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TITLE **Sheboygan Area School District (Support Staff), Dec.
No. 27145-A (Tyson, 10/31/92) (Employer)**

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97 No. 45074 INT/ARB-5889**

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NUMBER (lowest, if
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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration of the
Dispute Between the

Sheboygan Area School District
and the

Local 1750, AFSCME, AFL-CIO
(Custodial-Maintenance Unit)

Case 97

No. 45074 INT/ARB 5889
Decision No. 27145-A

Appearances:

Mr. Paul C. Hemmer, Attorney, and Ms. Debra M. Eckes, Legal Assistant, Godfrey & Kahn, S.C., Attorneys at Law, Sheboygan, WI.

Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Sheboygan, WI.

Sworn Testimony was received from:

Ms. Mary Ann Timler, Sheboygan, WI., a Cook for the District

Ms. Debra M. Eckes, from the law firm of Godfrey & Kahn

Mr. Mark Fessler, Sheboygan, WI., Food Service Manager for the District

Mr. Michael E. Clark, Sheboygan, WI., Supervisor of Auxiliary Services
for the District

Background

On October 22, 1990, representatives of the Sheboygan Area School District (hereinafter referred to as the "District" or the "Employer") and Local 1750, AFSCME, AFL-CIO, Custodial-Maintenance Unit (hereinafter referred to as the "Union" or the "Employees") exchanged proposals on a successor agreement for the 1991-92 and 1992-93 school years. The Union represents all regular full-time and regular part-time maintenance, custodial, operational, food service and matron employees of the District. The Parties met on four other occasions and

failed to reach an agreement. On January 8, 1991 the Union filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats.

Investigator Amedeo Greco, a member of the Commission's staff conducted an informal investigation on April 11, 1991, and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by January 8, 1992. On January 31, 1992 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed on March 9, 1992 and conducted a hearing on the matter on May 28, 1992 in Sheboygan, Wisconsin. Both parties had an opportunity to present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for exchanging briefs and replies. These dates were moved back 14 days by mutual consent.

The Issue(s)

The three main issues under consideration herein are the rate increases in pay for the various employee classifications for 1991-92 (4% District vs 4.1% Union offer) and for 1992-93 (4% vs 4.9%), whether or not employees who terminate employment with the District after ten (10) years service shall receive severance pay equal to 50% of accumulated sick leave (to a maximum 114 days), and whether kitchen employees involved with the "Senior Citizen" meals program shall receive two (2) additional "floating holidays." By the Employer's calculation, pay differences in offers for the first and second years are about \$1,200 and \$11,000. The "floating holidays" will cost about \$1,400 annually. Costing of the severance benefit is in contention; the District would be required to pay almost \$9,700 for retirees in 1991 under the Union's proposal, and it claims that a \$171,462.38 liability would result in 1992 for current employees' sick leave accumulations. Not surprisingly, the District includes this figure in its costing of the 1992 Union offer, while the Union includes only annual amounts paid in its costing of its proposal. Thus the District costs the second year of the agreement to be in excess of 18%. The severance pay issue therefore appears to be the major issue of the three, has captured a significant amount of the parties' attention, and would be a new benefit for this unit.

Underlying these three main issues is the crucial question posed by the parties: what constitutes the Sheboygan Area School Districts' Custodial Maintenance Unit employees relevant external comparable group? The Union contends that it is the Fox River Valley Athletic Conference, which, comprising several high schools, really includes only 3 school districts: Sheboygan, Green Bay, and Manitowoc. The Employer contends that the relevant primary comparable group should include the adjacent school districts of Cedar Grove, Elkhart Lake, Howards Grove, Kohler, etc. belonging to another athletic conference, and which only average about 1/9 (ranging from 1/5 to 1/16) the size of Sheboygan in terms of FTE. Moreover, only half of these small districts' custodial-maintenance employees are represented for bargaining purposes. No "comparable" has been directly established through prior arbitration. Moreover, the parties have not evidenced a historical basis for their chosen "comparables" based on bargaining history. The Employer contends that the adjacent school districts are geographically proximate and therefore are more relevant for labor market comparisons, a criterion noted by many arbitrators. The Union contends that Green Bay and Manitowoc are the relevant comparables because they are similarly sized/urbanized, a criterion also noted by most arbitrators.

The importance of the question of comparability arises with respect to the critical issue as one notes that the adjacent districts tend not to provide for a severance benefit based on accumulations of sick leave, while the districts in Sheboygan's athletic conference do provide for consideration of such accumulations, although not of the same type as required by the Union's offer. Unfortunately, the internal comparisons cannot be relied upon to provide unequivocal support either way since the other school district employees are not entitled to conversion of sick leave for purposes of severance benefits, but other municipal employees in the city and county generally do receive such benefits.

Another important question relating to the three issues outlined above is the nature of the costing of the Union's offer with respect to the 50% payout of accumulated sick leave to those unit employees who terminate with 10 years of service. The Union includes as cost of this provision those who terminated in 1991 with more than 10 years service a sum of 50% of accumulated sick leave at current daily rates. No costs were offered for 1992 since knowledge of such will not be available until Dec. 31, 1992. The Employer includes as cost for 1992 what all bargaining unit employees with 10 years service would be due if they were to terminate in

1992. Therefore, there is a difference in costing of the union's offer by the parties of about \$160,000.

Cost Costing of the proposals by the parties is in Table 1.

Table 1
Salary and Benefits Costs Under the District and Union Offers

	<u>1990</u>		<u>1991</u>		<u>1992</u>	
	<u>Actual</u>	<u>ER Offer¹</u>	<u>Union Offer²</u>	<u>ER Offer¹</u>	<u>Union Offer²</u>	
Wages ³	\$1,162,360	\$1,214,359	\$1,215,527	\$1,264,276	\$1,276,443	
% increase		4.47	4.57	4.41	5.01	
Health Ins.	279,804	317,068	same	420,363	same	
Dental Ins.	46,514	46,516	as	40,937	as	
LTD	3,371	3,522	employ-	3,666	employ-	
Life Ins.	1,265	1,312	er	1,365	er	
FICA ³	88,921	92,898	92,988	96,717	97,648	
WRS ³	138,321	146,937	147,078	154,241	155,726	
Severance			9,696		171,462	
Floating Holidays			1,366		1,433	
	\$1,720,560	\$1,822,613	\$1,835,078	\$1,981,567	\$2,169,094	
% Increase		5.93	6.66	8.72	18.20	
<u>Difference</u>						
Employer Calc.			\$ 12,465		\$ 187,527	
Union Calc.			\$ 15,083 ⁴		\$ 14,344 ⁴	

¹ Employer Exhibit 8

² Employer Exhibit 16

³ The Union's costing is less for 1991 and 1992, but excludes longevity in the calculation of wages.

⁴ Longevity is excluded in the Union's calculation. The Union includes \$13,717.23 as a cost of the severance payout in 1991 (the Employer calculates \$9,696). The Union made no estimate for costs of the sick leave payout in 1992.

The Statutory Criteria

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

- a. The lawful authority of the employer.
- b. Stipulations 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 settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding 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 municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

Arguments of the Parties

The Union

The Union contends that the statutory criteria of external and internal comparability primarily support its case for an arbitration award in its favor. It argues that the appropriate comparable group of similar employees would be the custodial-maintenance employees in the other athletic conference schools, namely in Manitowoc and Green Bay. It argues that most of the other criteria, namely the legal authority of the Employer, stipulations of the Parties, interests and welfare of the public and financial ability of the Employer are not at issue herein. Sheboygan has a better than average ability to pay, and it is in the interest and welfare of the public for the District to remain competitive in pay for its educational support staff. The Union feels that private employment comparisons cannot be made due to lack of truly comparable data, and believes that comparisons to other public employees, namely Sheboygan city and county specifically support its offer on severance pay. Overall compensation is not separately an issue here, and there have been no changes during pendency, so these factors are set aside. Rather, the Union primarily addresses its arguments to how the Sheboygan School District custodial-maintenance employees are compensated vis à vis the rest of the Fox River Valley Conference and to the other public employees in Sheboygan.

Comparables

In its brief, the Union argues that the comparables chosen by the Employer are such small school districts that it sees little "semblance of common interest" (Union Brief, p. 3). It (the Employer's comparison) is "like measuring up a little league baseball team against the major leagues" (p.3). It gives evidence (Union Exhibits 12,14) that Sheboygan fits in with its own athletic conference, being half the size of Green Bay (roughly 17,000 students) and twice the size of Manitowoc (about 4,600 students). The Employer comparables are 1/5 to 1/16 the

size of Sheboygan by the Arbitrator's calculation. The size factor is not inconsequential as in most cases the entire structure of employment is "different." Moreover, the variability of wages in these small districts listed as the Employer's comparables is so significant that they are not useable for purposes of arbitration of this dispute. There is too much variability in the "lanes" of wage progression to render comparison meaningless. Job classifications at Sheboygan are more specialized than in these districts, indicating that these aren't "similar" employees. Additionally, over half of the Employer's comparables have wages and employment conditions imposed, rather than bargained. The Union cites Vernon in Elkhart Lake (Dec. No. 43193) that Sheboygan ought not to be compared to the Employer's comparables (although the Undersigned notes that the unit in question was teachers). Inclusion of non-represented units would serve to "chill" further negotiations, as is emphasized by Malamud in Beecher-Dunbar-Pembine (Dec. No. 26421-A) where it is contended that reliance on such (non-union) comparables would "yeild (sic) wages and benefit patterns based upoon (sic) a process where wages and benefits are unilaterally set, rather than bargained" (Union Brief, p. 7).

In its reply brief, the Union stated that the comparables for Sheboygan teachers have been established by (the late) Arbitrator Joe Kerkman (Dec. No. 20975-A), who noted that city and county employees should also be accorded some, but lesser weight. However, in the case of school support personnel, the issue in this case, the Union points to Arbitrator Petrie's Genoa decision (No. 2706-A) that other government employees can be compared when they do "identical or substantially similar jobs" (Union Reply Brief, p.2). The idea of searching statewide for similarly-sized comparables even for teacher's aides is supported by Malamud in Racine (Dec. No. 21810-B) wherein the Sheboygan School District was included with the other 10 large districts in the state (along with Milwaukee, Madison, Green Bay, Kenosha, Waukesha, Appleton, Janesville, Eau Claire, and Racine) as "pattern setters." The Union did not intimate, however, whether or not a pattern was wholly absent and thus forcing that search.

Wages

The Union contends that wages for athletic conference custodial-maintenance employees far exceed levels paid at Sheboygan. Further, even given the Employer's proposed comparables, the percentage increases in those schools seem to exceed those which the Employer offers.

The Union's offer of a 4.1% wage increase in 1991 and 4.9% increase in 1992 is less than the 5% and 5% increases in both the Green Bay and the Manitowoc schools which are in Sheboygan's athletic conference. Moreover, the level of wages for similar workers is generally

lower at Sheboygan, as seen in Table 2 below.

Table 2
Comparison of "Benchmark Wages" of Custodial-Maintenance Employees 1

JOB CLASS	1990	1991	1992
Custodian 1			
Green Bay*	\$ 12.26	\$ 12.87	\$ 12.87
Manitowoc	10.93	11.48	12.05
Sheboygan - ER	8.88	9.24	9.61
Union	8.88	9.24	9.69
Custodian - Lead			
Green Bay	13.22	13.87	13.87
Manitowoc	11.20	11.76	12.35
Sheboygan - ER	9.65	10.04	10.44
Union	9.65	10.05	10.54
Delivery			
Green Bay	12.84	13.29	13.29
Manitowoc	9.72	10.21	10.72
Sheboygan - ER	9.44	9.82	10.22
Union	9.44	9.83	10.31
Maintenance			
Green Bay	13.89	14.58	14.58
Manitowoc	11.50	12.08	12.68
Sheboygan - ER	10.36	10.77	11.20
Union	10.36	10.78	11.31
Cook			
Green Bay	\$ 9.29	\$ 9.75	\$ 9.75
Manitowoc	No	Food	Service
Sheboygan - ER	7.67	7.87	8.18
Union	7.67	7.88	8.27
Food Service Worker			
Green Bay	7.67	8.05	8.05
Manitowoc	No	Food	Service
Sheboygan - ER	7.29	7.58	7.88
Union	7.29	7.59	7.96

* Green Bay is on a July 1 - June 30 schedule
1 Union Exhibits 17-22

Other comparisons favor the Union's wage offer. The Union argues that the Sheboygan Teacher's Aides unit received nearly 4.7% increases in 1991 and 1992 with classification changes and base increases (of 4%). The Clerical unit, moreover, is receiving a 21% increase over three years, although under special circumstances. Discussion of the city settlements where increases were 3.25%/3.25% based on 3%/1% splits for 1991 and 1992, or a little over 8% "lift" over the two years, was noticeably absent. The Union did argue that while the County workers were getting only 4% each year, their prior contract gave them .5% more than that which was received by this unit and thus a "catch-up" was in order. The Union contends that while the schools claimed as "comparables" by the Employer are not appropriately comparable, wage increases of cooks, servers, custodians, and maintenance -mechanics appear to be percentage-wise higher than that which the Employer is offering.

The Union is cognizant of the argument that its offer exceeds the current Cost of Living, but notes that the pattern of other settlements gives appropriate consideration to CPI changes since they were negotiated under similar economic conditions. Moreover, unit employees received smaller increases than the CPI changes during the past 4 contract years as evidences by the Employer (Employer Exhibit 148).

Sick Leave Payout/Severance

The Union argues that a payout of 50% of accumulated sick leave is supported by the comparables (Manitowoc and Green Bay schools) as well as city and county employees. Green Bay School District pays out 46% (up to 120 days) at the retirement (or death) of its custodial-maintenance employees and 37% to food service employees. Retirees in the Manitowoc School District receive \$50/day up to an accumulated 120 days. Sheboygan County employees receive pay for up to an accumulated 120 days of sick leave at termination, and are annually paid for any "excess" accumulations while active employees. Retired City of Sheboygan employees are "paid" \$28/day for accumulated sick leave up to 72 days, but those "payments" go towards health insurance. Accumulations exceeding 72 days are "banked" for such purposes as well. The Union also notes "miscellaneous Comparables'" provisions (Sheboygan Falls, Saukeville, Calumet County, Madison School District Support Staff, and Kiel School District) to indicate that its offer is not unusual.

The Union calculates that the 1991 severance payout, if granted, would be \$9,493.47 (Union Brief, p. 13) or .000551% of the units's wage and benefit package. The 1991 retirees accumulated an average of only 52% (or 42%) of the possible 114 days because the Employer

has no liability for payout of sick leave accumulations.¹ The Employer's costing of \$171,462.38 for 1992 is wrong, since no funds are required to be set aside. Moreover, since the sick leave was "bargained", it should not be "costed" (against the Union) again! Besides, no one can guarantee that current accumulations will not be used prior to retirement. The Union calls attention to Arbitrator Bellman's decision in Depere Firefighters (Dec. NO. 16014-A). In it he suggested that the Employer gains from a sick leave payout plan by reducing the abuse of sick leave. Additionally, he concluded that such a proposal could not be specifically costed due to uncertainty of retirements, future sick leave use, or savings due to reducing abuses. Arbitrator Bellman also concluded that while other (City of Depere) workers didn't have a payout of unused sick leave to retirees, it was generally in effect elsewhere in the area.

Anticipating that the Employer would argue that this Arbitrator should not disturb the status quo, the Union cites Arbitrator Petrie's decision (Village of Pulaski, No. 44884) where he quotes Arbitrator Block who cautions arbitrators to respect bargaining history in private sector arbitrations and not to "break new ground" or give either party something that could not have been achieved at the bargaining table. Petrie then goes on to suggest, however, that since public employees are precluded from strikes, only arbitration will change the status quo when change is needed, in the face of resistance to such change.

Additional "Floating Holidays"

The Union's offer calls for 2 additional floating holidays for kitchen personnel who are involved in the Senior program. These holidays are needed to compensate unit employees who are required to work when school is not in session (eg. holidays and summer) in order to provide meals for the senior meal program. This program was added a few years ago and expanded. The Union filed a grievance when there were insufficient volunteers to cover in the summer and employees were then required to sign up. The Employer denied the grievance, but recognized (Union Brief, p. 8 and Union Exhibit 77) that the issue would need to be addressed in subsequent negotiations. The Union feels that a veiled promise was made by the District to address this loss in working conditions so the grievance was dropped. The Union cites Arbitrator Bellman's Professional Firefighters decision (16014-A) and Joseph Kerkman's Appleton Education Association decision (No. 17202-A) wherein those arbitrators recognized a need to "make right" such promises.

¹The union's brief is confusing here, mixing references to days and hours, and using both percentages as the utilization rate for sick leave. The Undersigned apologizes if the logic here was not inferred as intended.

The Employer

The Employer contends that the statutory criteria support its case for an arbitration award in its favor. The District argues that at several "benchmarks", the Sheboygan Area School District wage rates rank high compared to the wages paid in the adjacent districts (which it argues is the only appropriate comparable for this bargaining unit) and are therefore competitive. It argues further that its package percent increases are double those of the Consumer Price Index percent changes (i.e., the inflation rate). While not arguing an inability to pay, the District contends that acceptance of the Union's offer would create a \$172,462 liability which would endanger the District's bond rating. Internal comparables are receiving increases similar to the Employer's offer in the instant case. Other local public workers are not receiving pay increases any higher than what is offered by the District. The Union's proposal for severance pay from accumulated sick leave changes the status quo without demonstrating a clear need, is dubious and unclear in its application, poses a real burden by imposing a significant liability on the district, and would provide a benefit to this unit which is not provided to any other group. The Union's proposal for two additional "floating holidays" for kitchen staff is unwarranted, is an incredibly expensive remedy for correcting any alleged problems, and would give this unit benefits significantly out of line with internal and external comparables.

Comparables

The Employer maintains that the best set of comparables applicable to the Sheboygan School District Custodial-Maintenance Unit would be those custodial-maintenance employees in the immediate vicinity-- those working in the school districts near to Sheboygan who would be considered in the area labor market. Briggs, in Montello School District (Dec. No. 19933) and Fleischli in Neillsville (No. 18998) are noted by the Employer for prescribing a geographical limit to markets for purposes of comparability. The Employer therefore has proposed that the geographically proximate districts of Cedar Grove, Elkhart Lake, Howards Grove, Kiel, Kohler, New Holstein, Oostburg, Plymouth, Random Lake, and Sheboygan Falls are appropriate comparables for the Sheboygan employees in this arbitration (Employer Exhibit 35-36). It is contended that these employers and Sheboygan are all competing for the "same pool of employees" (Employer Brief p. 5) and the employees are seeking jobs in the same general area, and face similar economic conditions such as cost of living. Proof of this proposition (other than a map of the locations), however, is noticeably absent-- and probably unobtainable. The Employer notes Arbitrator Mueller's decision in Howards-Suamico (No. 45747) that a city such as Green Bay will have employment policies which will influence labor market conditions in the surrounding areas. Whether Arbitrator Mueller would credit Howard-Suamico's public employment practices with contributing similarly to labor market conditions in Green Bay is the

\$171,000 (or so) question in this case.

The Employer rejects the Union's list of comparables in that it is numerically insufficient, and geographically less proximate. While there are many athletic conference K-12 schools listed by the Union, fundamentally there are only three districts in the conference, or two comparables for Sheboygan.

The Employer takes issue with the Union's inclusion of Sheboygan city and county employees as comparable to School District employees, given basic differences in mission and operations. Reference to Petrie in Village of Pulaski (Dec. No. 44884) that Pulaski School District and the Village employees were found not to be comparable reinforces this contention; however, the finding that the Village employees are not "considered sufficiently comparable" to Brown County and City of Green Bay employees also seems to be Arbitrator Petrie's important conclusion relevant to this case.

Since no prior arbitral awards have involved this unit, nor has either party offered historical evidence of the use of comparables in bargaining, the Employer contends that the Yaffe (Mishicot, Dec. No. 19849-A) criteria should guide the arbitrator in establishing a primary comparable group for the Sheboygan School District Custodial-Maintenance Employee unit. Under Yaffe, comparability is established based on 1) similarity in the level of responsibility, services provided, and training and/or education required, 2) geographic proximity, and 3) similarity in the size of the employer; these should determine whether another group of employees would be considered an appropriate comparable (Employer Brief, p. 8). The employer surveyed the surrounding school districts to determine whether and which of their own job descriptions were similar to Sheboygan custodial-maintenance employees and claims that those districts have similar employees. Proximity is obvious. Size is not discussed. The Employer argues that "proximity" is of primary importance in the case of this unit, citing Imes in New Lisbon School District (Dec. No. 26733-A), Rice in DeSoto School District (Dec. No. 16814-A), and Baron in Benton School District (Dec. No. 24812-A) to show that geographic proximity of a 30-35 mile radius constitutes an appropriate labor market for purposes of establishing primary comparables. While athletic conferences are customarily used for establishing teachers' comparison groups, the Employer cites arbitrators' awards which rely on more proximate comparisons for non-professionals on the theory that non-professionals do not compete on a state-wide basis and are less mobile than are professionals.²

² Imes, New Lisbon (Dec. No. 26733-A); Weisberger, Clintonville School District (Dec. No. 23061); Johnson, in LaCrosse School District (Dec. No. 16327); and Haferbacker, in Vernon County (Dec. No. 17716).

The Employer also argues that as a first arbitration award, the greatest number of comparables should be used. This pool should not exclude non-union units, solely because of non-union status.³ The Arbitrator notes that these decisions call for inclusion of non-union units which are otherwise similarly sized. Finally, the Employer maintains that Sheboygan School District's mill rate, cost per member, and aid per member are similar to those indices of the adjacent school districts, although these are not contrasted with these indices in Green Bay or Manitowoc.

Wages

The District has argued that the salaries offered Custodial-Maintenance Employees are significantly above levels of similar employees in the "comparable" schools which it has selected. It compares the 1990-91 wages at Sheboygan with these districts' wages at five "benchmarks," namely, Cook, Server, Custodian, Head Custodian, and Maintenance Mechanic for employees who have 10 or more years experience (10.21 years is the average tenure of current unit employees). This comparison is necessary, because Sheboygan pays for longevity at the Schedule Maximum of 3%, 6%, and 9% for 5, 10, and 15 years with the District. Generally these other districts do not have such a provision. Employer Exhibits 54-56 show a comparison at minimum and maximum wages (plus longevity) between Sheboygan and the average of these districts which the Arbitrator has summarized as follows:

Table 3
1990-91 Average Wage of Custodial-Maintenance Employees:
Sheboygan vs Average of Employer's Comparables

Class	<u>Minimum Wage</u>				<u>Maximum Wage</u>			
	<u>Sheboygan</u>	<u>Ave.Compar.</u>	<u>+/-</u>	<u>%</u>	<u>Sheboygan</u>	<u>Aver.Compar.</u>	<u>+/-</u>	<u>%</u>
Cook	\$ 6.69	\$ 5.71	\$.98	17.25	\$7.57	\$ 6.65	.92	13.85
Server	6.39	5.33	1.06	20.00	7.29	6.08	1.21	19.86
Custodian	7.77	7.13	.64	8.98	9.39	8.62	.77	8.95
H. Cust.	8.42	8.24	.18	2.18	9.65	9.21	.49	4.76
Maint.Mec.	8.92	9.71	-.79	-8.11	10.98	10.76	.23	2.11

Summarized from Employers Exhibits 54-56

³ Petri, in Elkhart Area School District (Dec. No. 19093-A); Yaffe, in Thorp School District (Dec. No. 23082); Vernon, in Owens-Withee School District (Dec. No. 22395); Christenson, in Rosholt School District (Dec. No. 36907); and Briggs, in Montello School District (Dec. No. 19933).

Under either offer, unit employees will have wages which "substantially exceed the average level of wage rates when compared to comparable districts" (Employer Brief, p. 19).

The Employer objects to several of the wage comparisons made by the Union between Sheboygan, Green Bay, and Manitowoc. The Sheboygan Cook (F2) at \$7.57/hr. was compared to the Green Bay Preparation Cook. Since the latter is at the top of the Green Bay food service scale and the former is mid-scale, the Employer questions the comparison.⁴ The Food Service Worker position at Green Bay may not be similar to the Server (F1) position at Sheboygan.⁵ The Union is alleged to have used the Green Bay Custodian 5 wage (Union Exhibit 71, Appendix 1,2) when it should have used the Custodian 3 wage to compare Green Bay Custodian 3 with Sheboygan's Custodian 4.⁶ Finally, the Employer would have the Arbitrator also accord little weight to wage differences between the Green Bay Engineer 1 position and the Sheboygan M-2 Maintenance position because the Union used the Night Shift rate which is \$.18/hr. higher than the regular rate.⁷ These objections do little to change the basic conclusion of the Union that Green Bay pays similar employees considerably more than does Sheboygan.

The Employer contends (Brief, p. 22 and Exhibit 50) that its offer exceeds the percentage increases of its comparables, in addition to the wage levels. Its submitted evidence is to the contrary, however (see below, p. 22, Table 4). But it also maintains that its overall hourly compensation offer for 1991 and 1992 is significantly greater than for the comparables, particularly for Cooks and Servers. The hourly total compensation in 1991 under both offers is calculated at about \$15 for Cooks and \$16 for Servers. The difference is attributed largely to the provision of fully paid health insurance for food service workers who work over 600 hours/yr. The standard work day for servers is four hours, so full health and dental insurance

⁴ The Arbitrator notes (Union Exhibit 72, Appendix 1) that the Green Bay Assistant Cook/Baker earned \$7.93 while the Head Cooks earned \$8.51. Splitting the difference, Sheboygan Cooks would be "only" \$.65 below Green Bay cooks.

⁵ The Arbitrator notes that both, however, are the lowest kitchen employee positions in their respective kitchen employee classifications and presumes that Green Bay does not use higher wage employees to collect tickets, rotate condiments, etc. which are duties of the F1 employee.

⁶ The Arbitrator is puzzled with the Green Bay schedule showing the Custodian 2 on Wage Level 2, no positions on Wage Level 3, and Custodian 3 AND Custodian 4 on Wage Level 4. The Union's apparent 1 wage level error reduces the Green Bay-Sheboygan wage difference here from \$13.22 vs \$9.65 to "only" \$12.84 vs \$9.65 in 1990, and from \$13.87 vs \$10.04 (Employer's Offer) to \$13.47 vs \$10.04 for 1991.

⁷ this would reduce the claimed wage differential from \$13.89 vs \$10.36 to "only" \$13.71 vs \$10.36 in 1990 and from \$14.58 vs \$10.77 (Employer offer) to \$14.40 vs \$10.77.

amounts to \$5.65/hr. in 1991 (as compared to a wage of \$7.58). Such payment of benefits is not only unusual among the Employer's comparables, but it is also noted that Green Bay food service and maintenance employees would have to pay 24% more of the family premium if they only work 20 hours/week. Manitowoc requires a minimum of 20 hours/week for insurance coverage, which may be less generous than Sheboygan.⁸ Other Sheboygan School District employees who regularly work part-time have pro-rationing of benefits unlike that which is enjoyed by food service workers.

Considerations of insurance benefits and their cost increases, the provision for longevity in the Sheboygan District (which is either nonexistent or less generous at "comparable" districts), step increases, unusually generous provisions for paid holidays, sick and emergency leave all result in package increases under the Board's offer being more than the 4%/4% for the 1991 and 1992 school years --5.93% and 8.72% to be precise, which is certainly much more than the change in the CPI of 3.2% (small metropolitan areas, Dec. 1990 - Dec. 1991). Furthermore, there is no "catch up" need; over the past 10 years the CPI has risen (Employer Brief, p. 34) about 5% less than unit employees' wages. When one considers that health care carries increasing weight in CPI calculations and that employees in the instant case are largely protected against health care cost increases, the real wage increases enjoyed under the Employer's offer are even greater than those which are observed by comparing wage increases to CPI changes.

Consideration of wages paid other public employees in the area also favors the Employer's offer. Four AFSCME units in Sheboygan County cited for comparison by the Union all received 4% increases in 1991 and will receive an (unweighted) average increase of 4.19% in 1992.⁹ The Union also makes comparisons with two AFSCME units of City employees.¹⁰ These units will receive split increases of only 3%/1% each year, yielding average increases of only 3.25%. The Arbitrator calculates a total lift of 8.22% which is roughly equivalent to an 8.16% lift under the Employer's offer. Moreover, the Union cannot contend that it needs greater percentage increases to catch up to these employees since the positions which appear to be common to the City, County, and School District (Custodian, Head Custodian) pay nearly the same, with the District employees earning a few cents more per hour.

⁸ Employer Brief, p.28. It is not entirely clear whether Sheboygan is more generous; ostensibly 4 hours/day = 20 hours/week, but Green Bay and Manitowoc may or may not count summer hours, or otherwise determine eligibility differently.

⁹ Local 110, Support Staff; Local 1749, Highway Department; Local 2427, Institutions; and Local 2481, Law Enforcement.

¹⁰ Local 2039, Public Works/ Wastewater, and Local 1564, City Hall employees.

Finally, the Employer offers settlement data to show that its offer "maintains the pattern with other District units..." (Brief, p. 40). Unfortunately, this data is inconclusive and/or favors the Union's position.

The Employer also shows that Local 1750 employees generally fare well compared to similar private sector workers (Exhibit 158, 159). While District Custodians and Maintenance Mechanics are slightly below average for Wisconsin, they earn about 7% more than average for the "Service Delivery Area."¹¹ Cooks and Food Servers, on the other hand, earn 11% and 18% above state averages, and 14% and 19% above area cooks and food servers. The Employer also conducted a survey of local private sector firms, finding that wage increases were averaging 3.7% and 3.6% in 1991 and 1992, respectively. National trends in negotiated wage settlements also appear to be in the 3.5%-4.0% range in latter part of 1991, further evidencing that the Employer's 4%/4% offer is reasonable.

Sick Leave Payout/Severance

The Employer reminds the Arbitrator that the Union is seeking a change in the status quo with respect to the sick leave payout. As such, the "Reynolds test" is to be applied to determine whether such changes are warranted (Dec. No. 26203-A). It is argued that the Union has failed to meet its burden of proof that the proposed change is needed, appropriately remedies a need, and does not impose an unreasonable burden on the District, or offers a sufficient quid pro quo for the change. The Employer contends that the proposed change is a "critical" change in the parlance of Arbitrator Friess' taxonomy (Howards Grove, Dec. No. 26363-A) and thus the Union has a substantial burden of proof in this matter. Dicta by Arbitrators Krinsky (Dec. No. 12444) and Rice (Dec. No. 19886-A) are offered which caution against disturbance of past bargaining practices through arbitration. Arbitrator Vernon's view that the result of the arbitration process should be as close to the terms which would have resulted from a voluntary agreement is emphasized (Ashland Police, Dec. No. 21536-A). Arbitrator Kessler's caution that failure to abide by this principle may be detrimental to the parties' future negotiations (City of Onalaska, Dec. No. 26652-A) is also noted. Having presented all this, the Employer simply says that the Union's offer is unreasonable and problematic (Employer Brief, p. 49).

The Employer argues that arbitral precedent gives considerable weight to maintaining internal patterns of fringe benefits (Imes, in Wisconsin Rapids Firefighters, Dec. No. 19899-A,

¹¹ SDA 17, or Sheboygan, Manitowoc, Kewaunee, and Door Counties. The Arbitrator notes the very small number of workers included in the SDA 17 survey. The Statewide survey is more convincing.

and Tyson, in Dane County Sheriff's Department, Dec. No. 44775-A). No other Sheboygan School District employee unit has a provision for pay out of accumulated sick leave such as is the one included in the Union's offer; nor do externally-comparable employees receive such a payout. Among the Employer's chosen comparables, only Kiel makes a payment-- and only \$8/day for retirees with at least 18 years of service.

The Employer further contends that the Union's offer is confusing in its interpretation since it refers to a payout to those who "terminate" with over 10 years service. It cites Arbitrators Haferbacker in Crandon (Dec. No. 20171-A), Christenson in LaCrosse County Highway Department (Dec. No. 19646-A), Miller in Marshfield, Reynolds in Sheboygan County (Dec. No. 25907-A...25911-A) and Malamud in Pierce County Sheriff's Department (Dec. No. 25009-A) and West Allis (Dec. No. 2170-A) wherein offers providing for status quo changes were rejected because they were imprecise or inconsistent.

The financial cost of the Union's offer compels it to be rejected. If accepted, this provision will cause the District to incur a \$171,462.38 liability since literal interpretation of the Union's offer would mean that any current employee with 10 years service could quit immediately and be owed the value of 1/2 of his or her sick leave accumulations. The Arbitrator must add that each year this amount will rise by whatever accumulates, the increment to wage rates, and the amount due employees who attain 10 years creditable service with the District. The Union argues that this is reduced by leaves taken, but this is not generally the case since a sick employee's work presumably has to be covered. Such a liability is likely to affect the District's bond rating and increase its costs of borrowing (Employer Brief, p. 55-56). Worse yet, other employee units would demand equal treatment, leading to "astronomical" cost and/or liability increases if granted or gained through arbitration. The Employer contends that this potential "roll-out" of benefits to other employees is reasonable justification for rejection of the offer and is supported in Arbitrator Petrie's Elkhorn School District decision (No. 19093-A). The Employer cites arbitral precedent for the rejection of new, "big-ticket" proposals in arbitration in Vernon (Seymour School District, Dec.No. 23228-A), Imes in Clark County Social Services (Dec. No. 18497-A) and Rice (Gateway VTAE, Dec. No. 18107-A)-- especially if these are not accorded other internal employees. Rather, if a new benefit is to be provided, it should be negotiated, and an appropriate quid pro quo exchanged.

The Employer does address the issue of comparing sick leave payout among other local public employees viz Local 1750 employees. Its argument regarding city employees is somewhat misleading and particularly weak except for the notion that those city employees who involuntarily terminate are apparently not given their accumulations. Regarding Sheboygan teachers, the Employer notes a restricted use of payout--to buy health insurance during early

retirement. It points out that unit employees who retire early are already provided health care so this employee group gets no better sick leave benefit than do unit employees. Sheboygan county employees who accumulate sick leave receive annual payout for any hours in excess of 960 hours. Terminated employees are paid their accumulation. If the employees terminate prior to age 65, however, they must buy their own health insurance unlike District employees involved in this case.

The Employer addresses sick leave payout for the Union's "comparables" and maintains that Green Bay's Custodial-Maintenance employees receive significantly less than what unit employees are demanding because Green Bay's employees must retire and then only get 46% (and only 37% for food service workers) of accumulated sick leave. Retiring Manitowoc employees receive a more generous \$50/day (to 120 days), but it is restricted to the purchase of health insurance. The Employer makes similar comments about "secondary comparables" cited by the Union such as Two Rivers (Custodial-Maintenance, schools), Sheboygan Falls (city), Saukeville (Village), Calumet County, and Madison (school support staff). Again, most of these refer to payout to retirees, and in many cases the payout is for health insurance--a benefit made unnecessary for early retirees of this unit because of Sheboygan's health and dental insurance coverage for these people.

Additional "Floating Holidays"

The Employer believes that the Union offer which provides for two additional "floating holidays" for food service workers involved in the senior meals program is an unwarranted additional benefit. It is a change in the status quo for which there is no demonstrated need nor is there a quid pro quo offered. It claims that kitchen employees have heretofore only been required to work 2 days (7 hours) during the summer and want 16 hours of floating holiday for it (plus pay). The District, in testimony before the Undersigned, has established that it has been very flexible and accommodating in these summer assignments. Teacher Aides receive no floating holidays while other full-time, full-year employees have only one floating holiday. The pattern for internal comparables is one floating holiday and 10 other holidays for full-year (less for school-year) employees. The Custodial-Maintenance employees currently have 10, including the one floating holiday and thus conform. Following Rice (Northeast Wisconsin VTAE, Dec. No. 26365-A), the Arbitrator is urged to "maintain uniformity among the internal comparables" (Employer Brief, p.77). The Employer's "comparables" show no provision for "floating holidays" and do not provide even the current number of holidays for food service employees. Furthermore, food service employees have paid personal leave for a variety of occasions and emergencies. Lastly, the Employer contends, following sworn testimony to the Arbitrator, that the Sheboygan food service program will need to hire an additional employee if the union

prevails in this arbitration which will jeopardize the program since it "operates on a very narrow financial margin" (Employer Brief, pp. 83-87).

Discussion and Opinion

The Statute requires the arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as pertinent to this decision are internal (e.), external (d.), private sector employees (f.), and cost-of-living (g.) comparisons as well as interests of the public (c.) and overall compensation (h.). Each of these is considered below as the outstanding issues of this dispute are discussed. First, the Arbitrator is compelled to comment on the question of "comparability" separately, as outlined on pp. 2-3 above. The other question of costing of the sick leave/severance payout is discussed below in that section.

Comparables

The Arbitrator is not willing to accept either party's list of primary comparables for purposes of applying criteria (d.) in order to judge which offer is more reasonable and to establish a precedent for any subsequent interest arbitration. Comparability based on similarity of size clearly favors the Union's pool, such as it is. Sheboygan is smaller than Green Bay and larger than Manitowoc. The Undersigned takes note of the fact that its per capita personal income level is also similar, but generally dissimilar to the Employer's proposed comparables.¹² But he also notes that Manitowoc does not even have a lunch program, so for about a third of the members of the bargaining unit, there is only a comparable "pool" of one other district. There are other large school districts in the area, namely Oshkosh, Appleton, Fond du Lac, etc. which may be used as comparables, but no data has been offered, so the Arbitrator is compelled to use what is offered by the parties.

Comparability based on geographic proximity would seem to favor the Employer's selection of an appropriate reference group. However, it is less obvious than the Employer suggests for several reasons. First, Manitowoc School District is specifically excluded by the Employer even though it is about the same distance from Sheboygan as is the Kiel, New Holstein, and parts of the Elkhart Lake, Plymouth, and Random Lake School Districts. By the Employer's logic, these and Howards Grove School District are part of the Manitowoc labor

¹² Wisconsin Department of Industry, Labor and Human Resources, "Special Report: County Personal Income," Wisconsin Employment Picture, September, 1992.

market. Secondly, the Employer's citations of various arbitrator's opinions deal with establishing comparability of similar, geographically proximate workers where comparisons should not be ignored because of non-union status or affiliation with different athletic conferences. The Arbitrator notes the size of the employer and comparison employer in these cited cases, and finds them to be generally "small," similarly sized, and otherwise comparable in contrast to this case. The argument is accepted that the labor markets in the smaller communities surrounding larger cities will be "influenced" by those cities--whether they surround Sheboygan, Manitowoc, or Green Bay--or elsewhere. But contending that those communities' labor markets will exert the same influence pari passu on the larger cities is questionable. And would this influence, if any, be greater for Sheboygan than for Manitowoc and Green Bay? There is no evidence presented to suggest such is the case. Finally, the Undersigned takes particular note of the lack of arbitral precedent establishing symmetry of labor market "influence" between large cities and smaller peripheral communities. Arbitrators indeed have found in many of the cases cited by the Employer and others that "dogs wag tails." But the Undersigned is reluctant to find that "tails wag dogs." The Arbitrator notes that employers of smaller school district support staff typically object to comparisons with their larger, proximate counterparts.¹³ Not surprisingly, the unions prefer to emphasize proximity in such cases. He especially notes that while a set of comparables for Sheboygan School District Custodial-Maintenance Employees has not been established, a set of comparables for the Employer's comparables has been established which excludes Sheboygan.¹⁴ Can Plymouth employees be a "comparable" of Sheboygan without Sheboygan employees being a comparable of Plymouth?

Following the Yaffee Criteria (Dec. No. 19849-A), responsibility, services provided, and training/educational requirements have therefore to be crucial guides for the Arbitrator in determining comparability. The Union's evidence in support of similarity between Sheboygan School District and Green Bay and Manitowoc is incomplete. Of the available comparisons, Custodial and Maintenance-Mechanic positions appear similar, but the Head Cook position at

¹³ see, for example, Johnson in Kewaskum Auxiliary Personnel, (Dec. No. 26484-A), Krinsky in Tomah Area School District Non-Teaching Employees, (Dec. No. 26799-A), and Rice in Nekoosa Educational Support Personnel, (Dec. No. 26636-A). To illustrate, the employer in Kewaskum (a district adjacent to one of the Employer's proposed comparables in the instant case) also argued that Kewaskum school district auxiliary personnel should be compared to the athletic conference based on similarity of the number of students, teachers, etc. The union argued that nearby districts (3-4 times as large) were the more appropriate comparables.

¹⁴ Plymouth School District (Dec. No.). Representatives for the Plymouth District and support staff union who are also the representative in this case argued that Sheboygan was not in the comparable group.

Green Bay has greater requirements. The Employer has not questioned the similarity of kitchen employees. On the other hand, the Employer's attempts to show similarity of its comparables are unconvincing. One or two of the Employer's comparables have maintenance-mechanic positions similar to Sheboygan while four are dissimilar and the rest are questionable, being undocumented, not responding, or the Arbitrator is unable to make a judgement either way. The Undersigned lists as "undocumented" those survey responses which simply list similar positions in the eyes of the respondent, though he has no reason to suggest any lack of truthfulness. The Arbitrator finds that four of these districts seem to have similar (L-2) Custodial positions while one or two do not, and the rest fall into the questionable category. One district appears to have a similar Head Custodian position, several are dissimilar, and the rest are questionable. There are at least two districts with similar Cook positions, none particularly dissimilar, and the rest questionable but presumably similar. One district "comparable" seems to have a similar Server position, one appears dissimilar, and the rest are questionable but also presumably similar. Districts perhaps "more similar" (to Sheboygan) among the Employer's comparables appear to be Plymouth, Kiel, New Holstein, and Sheboygan Falls. In retrospect, it turns out that these are the larger schools. Cedar Grove, Random Lake, and Oostberg would appear to be dissimilar.

Having determined that the Union has provided too little information for a comparison "pool" and that the Employer has provided a questionable pool, and that neither side has provided additional information on which to construct another pool, the Undersigned will consider all submitted information on district custodial-maintenance employees, especially the larger schools. Because of this problem of direct comparability, more attention is focussed on wage and benefit changes rather than levels. Other criteria also become more important in arriving at an award because criterion (d.) is difficult to apply in this case. The assumption which the Arbitrator makes is that whatever the "true" earnings differential should or should not be between Sheboygan and, say, Elkhart Lake or Green Bay, they should not change substantially in a relative sense as the result of this award.

Wages

The Union contends that while the schools claimed as "comparables" by the Employer are not appropriately comparable, wage increases of cooks, servers, custodians, and maintenance-mechanics appear to be percentage-wise higher than those which the Employer is offering. The Arbitrator calculates those average increases to be as follows:

Table 4.
Average 1990 Wage and Recent Wage Increases of Employer-proposed Comparables¹

Class	Comparables' 1990 Ave. Wage		Sheboygan 1990 Wage		1991 Average % Increase		1992 Average % Increase	
	Min	Max+L	Min	Max+L	Min	Max+L	Min	Max+L
Cook	\$5.71	\$6.65	\$6.69	\$8.02	8.7 %*	10.2%*	5.8%	4.8%
Server	5.33	6.08	6.39	7.73	6.6	9.3 *	6.1	5.1
Custodian	7.13	8.62	7.77	9.39	7.1	4.4	5.5	4.6
Head Custodian	8.24	9.21	8.42	10.52	17.8 *	12.8 *	4.2	3.7
Maintenance Mechanic	9.71	10.76	8.92	10.98	6.0 **	5.7**	N/S *	N/S *
Average Increase					9.2 *	8.5 *	5.4	4.6

- ¹ calculated from Employer Exhibits 54-63.
- * excluding a 39.4%/53.7% increase in 1991 from Cedar Grove, these would be 4.3%/3.6% for Cook, 4.1%/3.3% for Servers (23.5% and 51.*% increases), and 7.45%/3.75% for head Custodians due to 80% and 67% increases. Excluding Cedar Grove from the overall average computations results in 1991 average increases of 5.8% for the Minimum and 4.2% for the Maximum + Longevity.
- ** only 4 of the 10 Employer-proposed comparables have such a position; Three had established wages for 1991, while none had settled for 1992.

The Union's 4.1%/4.9% offer also appears to be closer to the percentage increases of the Employer's selected comparables. Even excluding the three extraordinary increases at Cedar Grove during the 1991 year, which the Undersigned is inclined to do given the above discussion, average increases for all five categories were 5.78 and 4.15 at wage Minimum and Maximum levels. Including the substantial increases at this lowest-paying school district in the averages, results average increases between 9.2% and 8.5% as seen in Table 4. Increases for 1992 were similar to those of the Union's comparables--about 5%-- and therefore closer to the Union's 4.9% offer than to the Employer's 4% offer. The Union is cognizant of the argument that its offer exceeds the current Cost of Living, but notes that the pattern of other settlements gives appropriate consideration to CPI changes since they were negotiated under similar economic conditions. Since there are many settlements, the Arbitrator agrees. Moreover, unit employees received smaller increases than the CPI changes during the past four contract years as evidenced by the Employer (Employer Exhibit 148).

Turning to other comparisons, the Arbitrator also finds support for the Union's wage

offer in comparison to Green Bay and Manitowoc school district support personnel. Both wage levels and the percentage increase in those wages are closer to the Union's offer. He finds that such a conclusion is hard to make regarding other Sheboygan school district employees; the "pattern" has been 4%/4%, the Employers offer, but there have been a number of "special adjustments" for 2 units resulting in increases above that amount. The Undersigned accepts limited use of City and County comparisons with school district custodians and maintenance employees but finds that in doing so, the Union's argument is undermined. Not only were the wage increases there more in line with the Employer's offer, but the wage levels appear to be as well. Lastly, wage comparisons of private sector employees in Sheboygan, the SDA, and statewide would seem to also favor the Employer's offer. Direct comparisons of employees and working conditions, and total benefits is more difficult, but the only evidence presented (by the Employer) suggests that such increases are in the 3.5%-4% range. Additionally, the Labor Department survey seems to corroborate a pattern found among both the Employer's and Unions comparables that Sheboygan kitchen employees fared better than non-kitchen employees in these external comparisons.

The interests and welfare of the public favor neither party's wage offer in the opinion of the Arbitrator. The Union notes the importance of competitive pay, while the District would like to maintain the "pattern" of District, County, and City pay; finding for the Union would probably mean a round of "catch up."

Sick Leave Payout/Severance

The Employer contends that the Arbitrator should reject the Union's offer because of the sick leave payout provision for several reasons: it is not supported by the appropriate external comparables (and the Green Bay and Manitowoc Districts provide for more restrictive payout), none of the other units of the Employer has such a provision, it is expensive and jeopardizes the bond rating of the District, and it is confusing in that it does not specify which types of terminations are eligible for the payout.

The Undersigned is not at all confused in the matter of eligibility for sick leave payout under the Union's offer. It is apparent that unit employees feel that sick leave accumulations are "banked wages" for good and faithful service which are due them when and if they terminate employment with the District, in addition to being available to them in the event of illness. Moreover, they are of the not uncommon opinion that the public interest (and their own) is best served if they have an incentive not to take sick leave unnecessarily. Current District policy regarding sick leave for most employees is "use it or lose it." Many (healthy) employees who are personally honest and have a strong work ethic undoubtedly may feel like suckers when they

have exceeded the maximum sick leave accumulation (114 days) and more so when they terminate with substantial sick leave accumulations (compared to their probability of long-term illness).

There is another side to this issue, not developed by the employer, that argues that sick leave is employer-provided insurance against prolonged periods of illness (rather than "banked wages"), the amount of which is earned with service as in the case of paid vacation. Rights arbitrators have and will uphold the discipline and dismissal of employees who persistently use sick leave even though they do not "use it all up", rejecting the argument that the benefit is annually earned and can be fully spent. Unfortunately these two aspects of sick leave (insurance vs deferred wages) present a recurrent and unresolvable dilemma not only in Sheboygan, but also in the rest of society where there is concern for those afflicted by significant illnesses or chronic health impairments.

Understanding the above issue is necessary in order to properly cost the Union's proposal for accumulated sick leave payout. The Union asks the Arbitrator not to "cost" the provision against it twice--once when won at the bargaining table, and again in this dispute. But the Union previously won sick leave insurance, not increased, albeit deferred wages (part of which would buy insurance). There is a difference in the benefit--and the Union knows it and wants the latter. There is a difference in the cost--and the Employer knows it and wants the former. What is the appropriate cost of the Union's offer? The Arbitrator rejects the Union's contention that the liability incurred if its offer is accepted is not as large as the Employer submits because a fund of \$171,462.38 does not have to be created. The Arbitrator disagrees. This is Wisconsin, not Illinois or New York, etc. Honesty, integrity, and fiscal and fiduciary responsibility are important values here. Retirement programs are funded, for example. An award for the Union will mean a real debt to employees as calculated by the Employer. This amount will rise annually because each year additional employees will reach the 10 year mark and annual wage increases will increase the liability. The Union offers that this amount will be lessened by any amounts of sick leave which employees actually take; this suggests that employees merely occupy space and are not missed when sick, and weakens the argument that the public interest is served when unnecessary sick leave is discouraged by an incentive system such as is being proposed by the Union. Their substitute replacements may cost less, or other employees may have to "pick up the load" so the Arbitrator agrees that there may be some cost mitigation. And the Arbitrator is basically in agreement with the Union that there is a public interest benefit by providing the employees with an incentive to accumulate sick leave. Furthermore, he recognizes that the Union is not asking for the entire unused leave--only 50% of that which can accumulate--and thus it is offering to sort of "split the difference." Additionally he does agree with the Union that the 1992 costing of this proposal should not be \$171,462.38. Rather, a reasonable

amount which would be due to likely terminations in 1992 would be the cost plus a portion of the liability which should also be charged to the 1992 year. Examination of the employee lists suggests to the Arbitrator that charging to 1992 perhaps 1/10 of the total incurred liability (or \$17,146) plus \$10-12,000 for 1992 terminees would be an appropriate cost estimate for this provision. Thus a cost of \$27,146.23 - \$29,146.23 is assigned to 1992.

The Union's offer which includes the severance payout of accumulated sick leave is not an unreasonable provision. It serves an interest of the public. On the other hand, cost-containment of benefits does as well. Has the Union demonstrated a need for the change in the status quo? No demonstration has been made that there is a problem of an abuse of sick leave or that absent such a provision some unfavorable consequences may ensue. Arbitrator Vernon and others have indicated that such a demonstration of need can be made by comparison to benefits enjoyed by similar employees.¹⁵ The Union's offer is supported in part by the athletic conference comparable(s), though it is more generous. It is conceptually supported by consideration of other local public employees in Sheboygan. The Employer's health insurance coverage of early retirees when this is not done elsewhere--except with sick leave accumulations--modifies this conclusion for these terminees. Clearly it is not supported by the Employer's chosen comparables. And very clearly it is not supported by internal (school district) comparables and would have a "roll-out effect" on other units in the District. "Miscellaneous comparables" may give some indication of support for the Union's offer, but not enough to influence the Arbitrator.

Has the Union offered a sufficient quid pro quo for a change in the status quo which it has partially demonstrated? The Arbitrator was not satisfied with the submissions of "comparables" by the parties and has determined that relative changes in these "comparables" would guide his decision ("truth" and "justice" taking a back seat to "reasonable settlement" for the time being). Following this reasoning, he concludes that the Union's offer of 4.1% in the first year is sufficiently "low", its offer of 4.9% in the second year is considered to be appropriate, but does not "buy-off" the \$28,000 cost of the status quo change.

Floating Holidays

¹⁵ Elkhart Lake and Bloomer School District (Dec. No. 43193-A and 24342-A), Nielson in Manitowoc Public Schools, (Dec. No. 26263-A), and Petrie, in New Richmond School District basically see support among the comparables as evidencing a "need" for change of the status quo.

The Arbitrator recognizes the "loss" to kitchen employees brought about by the Employer's decision to institute and expand the senior meals program. The question which needs to be addressed herein is whether or not the Union's proposal represents an appropriate remedy, and the weight accorded this issue in the context of this arbitration. It is unfortunate that the Union did not proceed with its grievance, believing that the Employer would provide appropriate compensation in its contract offer. In arbitration of grievances an arbitrator may have more latitude in fashioning a remedy, but in this interest arbitration, one party's total package final offer is chosen.

The cost of the two additional floating holidays (about \$1400/yr.) is not going to destroy the lunch program to the degree which the Employer contends. The Union has argued that a variety of options exists short of hiring more staff or closing the program. Additionally, testimony reveals that in the current meal price range, the demand is "relatively inelastic" which provides some pricing flexibility (although properly this added cost should be assessed to the senior, not student, meals). The Employer's argument that two additional floating holidays is excessive compensation for two extra days work is a bit misleading since kitchen employees now have to work holidays which they voluntarily rotate amongst themselves.

The Undersigned wishes he had an opportunity to provide some recognition of this loss to kitchen employees, but is reluctant to accept the Union's offer based on this provision for several reasons. First, it is a substantial benefit compared to the "loss," and it represents a significant departure from the pattern of holidays for other district employees, especially for full-time, full-year employees. Second, it is not supported by either set of external comparables. Some of these may even have a senior meals program as well. Third, the Union's contention that kitchen employees in this unit receive no paid vacation is generally the rule for part-year employees. Granted, some may now be inching closer to full-year status than they would have been in the absence of the senior program. Fourth, kitchen employees are eligible for full-time benefits--especially including health insurance--if they are scheduled to work as few as 600 hours/yr., which is unusual. Finally, as noted elsewhere, kitchen employees fare better than non-kitchen employees in at least three wage comparisons. The employer cites state and regional wage data to show that Sheboygan School District Custodial-Maintenance Employees earn above survey averages. This may be expected, since Sheboygan is the 10th largest district in the state, and has above-average personal income levels. But kitchen employees' wages exceed the average by a greater percentage than do other unit employees. The same conclusion can be reached by examining Table 3 (p.13) where the Employer compares unit employees to its own comparables. The Union's data also shows greater percentage differences between Sheboygan and Green Bay/Manitowoc wages for custodians, delivery, and maintenance employees than for kitchen employees.

Conclusions

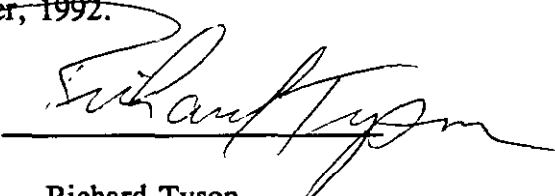
The Arbitrator is left to weigh the importance of each of these three issues. He finds that the Union's proposal for wage increases is somewhat more reasonable, especially for the custodian and maintenance employees. In reaching this conclusion, he relies on data provided by the parties on increases rather than levels because an appropriate external comparison is lacking. Other comparisons are mixed. He finds that the Union's proposal to change the status quo regarding severance pay and the additional floating holidays fails to convince him that such changes need to come through arbitration, and that its proposal will appropriately remedy problems. Support among "the comparables" for such a change in regard to the severance is mixed at best. As such, the Union has not shown a substantial pattern which would compel a change in the status quo. Its preferred wage offer which in 1991 may be considered somewhat of a quid pro quo, but in 1992 it does not "buy off" the substantial costs of its proposal. And such support for the floating holidays is not there. "Justice" for kitchen employees may represent such a need, but the Undersigned is not persuaded that the Union's proposal is the appropriate remedy. The arbitrator has taken to heart the Employer's quotations of other arbitrators' dicta regarding the status quo and the unique role of interest arbitration--to extend negotiations by deciding "...what..the parties themselves, as reasonable men (should) have agreed to." In the opinion of the Arbitrator, the Union's proposal does not meet that requirement.

Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the Sheboygan School District is to be incorporated into the 1991-92 Collective Bargaining Agreement with Local 1750, AFSCME, AFL-CIO (Custodial-Maintenance Unit).

Dated this 31st day of October, 1992.



Richard Tyson,
Arbitrator

FINAL OFFER TO THE
SHEBOYGAN AREA SCHOOL DISTRICT
TO
LOCAL 1750, AFSCME, AFL-CIO
(CUSTODIAL - MAINTENANCE UNIT)

1. TERM OF AGREEMENT. Two years.
2. COMPENSATION.
 - A. Effective January 1, 1991, increase each 1990 hourly wage rate, authorized at Article XIII, Section 1. of the collective bargaining agreement by 4%.
 - B. Effective January 1, 1992, increase each 1991 hourly wage rate, authorized at Article XIII, Section 1. of the collective bargaining agreement by 4%.
3. WISCONSIN RETIREMENT SYSTEM. Amend Article XI, RETIREMENT, Section 1, to provide that effective January 1, 1991, the School District will pay the employee contribution of 6.1% to the Wisconsin Retirement Fund, and that effective January 1, 1992, the School District will pay the employee contribution of 6.2% to the Wisconsin Retirement Fund.
4. TERMS OF SUCCESSOR AGREEMENT. Except as otherwise modified by stipulation, all other terms of the 1989-90 collective bargaining agreement will be incorporated without modification in the 1991-92 successor agreement.