure shall be used:

1. To the extent feasible, layoffs shall be accomplished through normal attrition.

2. The least senior employee on a unit wide basis shall be the first employee laid off however, the remaining employees must be able to do the work.

E. Recall: Rehiring of employees that have been laid off shall be in the reverse order to that of layoff. Laid off employees shall retain seniority rights for a period of one (1) calendar year from the date of layoff. The notice of recall for any employee who has been laid off shall be sent by certified mail to the last known address of the employee. Employees on layoff shall forward any change of address to the District.

ARTICLE XI - LEAVES

D. A temporary unpaid leave of absence may be arranged through the supervisor provided there is a two (2) week advance notification, with approval of the superintendent.

F. Paraprofessionals retiring after ten continuous years of service to the School District of River Falls will be granted an amount as a separation grant computed by dividing the number of accumulated sick leave hours (up to the maximum) by eight (8) hours (this represents a full-time position as stated in Article XI - Leaves, to convert hours to days and then multiplying the number of days by $25.00.

ARTICLE XII - HOLIDAYS

Paid holidays for all Paraprofessional employees are as follows:

Labor Day   Christmas Day   for the 1990-91 School Year

Memorial Day   for the 1991-92 School Year

Hours paid for holidays are to be the same as normal hours worked. If any holiday falls on the weekend, the corresponding Friday or Monday will be considered the paid holiday.

ARTICLE XVI - COMPENSATION

STEP	1990-91 #1	1990-91 #2		1991-92 #1	1991-92 #2
1	$4.90	$5.10			
2	5.10	5.30			
3	5.30	5.50			
4	5.60	5.80	1	$5.90	$6.00
5	5.85	6.05	2	6.20	6.35
6	6.20	6.40	3	6.55	6.75
7	6.65	6.85	4	7.00	7.15
8	7.10	7.30	5	7.42	7.55
9	7.30	7.50	6	7.70	7.90
10	7.65	7.85	7	8.05	8.25

Unit members will be placed on the schedule according to the following procedure:

1990-91:

Employees on step 7 and in their eighth year of employment on the 1989-91 agreement will be placed on Step 8 on the new 1990-91 schedule.

Employees on step 8 and in their ninth year of employment on the 1989-91 agreement will be placed on Step 9 of the new 1990-91 schedule.

Employees on step 9 and in their tenth year of employment on the 1989-91 agreement, will be placed on Step 10 of the new 1990-91 schedule.

Employees on step 10 and in their eleventh year and beyond on the 1989-91 agreement will be placed on Step 10 of the new 1990-91 schedule.

For the First 1/2 of their 1990-91 work year, employees will be paid the rates that are listed in the #1 column under 90-91.

For the Second 1/2 of their 1990-91 work year, employees will move across and be paid the rates that are listed in the #2 column under 90-91.

1991-92:

Employees who were on steps 1-3 of the 1990-91 schedule will be placed on Step 1 on the 1991-92 schedule.

Employees on:

Step 4 will go to step 2 on the 1991-92 schedule
Step 5 will go to step 3 on the 1991-92 schedule
Step 6 will go to step 4 on the 1991-92 schedule
Step 7 will go to step 5 on the 1991-92 schedule
Step 8 will go to step 6 on the 1991-92 schedule
Step 9 will go to step 7 on the 1991-92 schedule
Step 10 will go to step 7 on the 1991-92 schedule

For the First 1/2 of their 1991-92 work year, employees will be paid the rates that are listed in the #1 column under 91-92.

For the Second 1/2 of their 1991-92 work year, employees will move across and be paid the rates that are listed in the #2 column under 91-92.

ARTICLE XXI - DURATION

Term: This Agreement shall be in full force and effect from July 1, 1990 through June 30, 1992.

This Agreement shall be binding on the parties who are signatories thereto.

FOR THE BOARD

____
President

____
Clerk

FOR THE WEST CENTRAL EDUCATION ASSOCIATION

____
President

____
Chairperson
Negotiations Committee

Any tentative agreements

EXHIBIT No. 2

School District of River Falls

River Falls, Wisconsin 54022

RECEIVED
JUL 25 1991
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

July 24, 1991

Mr. Ed Bielarczyk
Wisconsin Employment Relations Commission
PO Box 7870
Madison, WI 53707-7870

RE: River Falls School District
Paraprofessional Unit
Case 22 No. 45551 INT/ARB-6010

Dear Mr. Bielarczyk:

Enclosed please find the School District of River Falls final offer. A copy of of this final offer was hand delivered to the Association on Tuesday, July 23, 1991.

If you have any questions regarding this matter, feel free to contact me.

Sincerely,

Dr. Charles R. Brenden
Superintendent of Schools
School District of River Falls

CRB/bk

Enclosures

C. Personnel Committee

Exhibit 2

RECEIVED
JUL 25 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

SCHOOL DISTRICT OF RIVER FALLS
Praprofessional Preliminary Final Offer
July 10, 1991

ARTICLE XII-HOLIDAYS

Paid holidays for all paraprofessional employees are as follows:

Labor Day
Christmas Day
Memorial Day

Hours paid for holidays are to be the same as normal hours worked. The three above mentioned days will commence as paid holidays in the school year 1991-92. If any holiday falls on the weekend, the corresponding Friday or Monday will be considered the paid holiday.

RECEIVED
JUL 25 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

SCHOOL DISTRICT OF RIVER FALLS
Praprofessional Preliminary Final Offer
July 10, 1991

ARTICLE XVI-COMPENSATION

Step	Year	1990-91 Current	1991-92	91-92
			Steps	
Step 1	1	4.85		
Step 2	2	5.05		
Step 3	3	5.25		
Step 4	4	5.55	1	5.74
Step 5	5	5.80	2	6.10
Step 6	6	6.15	3	6.47
Step 7	7	6.60	4	6.82
Step 8	8	7.05	5	7.28
Step 9	9	7.25	6	7.64
Step 10	10+	7.60	7	8.00

Section B relating to payday is a tentative agreement. **

RECEIVED
JUL 25 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

SCHOOL DISTRICT OF RIVER FALLS
Praprofessional Preliminary Final Offer
July 10, 1991

ARTICLE XXI-TERM OF AGREEMENT

"This agreement shall be in full force and effect from the date of ratification by the membership of the union through August 14, 1992."