IN THE MATTER OF INTEREST ARBITRATION BETWEEN

Wisconsin Education Association Council -
Cochrane-Fountain City Support Staff
"Union"

and

Cochrane-Fountain City School District
"Employer"

WERC CASE 15
NO. 46593
INT/ARB-6231
Decision No. 27234-A

NAME OF ARBITRATOR: John J. Flagler

DATE AND PLACE OF HEARING: July 15, 1992; Fountain City, WI

DATE OF RECEIPT OF POST-HEARING BRIEFS: September 21, 1992

APPEARANCES

FOR THE UNION: Jeffrey L. Roy, Organizer/Consultant
Wisconsin Education Association Council
33 Nob Hill Drive
Madison, WI 53708

FOR THE EMPLOYER: Kathryn J. Prenn
Weld, Riley, Prenn & Ricci, S.C.
PO Box 1030
Eau Claire, WI 54702

I. INTRODUCTION

On November 21, 1992, representatives of the Cochrane-Fountain City Support Staff (the "Union") and the representatives of the Cochrane-Fountain City School District (the "District") stipulated for arbitration after the two parties were unable to reach settlement of the 1990-93 Collective Bargaining Agreement.

Professor John J. Flagler was selected as the Mediator-Arbitrator. With the agreement of the parties, Arbitrator Flagler scheduled Wednesday, July 15, 1992, at 4:00 p.m. for the arbitration hearing.

Commencing at approximately 4:00 p.m. an attempt to reach agreement between the parties on the issues was made. Unable to reach an agreement, both parties submitted numerous exhibits and testimonies at the hearing following the mediation session. At the close of the hearing, the Arbitrator requested that the parties simultaneously exchange copies of their briefs postmarked by September 9, 1992, and reply briefs, no later than September 21, 1992.

The parties met the briefing schedule and the record was officially closed on September 21, 1992. In accordance with the Arbitrator's request, the parties met before the filing of briefs and prepared a spread sheet which sets forth the separate issues, the titles of those issues, a summary of the competing positions on each issue, and a descriptive statement on the difference between the parties on each of the issues (See Arbitrator's Exhibit A).

It should be noted that the ensuing interest arbitration award results in the first Collective Bargaining Agreement between the parties.

II. STATUTORY CRITERIA TO BE USED BY THE ARBITRATOR IN DECIDING THIS DISPUTE

Section 11.70(4)(cm)7, Wis. Stat. directs that the Arbitrator give weight to the following factors in arriving at a decision to which party's final offer should be adopted:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal 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 proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 municipal employes, 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

III. STATEMENT OF ISSUES

It is hereby emphasized that the spread sheet summation of the parties final positions submitted to the Arbitrator at his request on August 25, 1992 does not replace, preclude, or supersede the fuller elaboration of either party's position as set forth in their respective briefs and reply briefs. The spread sheet is meant to be no more and no less than a useful focus for common numbering and identification of issues.

The spread sheet serves the further purpose of encouraging the parties to define their differences on each of the issues remaining at impasse. My forty years experience as an arbitrator counsels that the discipline of having to define the actual differences between impasse positions often leads to settlement. At a minimum, this process tends to sharpen the focus of choice for the interest arbitrator.

With these considerations in mind, the issues here in arbitration are set forth in Union Exhibit 3, and in District Exhibit 1. Both parties' final positions are summarized in the following spread sheet marked as Arbitrator's Exhibit A.

ARBITRATOR'S EXHIBIT A

COCHRANE-FOUNTAIN CITY ARBITRATION
ISSUES AND POSITIONS

ISSUE	TITLE	ASSOCIATION POSITION	DISTRICT POSITION	DIFFERENCES IN POSITIONS
1.	EMPLOYEE RIGHTS/PRIVILEGES	Parties are in agreement.	Parties are in agreement.	There is no difference in the language, only the title of the Article
2.	DUES DEDUCTION AND FAIR SHARE	Standard dues deduction/fair share language.	Standard dues deduction/fair share language except paragraph B(2)(a) establishes that employees paying Association dues are exempt from fair share payments, Paragraph B(2)(b) codifies the employee's statutory rights to challenge fair share payments.	The Association final offer does not include the provision of Paragraph B(2) which codifies the employee's statutory rights to challenge fair share payments.
3	CONDITIONS OF EMPLOYMENT	B. District pay for any certification and licenses that it requests an employee to obtain E. (Board Offer) No position-past practice H. Extra duties and assignments be first offered to unit members in each department.	B. Does not obligate the District to pay for certifications and licenses required to maintain eligibility for employment. E. Requires employees to conduct all extra-curricular duties outside of their regular duties H. (Union Offer) No position.	B. The Association would require the District to pay for all certificates and licenses, including renewals. E. The Association proposal is silent on extra-curricular duties H. The District offer is silent on the assignment of extra duties.
4.	STAFF REDUCTION	C. SELECTION FOR REDUCTION 1. The least senior employee in the department be the first person laid off. D. SENIORITY 1. Commence upon the first day of hire in the District. E. RECALL 1 Retain layoff rights for a period of two years. G. GRIEVANCE PROCEDURE 1. When filing a grievance on a layoff, the grievant may start at step 2 of the grievance procedure.	The District proposes the use of four criteria to determine layoffs and specifies the procedure to be used in case of ties; the District proposes that recalls be limited to the department from which the employees was laid off, establishes that the recalled employees must be qualified for the position and established a recall rights period of one calendar year.	The Association proposes that layoffs be based strictly on seniority by department and does not specify the procedure to be used in case of ties. Board established a recall rights period of (1) one calendar year and the Association establishes a recall rights period of (2) two years. Parties are in dispute in regards to member being qualified for recall purposes. Board does not propose a advancement to step 2 of grievance procedure.

5.	TRANSFERS AND VACANCIES	1. Vacant positions be filled by qualified bargaining unit applicants. Seniority be applied when 2 or more qualified employees apply. 2. Employee not selected be given a written explanation why. 3. District determines the qualifications needed for vacant position. C. INVOLUNTARY TRANSFERS 1. In a involuntary transfer, the employees qualified for the position with the least seniority be transferred. 2. No involuntary transfer if there are qualified volunteers first. 3. A meetings regarding the involuntary transfer between Union and District 4 If involuntary transfer results in a reduction of hours, staff reduction article of contract will be used.	The District proposes that employees who are transferred involuntarily will be given reasons for the transfer. The District's positions on voluntary transfers is found in the tentative agreements.	The Association proposes that qualified employees applying for vacant positions will be given the position. The Association proposes that involuntary transfers be based on asking for volunteers first, then employees qualified for the position with the least seniority.
6.	COMPENSATION	1. Past practice be followed regarding early dismissal, late start, or closing of school. 2. The Board will contribute the full required employee's contribution for all eligible employees. 3. Longevity be paid for those employees, except transportation employees, that on the top of their schedule and who did not receive an increment step.	1 The District offer is silent in regard to school closings. 2. The Board proposes to contribute the full employee's required contribution to the retirement system, expresses as a percentage 3. The District offer is silent in regard to longevity.	1. Association proposes to follow the past practice in the District. 2. Language written as full or as a percentage to the amount of contribution 3. Association proposes longevity for employees, except transportation employees, not receiving an increment.
7.	HOLIDAYS	1. 12 month employees: 8 paid holidays 1990-91 8 paid holidays 1991-92 9 paid holidays 1992-93 2. School year employees: 1 paid holiday 1991-92 2 paid holidays 1992-93	The District proposes six paid holidays for 12-month employees and no paid holidays for school year employees; requires an employees to work the day before and the day after the holiday to be eligible and retains the right to determine whether Friday or Monday will be the paid holiday if the holidays falls on a weekend.	The Association proposes eight paid holidays for 12-month employees and two paid holidays for school year employees; does not require an employees to work the day before and the day after the holiday to be eligible and specifies whether Friday or Monday as the paid holiday if the holiday falls on a weekend.

8.	ABSENCE FROM WORK/LEAVES	A. PAID LEAVE 1 12 month employees: 1 day per month, 12 a year, cumulative to 90 2. School year employees: 1 day per month, 9 a year, cumulative to 90. 3. May be used for: Illness funerals 1 day for personal reasons B. UNPAID LEAVE OF ABSENCE Discretion by the Board C. MATERNITY LEAVE *May be used as paid leave* when certified by doctor. D. NOTICE OF LEAVE District will provide statement of accumulated leave.	One day of sick leave per month worked, up to 90 days can accumulate. One day of sick leave can be used for personal leave under certain conditions. Up to 9 days of emergency leave for funerals and unpaid leaves may be granted at the Board's discretion.	No substantive difference on sick leave; one day of sick leave can be used for personal leave with no restrictions, no difference on emergency leave for funerals; no substantive difference on unpaid leaves The Board offer is silent on maternity leave.
9	GENERAL PROVISIONS	1. Buses may be kept at home. 2. Payment for electricity for plugging in buses at home. 3. Payment for drivers on overnight trips. 4. Drivers reimbursed for expenses. 5. When working a paid holiday, employees will paid holiday pay plus regular hourly rate. 6. If assigned to work on Sunday or Saturday, *he/she will be paid time* and one-half.	The District proposes to reimburse transportation employees $50 for gasoline buses and $70 for diesel buses if they ar kept at home during the winter; the District specifies *the procedure to be uses to* assign extra-curricular bus trips; the District defines how sitting time will be paid for drivers on extra-curricular trips, the District proposes that work on Saturday and Sunday be paid at the employee's regular rate unless the hours worked are n excess of 40 on one week; and the District proposes a liquidated damages provision.	The difference on payment for electricity is $5 when buses are kept at home. Disagreement between parties on assignment of extra-*curricular bus trips* Disagreement on use of sitting time for bus drivers Disagreement on payment of work performed on Saturday and Sunday. Association does not propose a liquidated damages provision.

10.	BENEFITS/INSURANCE Health-1990-91 Single: $1869 12 Family: $4832 40 Health-1991-92 Single: $1915.44 Family: $4940.40 Health-1992-93 Single: $2081 76 Family: $5357.04 ********** Dental-1990-91 Single: $ 193.92 Family: $ 511.92 Dental-1991-92 Single $ 203.04 Family: $ 534.48 Dental-1992-93 Single: $ 231.36 Family: $ 598.56	A. INSURANCE 1. Board will pay for full coverage toward health insurance plan 2. Board will pay for full coverage toward dental insurance plan. 3. Pro-rated benefits for employees working less than eight hours a day. Food service based on 7.5 hours a day.	INSURANCE-Board will pay: HEALTH INSURANCE A. Regular full-time, 12 month employees: 11/14790-6/30/92: $4693.00 family and $1820.00 single. 7/1/92: $5397.00 family and $2093.00 single. B. Regular full-time, school year employees: 11/14790-6730/92 $4199.00 family and $1628.00 single 7/1/92: $4829 00 family and $1872.00 single. DENTAL INSURANCE C. Regular full-time, 12 month employees: 11/14790-6/30/92: $508.00 family and $193.00 single. 7/1/92: $533.00 family and $203.00 single. D Regular full-time, school year employees: 11/14790-6730/92: $454.00 family and $173.00 single. 7/1/92 $477 00 family and $182 00 single.	The Association proposal calls for the District to pay the entire health and dental premium each of the contract for both 9-month and 12 month employees, while the District proposes a dollar figure.

11	WORK SCHEDULES	A. PAID WORK DAYS Office personnel will not work on a October Teacher Convention b. Christmas Vacation c. Easter Vacation B. EXTRA DAYS Extra days may be requested at the discretion of the Board.	Self-explanatory	The Association proposes that all clerical employees receive unpaid time off during October Teacher Convention, Christmas Vacation and Easter Vacation
12	MANAGEMENT RIGHTS	STANDARD MANAGEMENT RIGHTS LANGUAGE	Essentially the same as the Association proposal.	Association proposal contains minor differences in the introductory paragraph and omits the last two paragraphs of the District's proposal
13	ENTIRE MEMORANDUM OF AGREEMENT	Contract between parties represent full and complete agreement.	Same as Association proposal	None
14.	DURATION	November 14, 1990 to June 30, 1993	Essentially the same as Association proposal.	No substantive differences
15.	APPENDIX A - WAGES	1990-91: Minimum of 4% for all employees 1991-92: Employees placed on schedule that gives a minimum of 4% wage increase. 1992-93: 4% wage increase plus increment or longevity	1990-91: The District proposes the same wage rates in existence for the entire 1990-91 school year for the time period from 11/14/90 through 6/30/91. 1991-92: See final offer 1992-93: See final offer	1990-91: The Association proposes that all employees receive at least a 4% wage increase for the 1990-91 school year. The Board proposal freezes some employees at their 1989-90 wage rate while other employees receive wage increases. 1991-92: Both parties propose that all employees be placed on a salary schedule and receive a wage increase. 1992-93: Association proposal increases each step of the salary schedule by 4% The Board proposal gives a wage increase, but the wage amount given to all employees is not the same.
16.	NO STRIKE CLAUSE	NO LANGUAGE PROPOSED	Prohibits job actions and provides penalties for violations.	Association offer contains no proposal.

IV. STATUTORY CRITERIA (Section 111.70(7)(d)(e)(f), Wis. Stat.)

Under the statutory criteria the Union proposes that the comparison pool be that relied on by Arbitrator Gil Vernon in his decision involving the Cochrane/Fountain City Teachers' Association and the School District of Cochrane/Fountain City. In that decision Arbitrator Vernon extended the geographical area radius to 50 miles because of the limited number of contract settlements available for comparison purposes in a more contained area such as the Dairyland Conference.

In that wider comparison sample, Arbitrator Vernon listed the following school districts:

Westby	De Soto
Durand	Elk Mound
Altoona	Bangor
Mondovi	Pepin
Fall Creek	Arkansaw
Gilmanton	

Vernon discounted Altoona and Arkansaw as statistically non-representative and accepted the remaining districts as comparable. By analogy to the Vernon determination, the Union argues that the lack of bargaining representation of support staffs in the Dairyland Conference (except for Eleva-Strum and to a more limited extent the Alma Center bus drivers bargaining unit) requires the same 50 mile radius could be applied to identify an appropriate comparison group in the instant case.

By contrast, the District contends that the statutory criteria better supports its primary reliance on the other school districts which make up the Dairyland Athletic Conference plus all school districts within a 35-mile radius, whether unionized or not. Indeed, the majority of the schools in the District's comparison group do not have unionized support staffs. Notwithstanding the paucity of unionized support staffs in its comparison group, the District offers several interest arbitration awards which have relied of a mix of union and non-union school districts.

Discussion

More than any other criterion, parties to collective bargaining contracts rely on comparable terms and conditions of employment among like-situated groups to determine what constitutes a fair settlement. Seasoned negotiators, as well as experienced interest arbitrators, recognize that all such comparisons are imperfect. We will continue to rely on such comparisons, however flawed, as necessary furnishings of the collective bargaining process -- and by extension the interest arbitration forum.

In the ordinary course of a collective bargaining relationship, the parties themselves work out some fairly representative sample of like-situated employee groups through the give and take of negotiations. This culling out process customarily discards those units higher and lower, larger and smaller at the extremes until the parties finally arrive at a comparison group they both can live with. This sifting out process takes time and patience. For all its flaws, the end product is infinitely superior to the imposition of some set of comparables by an interest arbitrator using esoteric statistical methods and inferences which the parties, left to their own devices, would probably never even consider.

The fact that this is the first collective bargaining agreement between the parties poses the vexatious problem of not having any significant history of negotiations over what should constitute an appropriate comparison group. The fact that only one school district (Eleva-Strum) out of the eleven in the Dairyland Athletic Conference has a comparable wall-to-wall unionized support staff further compounds the problem of identifying a valid comparison group.

The District argues that I should ignore the effect of the minimal level of unionization among the school districts which make up its proposed comparison group and cites several interest arbitrators who have accepted a mix of union and non-union school districts as appropriate. I have no quarrel with other interest arbitrators who accept both union and non-union employers in a comparison sample. I have done the same where the inclusion of non-union groups with union groups resulted in a balanced, representative statistical sample.

It cannot be seriously argued, however, that the one wall-to-wall bargaining unit among the eleven in the Dairyland Athletic Conference, primarily relied upon by the District, produces a representative comparison group. To accept the District's comparison group -- skewed as it is towards non-union support staffs -- would be to ignore the most fundamental principle undergirding the interest arbitration process. That principle advises that interest arbitrators must avoid imposing a settlement that the parties would not likely to have reached on their own. Stated in the affirmative, interest arbitrators are obliged to seek out the result the parties themselves may well have reached if they had not run out of time and/or patience to reach voluntary settlement. Even the addition of unionized groups outside the Lakeland Conference to the District's 35 mile radius sample falls short of producing a satisfactory balance.

Rather than plowing new ground interest arbitrators rely on a combination of bargaining history, current positions and trends in the comparison group, the financial situation of the employer, inflationary pressures, and the other indicia mentioned in the statutory criteria. As mentioned earlier, of all these criteria, interest arbitrators generally attach greatest weight to the comparison group -- especially as it evolved through several successive rounds of bargaining.

In the absence of any such bargaining history, I surmise on the basis of well over 100 interest arbitrations I have handled in Wisconsin, Minnesota, and Iowa, that it would be highly unlikely that this Support Staff Union would ever agree to a comparison of such a large percentage of non-union employees doing similar work as proposed by the District. Neither can I envisage the District readily agreeing to the 50 mile radius comparison group proposed by the Union.

As between these two defective samples, however, the Union's is the far less flawed. In this regard, the District's argument that prospective support staff would not be drawn from the Union's 50 mile radius ignores the fact that only three of those school districts (De Soto, Westby, and Spring Valley) are located at the outer perimeter of this area. Other Union-proposed school districts such as Mondovi, Durand, Augusta, and West Salem are either within the District's 35 mile radius or so close as to be only negligible driving distances further out. Statistical inference would place some one-half of even the outlying districts' labor markets within rather than at the 50 mile perimeter.

More importantly, the Union's proposed comparison group provides a substantially less statistically skewed distribution between union and non-union support staffs. This does not suggest that the Union's proposed comparison sample is not also tilted towards its own partisan interests. It does have the additional marginal advantage of being more closely related to the comparison group relied on by Arbitrator Gil Vernon in interest arbitration award involving this same District and the Cochrane-Fountain City Teachers Association.

While certain differences may be noted between what would constitute an appropriate comparison group for teachers and that for support staff the overriding similarity between the choice facing Arbitrator Vernon and that involved in the instant matter is that only one school district in the Dairyland Athletic Conference was reasonably comparable in both cases -- in the Vernon decision only Gilmanton was a negotiated settlement and in the present case only Eleva-Strum can be considered as a collectively bargained contract covering employees performing essentially the same work. Accordingly, Vernon's rationale for expanding the geographical area from which he drew his comparison group applies with equal logic in the present case.

In similar vein to my own findings as to the marginality between the 35 mile radius proposed by the District and the 50 mile radius offered by the Union, Vernon observed that:

> At the outset, the Association notes there is only one settlement in the athletic conference (Gilmanton). Thus, they expand the primary set of comparables to include settled "area" schools, similar in size, within approximately a fifty-mile radius. Thus, none of these schools are any

> farther than the most distant athletic conference schools (Alma Center and Augusta).

A further consideration favoring the Union's proposed comparison group arises from the fact that 12 of the 16 issues here at impasse involve so-called "language" items as opposed to the 4 entirely economic issues. While comparisons with non-union support staffs may provide some limited guidance on the economic package, in the absence of collective bargaining agreements no useful comparisons are possible with non-union school districts as to contract language issues.

As often happens with first labor contracts, a larger number of such language items appear on the bargaining agenda relative to the economic issues. Once these language items are settled, they do not often reappear in subsequent rounds of bargaining, except for relatively minor fine tuning. The economic package, however, will always be the major focus of subsequent contract negotiations. As the relationship thus matures, the Union and the District will probably work out a mutually satisfactory comparison group. For the present interest arbitration, however, I find the following group, as proposed by the Union, to be reasonable:

Eleva-Strum	Alma Center
Augusta	De Soto
Durand	Fall Creek
Mondovi	West Salem
Westby	Spring Valley
Elmwood	Osseo-Fairchild

While the Union's list of comparables is the more reasonable and should provide a better starting point for future negotiations, the District's final positions on the primary economic issues, considered as a whole, fares well even against the Union's comparison group. This interest arbitration poses difficult and perplexing problems, but in the final analysis turns a relatively few issues which comprise the core of the dispute and thus warrant greater weight in the final determination.

Issue No. 10 - Benefits/Insurance

As both parties emphasized in their briefs, the insurance package represents the single most important issue at impasse. The Union challenges the District's position on the insurance package as a unilateral change which should not be considered part of the status quo ante to the negotiations leading to the present interest arbitration. That argument lacks merit in view of Investigator Yeager's determination that:

> The effective date for this first contract cannot precede November 14, 1990, inasmuch as the union was not legally certified to act on the behalf

of the bargaining unit in entering into a collective bargaining agreement with the District.

The Union's own chronology on p. 30 recognizes that the District decided on the changes in the insurance package and certain other conditions of compensation at the end of the 1989-90 school year -- several months before the Union even filed its petition for a certification election. Thus, the District had no collective bargaining obligations to the non-unionized support staff at the time it notified them of the changes in insurance premiums made in May of 1990. It necessarily follows from this chronological and legal fact that the status quo period for purposes of this interest arbitration must cover those mandatory terms and conditions of employment in existence at the time formal contract negotiations commenced.

Arbitrators differ on the role of the status quo ante in interest arbitration but most would agree that, at a minimum, the concept places the preliminary burden of proof on the party proposing a change for a prima facie showing of reasonableness. The Union simply was unable to make that prima facie case in regard to the insurance package.

In plain truth, the Union's own comparison group better favors the District's position on the insurance issue. Out of the 12 school districts relied on by the Union, only two pay 100% of health and dental coverage for full-time support staff, while five of the Union's comparables pay nothing towards dental insurance for these employees.

The Union's assertion that its internal comparables support its final insurance package offer must be tempered by the premium capping feature in the teachers' agreement. The teachers' arrangement calls for them to have any insurance premiums above the cap be taken out of their salaries. Thus, it cannot be unequivocally stated that the teachers receive 100% of their premiums forevermore. Time and the increasing cost of health care will determine when and if the teachers' arrangement will become a contributory program.

It should be further noted that the Union misstates the case in asserting that the District's insurance premiums have decreased in past years and despite this the District offer on insurance is a further "takeback." The facts contradict both assertions. The uncontested data establishes that while the rate of insurance premium increase paid by the District has tapered off from the double digit level of 1989-90, it continues to pay a higher premium each and every year. The data further shows that the District's position at least maintains the same contribution level for some employees while increasing it for others, i.e., improving insurance payments for both 9 month and 12 month employees in 1992-93 while maintaining the proration formula.

The Union's proposal to treat both 9 month and 12 month employees to the same full premium payment also detracts from the persuasiveness of its insurance position. Certainly direct wage payments are made in direct proportion to actual time worked. In like vein, it is increasingly common to see some fringe benefits prorated to the amount of hours actually worked.

A major consideration favoring the District's insurance package, moreover, is the pronounced trend toward employee contributory insurance plans in collective bargaining agreements. Unless and until health care costs are better contained, health insurance premiums surely will continue to skyrocket. This is not to suggest that the employees subject to this arbitration have been abusing their health care coverage -- the District never claimed that the sharing of premium costs was intended to curb utilization of the plan. Rather, the contributory feature underscores the reality that employers in increasing numbers are coming to realize that no effective health care cost containment can ever be achieved if every successive increase in premiums are automatically absorbed by them alone.

Perhaps the last best hope of effectively containing health care costs lies with the combined resistance of unions and employers expressed through the political parties as well as directly to the health care providers and to the insurance carriers. Such an alliance stands a much better chance of succeeding to the extent that union members become even more aware and energized about the spiralling costs of health care through the device of contributory plans.

For all the above reasons, I find the District's final offer on the insurance package to be the more reasonable. Standing alone this decision on the health insurance package turns the entirety of the award to the District's favor because of the heavy weight both parties assign to issue No. 10.

As a guide to future bargaining, however, the parties are entitled to have the entirety of the list of issues reviewed.

Issue No. 1 Employee Rights/Privileges

This item comes about as close to a non-issue as anything I have encountered in interest arbitration. If this were conventional arbitration I would set this issue to rest by titling the Article Employee Rights and Privileges. Neither side has an advantage on this item.

Issue No. 2 Dues Deduction and Fair Share

The sole difference between the parties on this issue is the District's proposal to include paragraph B(2), which codifies in the collective bargaining agreement an employee's statutory rights to challenge fair share payments. Such a mention in a

labor contract can only encourage discord and raise the potential for litigation. It has no more place in a labor contract than would codification of the District's bargaining obligations under Wisconsin statutes.

Issue No. 3 Conditions of Employment

The District's final offer would limit its payment for certificates and licenses to only those that it requests employees to obtain but which are not otherwise required to maintain eligibility for employment. Thus, the District's proposal would not cover such licenses as commercial drivers' renewals because these are required as a matter of Wisconsin law in order to drive buses. The District's position on this first item is quite reasonable and, indeed, commonly appears in such public sector labor contracts.

The second item under Issue No. 3 raises the familiar dispute over the performance of extracurricular duties during regular duty hours. The union offers no entirely satisfactory resolution to the potential for occasional double dipping abuse. On the other hand, some parts of extracurricular duties may have to be performed during regular shift hours and also require extra effort to both complete assigned work and handle some extracurricular chores. An example from a past grievance I heard was a custodian who worked harder to complete the rooms he was assigned to clean in order to make time for contacting members of a team he coached concerning an emergency change in travel arrangements to an out of town game.

Both double dipping and a corresponding failure to properly compensate for extra effort and responsibility for a demanding extracurricular create an unjust result. Some school districts have negotiated for limited on-duty performance of extracurricular activities under reasonably strict guidelines governing special circumstances. Others simply build into the compensation for such assignments an adequate compensation expressly to recognize the extra effort and burden sometimes required during regular work time. In short, neither party deserves any weight in regard to this item.

In regard to the third item in this particular Article, the District simply overstates its case. The Union's proposal can be found in many public and private sector labor contracts. A consensus of arbitral authority has construed this language as applying only to bargaining unit work and "extra duties" as covering a range of work activities traditionally performed by members of the bargaining unit. This language poses no substantial problems of ambiguity and is a reasonable provision on its face.

Issue No. 4 Staff Reduction

Both parties' final positions on layoffs are seriously flawed. The Union's proposal makes no mention of qualifications. The District's four criteria approach

downplays length of service. The parties in their next round of bargaining would be well advised to negotiate a better balance between the legitimate need of employees for job security and the District's need to have qualified employees available for the work that must be performed.

The most common balancing of interests provisions seen in labor contracts dealing with layoffs contain some version of the proposition that whatever jobs remain after a reduction in workforce shall be assigned to senior qualified employees. The layoff in reverse order of seniority concept proposed by the Union often appears in labor contracts although tempered by language assuring the employer that if no more senior person remains who is qualified to do the job, the least senior person will not be the one laid off.

The District has the better of the length of recall period item. Indeed, the Union had already tentatively agreed to a one year recall provision. The interest arbitration process ought not seem to accept readily, much less reward either party for backing off from tentative agreements. Such "all bets are off" approach to interest arbitration undermines chances for voluntary settlements which might otherwise still be reached before the scheduled hearing.

On a narrow margin the Union's proposal is somewhat less defective than the District's but this comment should be read as damning it with faint praise.

Issue No. 5 Transfers and Vacancies

The District again overstates its case with the stale argument that the Union's language is fraught with ambiguity and thus creates a seedbed for grievances and litigation. The one sure way to avoid grievances, of course, would be to craft language so restrictive of reasonable employees' rights as to preclude effective challenge. I find the District's argument in this regard unpersuasive.

The District attacks the Union's proposal by asking "What is a 'good' reason? "What are 'superior' qualifications?" The short answer to the District's questions in this regard is that a substantial body of literature exists in standard industrial relations texts which addresses these questions. Arbitration awards in the standard reporting journals can be easily found on point. The Union has much the better case on the filling of vacancy language which also draws support from the comparison groups.

The District, however, presents the stronger position on involuntary transfers. The procedure proposed by the Union lacks support among its comparables, is cumbersome to apply, and unduly restricts the kind of staffing options school districts need to routinely make in the interest of improving the educational effectiveness of its programs.

Neither party enjoys any distinct advantage in their competing positions on this issue.

Issue No. 6 Compensation

The District's position on the items under this issue is the more reasonable. Consistent with its other revisions of wage and benefit policies for 1990-91. The overriding principle pursued by the District in these revisions, which preceded formal collective bargaining, is that of resolving compensation inequities by paying for hours actually worked.

This principle certainly does not cover all situations inasmuch as paid vacations, holidays, funeral leave, etc. are all forms of deferred wage payments. As such, none of this class of payment can be strictly defined as compensation for hours actually worked. In this vein, school districts have sometimes negotiated a set number of "snow days," based on past weather seasons, thus guaranteeing that at least some part of the time lost to inclement weather will be compensated. These kinds of arrangements deserve attention during the next round of negotiations. These and other pre-bargaining revisions initiated by the District prior to certification of the Union cannot be automatically included in the new labor contract under the claim of status quo ante.

Finally, the Union offered inadequate justification for its position on longevity. Indeed, as a general rule such compensation provisions are disappearing from labor contracts in favor of compensation adjustments based on improved training and performance.

In sum, the District has the better view on the compensation issue.

Issue No. 7 Holidays

This issue poses no special problems. The comparables clearly favor the Union and, accordingly, if this were conventional arbitration I would readily adopt the Union's position on holidays.

A comment is appropriate on the District's repeated reliance on the theory that the Union has not made its case because "[it] is clearly changing the status quo with absolutely no corresponding quid pro quo." On the basis of forty years of arbitration experience and the reading of many hundreds of interest awards, I assure the parties that this esoteric theory is held by a small minority of arbitrators.

It should be patent on the face of the matter that the entire purpose of a union is to change the status quo. In seeking such changes, a union seldom has much to offer an employer in the strict sense of a quid pro quo except through tradeoffs in the

form of modifying demands in some areas in favor of setting priorities in others. If every amendment to the status quo proposed by a union were to require some corresponding reduction in another area, unions would simply clutter the bargaining agenda with "garbage items" to be blithely tossed aside so as to meet the requirements of the theory. Such game playing happens too often in the ordinary course of events without encouraging more such diversions through the imposition of this theoretical standard by interest arbitrators.

Issue No. 8 Absence From Work/Leave

There are no significant substantive differences on sick leave, funeral leave, or personal leave. The District's final offer is silent on maternity leave which is an increasingly important feature of public sector contracts. The Union's position on Issue 8 is the more reasonable.

Issue No. 9 General Provisions

The differences between the parties are essentially de minimis in regard to the items under this particular heading. Payment of bus drivers for Saturday and Sunday work at time and one-half does not automatically flow from the other overtime provisions in the agreement. An employee might miss his/her forty hours due to illness, accident, or other reasons for a short work week. The Union's position on a per se time and one-half therefore is reasonable in view of the fact that these are days commonly reserved for family activities.

The District again raises the "seedbed for grievances" argument which, under the language here proposed by the Union, is entirely unpersuasive. The sitting time definition from external guidelines should be sufficient to resolve any grievance over what this term covers without codification in the labor contract.

Issue No. 11 Work Schedules

This provision ought not pose the problems it has for the parties. There are several alternatives for granting office personnel the proposed time off without leaving necessary office functions untended or assigning them to employees in other classifications.

In any event, the District proposes the less unreasonable position in view of its need for at least minimal staffing of necessary clerical functions. The parties might well consider some system of rotation to cover only the minimal staffing needed during the periods in question and permit the majority of office staff the time off from work. This can and should be addressed in the 1993 round of negotiations.

Issue No. 12 Management Rights

The District's proposal is virtually commonplace in public sector contracts -- particularly in education and is the more reasonable proposal here.

Issue Nos. 13 and 14

No substantive differences remaining at impasse.

Issue No. 15 Appendix "A" Wages

No useful purpose can be served by a detailed review of the parties competing positions on the wage issue. While I see the District's final offer as too little in the dollar amounts generated, the dispositive consideration here turns on the fact that the Union's straight line, across-the-board percentage formula would not only restore but would exacerbate the very inequities that the District sought to resolve in its revisions prior to the commencement of formal collective bargaining.

The better approach to long term equity in the total compensation package requires that the basic wage schedule be a rational instrument for relating earnings to classifications of work, length of service and such other features as the parties eventually may agree justify compensating. The District's position moves in this direction. The Union's moves away from this result.

Issue No. 16 No Strike Clause

As a general proposition, I am opposed to codifying law into labor agreements for a number of reasons. Among these is the elemental fact that if all external law directly affecting employment matters and the collective bargaining relationship were to be so codified, a typical labor contract would need several shelves to hold its separate parts.

Further, such codifications of law encourage legalistic rather than contractual arguments and extend the time and expense of grievance arbitrations. Finally, such codifications rarely serve any useful purpose when a particular statute remains the primary source, of governance of the subject matter in any event.

SUMMARY

As the parties will note in their issue-by-issue reading of this award, the Union proposed the more reasonable position on some while the District prevailed on others. In a proper weighting of key issues which will have the greatest impact on the employees and the District, however, the District's composite of proposals emerges as the more appropriate and is, hereby, awarded.

10/18/92
Date

John J. Flagler
John J. Flagler, Arbitrator