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STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Arbitration  
of a Dispute Between

BLACK HAWK EDUCATIONAL  
SUPPORT TEAM

and

BLACK HAWK SCHOOL DISTRICT

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Case 16  
No. 46162  
INT/ARB 6112  
Decision No. 27247-A

APPEARANCES:

Robert J. Taylor, Negotiations Specialist, Wisconsin  
Education Association Council, on behalf of the Black  
Hawk Educational Support Team

Robert W. Butler, Staff Counsel, Wisconsin Association of  
School Boards, Inc., on behalf of the Black Hawk School  
District

BACKGROUND

On August 20, 1991, the Black Hawk Educational Support Team (hereinafter "the Union") filed a stipulation with the Wisconsin Employment Relations Commission (WERC) alleging that an impasse existed between the Union and the Black Hawk School District (hereinafter "the Board") in their collective bargaining concerning an initial collective bargaining agreement between them covering support staff personnel employed by the Board and further requesting the WERC to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA).

On April 28, 1992, following investigation and report by a member of the WERC staff, the WERC found that an impasse existed within the meaning of Section 111.70(4)(cm)6 of MERA and ordered that arbitration be initiated. On May 14, 1992, after the parties notified the WERC that they had selected the undersigned, Richard B. Bilder of Madison, Wisconsin, the WERC appointed him to serve as arbitrator to resolve the impasse pursuant to Section 111.70(4)(cm)6 and 7 of the MERA. No citizen's petition pursuant to Section 111.70(4)(cm)6b was filed with the WERC.

On July 24, 1992, the undersigned met with the parties at the Black Hawk High School in South Wayne, Wisconsin to arbitrate the dispute. At the arbitration hearing, which was without transcript, the parties were given a full opportunity to present

evidence and oral arguments. Post-hearing briefs and reply briefs were submitted by both parties, the last being received by the Arbitrator on September 21, 1992.

This arbitration is based upon a review of the evidence, exhibits and arguments, utilizing the statutory criteria set forth in Section 111.74(4)(cm)7.

### ISSUES

The parties are in agreement that the Agreement should have a term of two years, commencing on July 1, 1990 through June 30, 1992, and have reached agreement on various other matters. The issues which have not been resolved voluntarily by the parties, and which have been placed before the Arbitrator, are as follows:

1. Health Insurance. The Board is proposing paying one-hundred percent (100%) of the health insurance premium in 1990-91 and paying ninety percent (90%) of the health insurance premium in 1991-92 of the six members of the bargaining unit who received one hundred percent payments in 1990-91. Other employees who worked 1495 hours or less, would be able to pay for their own insurance and employees who work 1496 or more hours would receive 90% premium payment. The Union is proposing that the Board pay one-hundred percent (100%) of the health insurance premium in 1990-91 and one-hundred percent (100%) of the health insurance premium in 1991-92 of the six members of the bargaining unit who received one-hundred percent premium payments in 1990-91, with certain adjustments for other less than full-time employees beginning with the 1991-92 contract year. Beginning in 1991-92, those employees working less than 1200 hours per year would receive no employer contribution towards health plans, but could pay their own premiums if they wished. Employees working between 1201-1800 hours would be entitled to 50% employer paid premiums for health insurance and those employees who work over 1801 hours would have fully paid health insurance.
2. Dental Insurance. The Board is proposing paying one-hundred percent (100%) of the dental insurance premium in 1990-91 and paying ninety percent (90%) of the dental insurance premium in 1991-92, with certain adjustments for those members of the bargaining unit who received health and dental family plans in 1990-92 as in the case of health insurance. The Union is proposing that the Board pay one-hundred percent (100%) of the dental insurance premium in 1990-91 and one-hundred percent (100%) of the dental insurance premium in 1991-92, with certain adjustments for other less than full-time employees beginning with the 1991-92 contract year, as in the case of health insurance.

3. Holidays. The Board is proposing that 12 month custodians and secretaries receive 7 and 10 holidays, respectively. The Union is proposing that 12-month custodians and secretaries would receive 10 holidays. However, while both proposals include Good Friday, the Board's proposal would grant secretaries only Good Friday afternoon, so the Union argues that the Board's offer is only 9 1/2 days.

The Board is proposing that nine month secretaries, custodians, food service, teachers aides and bus drivers receive 7, 7, 2, 2 and no holidays, respectively. The Union is proposing that nine month secretaries, custodian, food service, teachers aides and bus drivers receive 7, 7, 3, 3 and 3 holidays respectively.

4. Paid Vacation. The Board is proposing that employees would receive one week of vacation after one year of service and two weeks of vacation after three years. The Union is proposing that employees receive one week of vacation after one year of service, two weeks of vacation after two years of service, and three weeks of vacation after five years of service. The Union is also proposing that upon the termination of the employee's employment with the district he/she would receive pay for any unused vacation days.
5. Sick Leave. The Board is proposing that each employee will be credited with one day of sick leave per month for the first 10 months of employment or a maximum of 10 days per contract year (e.g. a full year employee could not earn more than ten (10) days). The Union is proposing that each employee will be credited with one day of sick leave per month (e.g. a school year employee would earn nine (9) days while a full year employee would earn twelve (12) days).

The Board is proposing that sick leave will be accumulative to 60 days for full year employees and 20 days for school year employees. The Union is proposing that sick leave be accumulative to 90 days.

6. Personal Leave. The Board is proposing that each employee be allowed one day of non-accumulative personal leave per contract year, which shall be deducted from accumulated sick leave. The Union is proposing that each employee be allowed two days of non-accumulative personal leave per contract year. The Board is also proposing that District-wide, no more than three personal leave days may be used on any one day.
7. Bereavement Leave. The Board is proposing that each employee be allowed up to three days of bereavement leave, provided such leave is deducted from accumulated

sick leave. The Union is proposing that each employee be allowed up to three days of bereavement leave, which would not be deducted from sick leave.

8. Jury Duty. The parties stipulated at the hearing that the different language in their final offers on jury duty was inconsequential and should not play a role in the Arbitrator's decision.
9. Work Day/Work Week, Overtime. The Board is proposing a regular work day of eight hours, excluding a one-half hour lunch period, and a regular work week of forty hours. The Board also includes language regarding mandatory overtime, prior approval for overtime and reporting requirements. The Union is proposing that a normal work day is eight hours, including paid breaks and paid lunch period of one-half hour and that a regular full-time work week is forty hours; any work beyond forty hours per week will be paid at time and one-half.

At the arbitration hearing the parties stipulated that work performed on Sundays would be at time and one-half and that working on holidays would be compensated at the holiday rate plus time and one-half. The parties further stipulated that an employee would receive a minimum of one hour's pay for overtime call-in or building security checks.

10. Lunch and Break Periods. The Board proposes that employees who work six or more hours a day shall have an unpaid thirty minute, duty-free lunch break. The Union proposes that this thirty minute lunch break be paid. Both parties are in accord as to entitlement to certain other fifteen minute paid breaks.
11. Emergency Late Start. The Board proposes that cooks and secretaries report at regular time or as soon as possible depending on the weather and that they are paid for a full shift. Janitors will report at the regular time and are paid for a full shift. All other employees will report at the time relating to the start of the school day and are paid for a regular shift. The Association proposes that cooks, custodians and secretaries report as close to their normal starting times as possible and are paid for a full shift. All other employees will report at the announced start of the day and are paid for a full shift.
12. Early Dismissal. The Board proposes that janitors, secretaries, cooks and business office employees work the regular day and are paid for a full shift; supervisors may dismiss any of the aforementioned employees (i) if it is hazardous to health to remain at

work or (ii) if the work has been completed. Teachers aides and library clerks will be dismissed after students leave and will be paid for a full shift. The Union proposes that, in the event of an emergency early dismissal, all employees will be dismissed after the students leave and will be paid for a full shift.

13. School Closing. The Board proposes that janitors report for snow removal with second shift reporting with first shift and will work a regular work day. All secretaries will work a regular work day. Janitors and/or secretaries may be dismissed by their supervisors and would then be paid for a full shift. All other employees need not report and are not paid; bus drivers are paid for one hundred and eighty days. The Union is proposing that, when, by order of the District Administrator, school is closed because of increment weather or when school is closed by order of a health officer, custodians and secretaries may be called in by their immediate supervisor. They will report as close to their normal starting time as possible and are paid for a full shift plus one and one-half times the employee's regular rate of pay for actual hours worked on that day. Those custodians and secretaries who are not called in and all other employees need not report and will be paid for a full shift if state equalization aids are paid for the day the school is paid.
14. Continuing Employment/Change of Assignment/Letter of Appointment. The Union proposes that all employees shall be issued initial letters of employment, which shall include the work assignment, hourly rate of pay, weekly and annual hours of work. Upon completion of the probationary period, employees shall be considered continuing employees unless otherwise notified by the District in a manner consistent with this agreement. Annually, no later than May 1st, each employee will be furnished with a "Letter of Reappointment" for the following fiscal year and such letters shall restate the work assignment, hourly rate of pay, weekly and annual hours of work. Employees shall accept the reappointment in writing prior to June 1st. Any subsequent anticipated changes in an employee's work assignment and/or weekly hours for the following school year shall be given, in writing, to the affected employee prior to the start of that school year. Annually, prior to September 30, each employee shall be furnished an accounting of his/her accumulated leave time.

The Board proposes that, upon completion of the probationary period, employees shall be considered continuing employees unless otherwise notified by the District in a manner consistent with the Agreement. Anticipated changes in the employee's work assignment

and/or weekly hours for a subsequent school year shall be given to the affected employee prior to the start of the school year.

15. In-Service Training. The parties stipulated at the arbitration hearing that "The District, within its discretion, may provide appropriate paid in-service training to each employee."
16. Retirement Benefits. The Board is proposing to continue to pay the employer's share of the Wisconsin Retirement System. The Union is proposing that the Board pay the employer's share and also one-half of the employee's share of the Wisconsin Retirement System in the 1991-92 contract year.
17. Wages. The Board is proposing an average wage increase of 5.4 percent and 8.5 percent in 1990-91 and 1991-92 respectively. The Union is proposing an average wage increase of 8.0 percent and 7.7 percent in 1990-91 and 1991-92, respectively.
18. Total Package. The Board is proposing a total package increase of 6.5 percent in 1990-91 and a 6.0 percent increase in 1991-92. The Union is proposing a total package increase of 7.4 percent in 1990-91 and a 6.5 percent increase in 1991-92.

#### DISCUSSION

##### I. The Appropriate Set of School Districts for External Comparison Purposes

Section 111.70(4)cm7d of the Wisconsin Municipal Employment Relations Act (MERA) requires that the Arbitrator compare the parties' final offers to wages, hours and conditions of employment of school support staff in comparable school districts. As a threshold matter, the parties disagree as to the other school districts which should be regarded by the Arbitrator as external comparables in this respect.

The Board urges that the appropriate comparables for this purpose should be those school districts which are either contiguous or in the same athletic conference to which the Black Hawk School District belongs, namely the State Line Conference, and thus would include the following school districts as external comparables: Albany, Argyle, Barneveld, Belleville, Darlington, Juda, Monroe, Monticello, New Glarus, and Pecatonica. The Union urges that the Arbitrator adopt as comparables a broader group of school districts in the southwestern portion of the state whose support staffs are unionized, and thus would include the following school districts as comparables: Darlington, Pecatonica, Monroe, Benton, Boscobel, Iowa-Grant, Mineral Point, (Orfordville) Parkview; Platteville and Seneca. Thus, both the

parties accept Darlington, Monroe and Pecatonica as comparables, but differ as to the others.

The Board argues that its list of comparables is more appropriate because they are geographically proximate to the Black Hawk School District, of generally similar economic conditions, and, except for the Darlington and Monroe school districts, of generally similar size. It argues that in contrast, the Union's suggested list of comparables is a hodgepodge, exhibiting no geographic or organizational pattern, and not appropriate for purposes of comparison in this matter because a number of the school districts the Union suggests are either not geographically proximate to, or differ significantly in size or economic conditions from, the Black Hawk School District. The Board presents authorities which it regards as supporting its view both that geographic proximity should be the most important indication of comparability in a case like this involving school support staff, and that it is appropriate to take into account non-unionized districts in making comparison between the parties' offers.

The Union argues that its list of comparables is more appropriate since they share economic and demographic characteristics, are similar in size, and, most particularly, that they have unionized educational support units and collective bargaining agreements in place for the time period involved in this dispute. It contends that the District's set of comparables would limit the Arbitrator to only three unionized districts and to other State Line League schools which are unorganized and for which data is sparse, and that such a grouping would provide an insufficient basis for rendering a decision given the issues in this dispute. It presents authority which it regards as supporting its view that an arbitrator should, for comparison purposes, rely primarily on school districts that have collective bargaining agreements covering the same type of employees in question.

As indicated, the parties are in accord that Darlington, Monroe and Pecatonica should be used by the Arbitrator for the purpose of external comparison under subsection (d) of the statute. As to the possible inclusion of other school districts as external comparables, the Arbitrator believes that the list of additional districts proposed by the Board is in general more appropriate than that proposed by the Union. As indicated, the Board's list is based primarily upon geographic proximity and generally similar size and economic conditions, as broadly evidenced by the fact that all, except for Darlington and Monroe, are members of the same athletic conference, the State Line League. The Arbitrator agrees that, in determining the relevant market for non-certified workers such as are here involved, geographic proximity should be an important indication of comparability. The Arbitrator is also satisfied that the Board's suggested grouping is unlikely to otherwise result in unfair comparisons. As the Board points out, all of its comparables

have average personal incomes higher than Black Hawk, and four of its comparables have a larger tax base. In contrast, the Union's proposed grouping has characteristics which raise questions as to its usefulness for purposes comparison. For example, several of the school districts it proposes, such as Seneca and Boscobel, are considerably distant, and thus less likely to be, as a realistic matter, part of the same labor market for employees such as are here involved, while several others, such as Platteville and Parkview, are considerably larger than Black Hawk.

As indicated, the Union argues that its list of comparables is more appropriate since it, in contrast to the Board, has included only districts in which the support staff is unionized. However, the Arbitrator finds nothing in the MERA to suggest that only school districts where the support staff is unionized should be taken into account for comparison purposes under subsection (d) and, indeed, in the Arbitrator's opinion, such an exclusion on this basis alone would be inappropriate. Moreover, the Board argues that the Union has not included in its grouping all of the unionized school districts in Southwestern Wisconsin, but has excluded some which are even closer to the Black Hawk School District than the one's selected by the Union, without explanation; the Board suggests that the Union may have selected only those which support, rather than contradict, its proposals. And the Board suggests that its list, in any event, includes three unionized school districts -- Darlington, Monroe and Pecatonica.

The Arbitrator does agree with the Union, however, that the Benton School District should appropriately be included for purposes of external comparability. Since the Benton School District is only twenty-seven miles from Black Hawk, and has a smaller pupil enrollment and lesser property tax base than Black Hawk, there seems no persuasive reason to exclude it.

For these reasons, the Arbitrator determines that the following eleven school districts are most appropriate for purposes of external comparability: Albany, Argyle, Barneveld, Belleville, Darlington, Juda, Monroe, Monticello, New Glarus, Pecatonica, and Benton.

## II. The Relevance of Internal Comparables

Section 111.70(4)(cm)7d and e of the MERA requires that the Arbitrator compare the parties' final offers to wages, hours and conditions of employment of other employees in similar employment or more generally in public employment in the same community.

In the Arbitrator's opinion, the most relevant group for purposes of internal comparability is the Black Hawk teachers. While the Union has used the factor of internal comparability in some of its arguments, the Board has largely ignored this factor. Of course, there may be valid reasons for difference in at least



some conditions of employment between certified teachers and noncertified school support personnel; they are not doing exactly the same job. However, it seems evident that, particularly where employees work together at the same school, significant unexplained and arguably unjustified differences between school support personnel and teachers in at least certain common conditions of employment may lead to perceptions of unfairness. Consequently, it is incumbent on the Arbitrator, at least where relevant and the evidence permits, to examine the question of internal as well as of external comparability.

### III. Comparison of the Parties Offers on the Outstanding Issues

As indicated, the parties in negotiating their initial contract have left outstanding a large number of issues, and much of their voluminous evidence and exhibits and extensive argumentation is directed to questions of comparability. As often the case, comparisons cannot always easily be made with respect to some issues in dispute, nor can conclusions as to which proposals are closest to external and internal comparables always confidently be drawn.

In view of the large number of issues and consequent length of this opinion, the Arbitrator will in at least some cases not seek to repeat the parties proposals or arguments in detail, leaving the reader to the "Issues" section of this opinion for a fuller description.

1. Health Insurance. In broad outline, the principal dispute between the parties is whether the Board should continue to pay 100% of the support staff employees' health insurance, or whether as of 1991-92, the support staff employees who received 100% coverage in 1990-91 should be required to themselves pick up ten percent (10%) of their health insurance premiums, with the Board only paying 90%.

The Board argues that its offer is clearly closer to, and indeed above, that of comparable districts on the issue of health insurance eligibility requirements. It points out that Black Hawk is the only comparable district, other than Monroe, to pay 90% of the premium at such a low annual hour requirement as 1496 hours, and that the next lowest number of annual hours noted by employees in other districts to qualify for a 90% contribution is 1820 hours. It argues that, in contrast, the Union's proposal would deny coverage to employees who worked less than 1800 hours annually since the cost of having to pick up one-half premium costs, as under that Union proposal, would be prohibitive. Moreover, the Board argues that it has support amongst its contiguous districts on the issue of employee contribution. It notes that five of the comparable school districts currently require employees to contribute to the cost of the health insurance premium, and three of these (including two of the contiguous districts), require employees to contribute 10% to health insurance costs.

More broadly, the Board argues that this issue should be viewed in the context of the entire wage and benefit package. It notes that none of the school districts which require their employees to contribute to health insurance have such high wages as Black Hawk. It argues that, consequently, if the Union wishes a large wage offer, such as the Board is here proposing, it should be prepared to make a concession by contributing towards the cost of health insurance. Moreover, the Board urges that the Arbitrator should take into account the fact that the Board's total compensation offer exceeds the settlements that exist amongst the comparable districts.

Finally, the Board stresses what it argues in a national concern over the problem of skyrocketing health costs and the need to control them, and that there is a strong trend toward requiring employee contribution and/or cutting back on benefits. The Board argues that it has demonstrated its need for a health insurance concession.

The Union argues that its proposal is preferable since it is more in line with both internal and external comparables. It points out that Black Hawk teachers, who earn substantially more than employees in the support unit here involved, currently are entitled to a 95% Board payment of insurance premiums. It argues also that at least those other districts it has urged be used as comparables have tended to pay both a higher percentage of and higher dollar amount in premiums than would Black Hawk under the Board's proposal. The Union also argues that under the Board's formula, which would provide employees (other than those covered in 1991-92) 90% Board payment only if they worked 1496 or more hours, most other employees would never reach this amount since aides currently work 1365 hours, cooks no more than 990 hours and bus drivers even less under the Union's proposal in contrast, aides would qualify for a 50% payment.

From the evidence submitted by the parties on this issue, it is not easy to say which proposal is closer to the comparables. The Black Hawk teachers have 95% of their health insurance premiums paid, midway between the parties' offers. As to external comparables, the Board appears correct that its eligibility requirements are more favorable than most other comparable districts. However, as to payments of full-time workers premiums, the situation is less certain. Argyle and Monroe, two districts contiguous to Black Hawk appear to pay only 90%; Darlington, also contiguous, pays only 90% of family plan; at least five other districts pay 100%; and Benton pays a flat rate.

As indicated, in the Arbitrator's opinion, it is difficult in this context to say that either of the parties proposals are the closer as regards the internal and external comparables.

2. Dental Insurance. The proposals of the parties on dental insurance generally parallel their proposals on health insurance.

The Board argues that its offer is clearly supported by the external comparables, only five of which even provide dental insurance for their employees, and among those five, only at an average level of 94%.

The Union argues that Black Hawk teachers, the principal internal comparable, in this case receive a 100% payment of dental premiums, while it believes its external comparables support its proposal.

In this case, the closest internal comparable, the Black Hawk teachers, is closer to the Union's proposal. On the other hand, the external comparables appear to somewhat favor the Board's proposal. Four districts do not provide any contribution towards dental insurance, one provides only 80%, one provides 90%, and only three provide 100%; Benton provides a lump-sum payment, which is difficult to evaluate.

So again, while the internal comparable tends slightly to favor the Union's proposal, overall the parties' offers are fairly even with respect to the relevant comparables.

3. Holidays. The Board argues that its offer as to holidays is in general equal to or more favorable than is the case in comparable school districts, while the Union, using its different set of comparables, has argued the contrary. The Board also asks the Arbitrator to note that the cost of the additional holidays proposed by the Union has not been taken into account by either party in the costing of the final offers, and that it would constitute an additional cost of significant impact to the District.

The evidence indicates that, only three of the 11 comparable districts accepted by the Arbitrator (Albany, Benton and New Glarus) accord 10 holidays to their 12 month full-time secretarial and custodial staff. Consequently, while comparisons cannot be exact, the Board's offer of 10 holidays to 12 month secretaries and seven holidays to 12 month custodians appears at least equal to or more favorable than the number of holidays accorded such employees in the majority of the comparable districts; holidays in other districts range from 3 days in Belleville to 8 days in Pecatonica and Barneveld, with the average of the group being in the 8 day range. Similarly, the Board's offer of holidays accorded school-year secretaries and custodians is greater or equal to the number of holidays accorded similarly situated employees in eight of the 11 comparable school districts. While the Board's offer provides no holidays for bus drivers, this appears also the case in at least seven of the 11 comparable districts. On the other hand, the Board's offer of only two holidays for nine month food service and teacher aide employees appears to be less favorable than holidays accorded such employees in eight of the comparable districts; most of these provide at least five holidays, while Albany, Barneveld, Belleville and Juda provide them no holidays.

In the Arbitrator's opinion, the evidence indicates that, on balance, the Board's proposal is the more comparable on this issue.

4. Paid Vacation. The Board proposes employees receive one week of vacation after one year and two weeks after three years, while the Union proposes one week after one year, two weeks after two years and three weeks after five years, with employees upon termination receiving pay for any unused vacation days. The Board again urges that the Arbitrator take into account the fact that the District may be making up in higher wages any possible comparative difference in benefits such as holidays. The Union on its part argues that its offer is closer to the situation in comparable districts.

While the evidence is not clear, it appears that comparable districts are roughly split between those that allow two weeks vacation after two years or after three years, but that a majority do provide for a three-week vacation, at least for custodial and clerical staff, after some additional period, ranging generally from five-to-ten years.

On this basis, the Arbitrator regards the Union's offer on this issue as slightly more comparable.

5. Sick Leave. The Board is proposing that each employee be credited with one day of sick leave per month to a maximum of 10 days per contract year, cumulative to 60 days for full year employees and 20 days for school year employees. The Union proposes that each employee be credited with one day per month, cumulative to 90 days.

The evidence indicates that the Black Hawk teachers receive nine days sick leave per school year accumulative to 90 days. Darlington grants 12 days sick leave per hour cumulative to 110 days; Benton gives 1 day per month cumulative to 90 days; Monroe gives 1 day per month cumulative to 120 days; and Pecatonica gives one day per month cumulative to 110 days.

While the situation in this respect as to other comparable districts is not clear from the exhibits, the above evidence suggests that the Union's offer is the more comparable.

6. Personal Leave. The Board proposes that each employee be allowed one day of personal leave per year, which would be deducted from sick leave, while the Union proposes two days, which would not be so deducted.

The evidence indicates that as regards internal comparables, the Black Hawk teachers receive two personal leave days, which are not deducted from sick leave. The Board's offer is equal to or better than six of the comparable districts and less favorable than five of them; Juda allows two personal days and Argyle, Monticello and New Glarus permit two or more emergency days.

In the Arbitrator's view, given an almost even split on external comparables, on the basis of the internal comparable the Union's proposal on this issue is the more comparable.

7. Bereavement Leave. The Board proposes that bereavement leave be deducted from sick leave while the Union proposes that it not be so deducted.

The Black Hawk teachers are entitled to three days of emergency leave, which shall not be deducted from sick leave. Benton has 1 day, Darlington 3-5 days, Monroe 3 days, and Pecatonica 4 days, New Glarus 5 days and Monticello 3 days. There is no indication in the exhibits that these emergency days are deducted from sick leave. The situation regarding other comparables is not clear from the parties' exhibits.

The Arbitrator is of the view that the Union's proposal is the more comparable on this issue.

8. Jury Duty. As indicated, the parties stipulated at the hearing that the different language in their final offers on jury duty was inconsequential and should not play a role in the Arbitrator's decision.

9. Work Day/Work Week, Overtime. There appears to be no significant difference between the parties as to the basic work day or work week, other than with respect to the specific issues following.

10. Lunch and Lunch Breaks. The principal difference between the offers is that the Board's proposal provides for an unpaid 1/2 hour lunch period whereas the Union's proposal provides for a paid 1/2 lunch period. The evidence indicates that ten of the comparable districts -- all but Monticello --- provide unpaid rather than paid lunch breaks. Consequently, the Board's offer appears the most comparable.

11. Emergency Late Start. The Union argues that its proposal would make it clearer than does the Board's that late starts may possibly occur for reasons other than snow, and that custodians will arrive as soon as they can. There does not appear to be any significant difference between the parties on this issue.

12. Early Dismissal. The differences between the parties on this issue appear to relate only as to whether the regular support staff, other than teachers aides and library clerks, may be required to stay at work despite an early dismissal. The Union's proposal would require such dismissal, while the Board's proposal would give supervisors discretion to dismiss the support staff if remaining was either hazardous or if their work was completed. There appears no clear evidence concerning comparables in this respect. However, the Board's position that support staff should remain unless staying is hazardous or their work is completed seems to the Arbitrator the more reasonable.

13. School Closing. The Board proposes that if school is closed, employees who are called in to work will be paid their regular rate. The Union proposes that if school is closed, employees who are called in to work will be paid time-and-one-half, and also that, if school is closed due to inclement weather or by order of a health officer, all employees will get paid their regular rate if school equalized and is paid, and need not report for work. The Union argues that this proposal would give them equal treatment with the Black Hawk teachers.

The evidence appears to indicate that the Union's proposal is not supported in any comparable school districts. Consequently, the Board's proposal on this issue is the more comparable.

14. Continuing Employment/Change of Assignment/Letter of Appointment. The difference between the parties appears to be that the Union proposes formal written annual notification for full-time employees, while the Board treats such employees as continuing and notifies them only in the event of changes. The Union argues that the teachers receive such a notification. Absent a showing by the Union of significant problems in this respect, the issue would not appear of major significance. However, absent also evidence by the Board that such notification would be burdensome or costly, the Union's proposal seems not unreasonable and, if it is viewed by the employees as important, slightly preferable.

15. In-Service Training. As indicated the parties have stipulated agreement as to this issue and it is no longer in contention.

16. Retirement Benefits. The Union proposes that in the 1991-92, the Board pick up one-half of the employee-required contribution of 6.2%, or 3.1%. The Union argues that Black Hawk teachers have 100% of the employees share paid by the District, and that Benton, Darlington and Pecatonica pay 6% of the employee's share. The Board argues, on the other hand, comparable that the districts are all over the place on this issue since one of the comparables does not provide any retirement benefits, two do not contribute to the employee's share for any of the employees, two contribute to the employees share for secretaries and custodians, and one contributes 10% of salary to a private plan.

While the Board is correct that the pattern is not very clear, the internal as well as external comparables suggest a slight preponderance favoring at least some District contribution to the employee's share. Consequently, the Arbitrator considers the Union's proposal as slightly more comparable.

17. Wages. The Board argues that its wage offer is superior to that of any comparable district; its starting wages are second to none, under the Board's wage schedule employees reach their

maximum salary quicker than they do in any district, and the Board's maximum salaries are also higher than all the comparable districts except Monroe. The Board urges that, since wages are the largest part of employee compensation, this arbitration be decided on the merits of the wage schedule. As indicated, it also request that the Arbitrator take into consideration the impact that this wage schedule has on the employee's ability to contribute towards health insurance and to pay their share of retirement costs, as well as to pick up other minor expenses requested by the Board.

The Union takes the position that the parties are extremely close on wage rates in both years of the contract, and that wage rates are not a key issue in dispute. It does not appear to contest the Board's contention that the wage rates it proposes are generally more favorable than those in comparable districts.

The evidence supports the Board's contention that the District's proposed wages and wage-schedule exceed that of almost all of the other comparable districts, and should consequently be preferable as the most comparable.

18. Total Package. The evidence of comparability with respect to the parties' total package is not clear from the exhibits. However, on the basis of the evidence on wages, the Board's offer would again seem most comparable. However, the Union argues again that the difference between the parties in total package cost is very small -- by its figures \$3564.61 in 1990-91 and only \$806.34 in 1991-92, or a total of \$4370.95, and that consequently this should not be a major factor in the Arbitrator's decision.

#### IV. The Cost of Living

Subsection (g) of the MERA directs the Arbitrator to give weight to "the average consumer price index for goods and services commonly known as the cost of living."

The Board's evidence shows that the CPI for nonmetropolitan urban areas increased by 4.0 percent in 1990-91 and is currently running at an average annual rate of 2.7 percent for 1991-92.

As indicated the Board has offered a 5.4 percent salary increase in 1990-91 and an 8.4 percent salary increase in 1991-92, and the Union has proposed an 8.0 percent salary increase in 1990-91 and a 7.7 percent salary increase in 1991-92. As regards total compensation, the Board has offered a 6.5 percent total compensation increase in 1990-91 and a 6.0 percent total compensation increase in 1991-92, while the Union has proposed a 7.4 percent total compensation increase in 1990-91 and a 6.5 percent total compensation increase in 1991-92.

As the Board notes, both offers exceed the percent increase in the cost of living by a significant amount. The Board's proposed increase in wages for each year is twice the increase in

the CPI and the Board's proposed increase in total compensation exceeds the CPI by 2.5 percent in 1990-91 and by 3.3 percent in 1991-92, representing economic gains in real terms. The Board also argues that, since Black Hawk support staff members have the highest average earnings among support staff employees in their part of the state, there can be no legitimate claim of any need to "catch-up" on wages and compensation. The Board's position is that, since the Board's offer is already well above the CPI, the Union's final offer, which is even further above the rise in CPI, is clearly excessive in terms of this statutory criterion.

The Union argues that the cost of living should not be a major consideration in this arbitration.

In the Arbitrator's view, the fact that both of the parties wage and total compensation proposals significantly exceed the CPI increases for the years in question has some relevance to the consideration of this matter. Since the Board's proposal, while exceeding the CPI, and reflecting real increases in wages and compensation, is somewhat closer to the CPI, it appears, with respect to this factor, to be preferable.

V. Comparison with other State and Local Government Employees Generally and with Private Sector Employees

Subsections (e) and (f) of the MERA directs the Arbitrator to give weight to a comparison of the parties offers to wages, hours and conditions of employment of other employees generally in, respectively, public employment and private employment in the same and comparable communities.

As indicated, the Arbitrator agrees with the Union that the Black Hawk teachers are a relevant internal comparable in this arbitration, and has drawn such comparisons as appropriate in the previous discussion.

The Board presents evidence that the average wage increase nationally resulting from collective bargaining settlements for state and local government workers during 1990 was 4.9 percent in the first contract year and 5.0 annually over the life of the contract, and that such agreements in private industry in 1990 provided wage increases averaging 3.8 percent in the first contract year and 3.3 percent annually over the life of the contract. The Board argues that its offer exceeds these settlements in both years. It argues further that, while its evidence shows that the average American worker has experienced a decrease in real income in the last two years, the Board's final offer will give Black Hawk support staff employees a real income increase. For these reasons, it urges, its offer is preferable.

The Union contends that neither party has introduced any substantive evidence with regard to this factor.



The Arbitrator agrees with the Union that no evidence has been presented in this arbitration as to the actual wages, hours and conditions of employment of other employees generally, other than those specifically discussed above as internal and external comparables. However, the Arbitrator also agrees with the Board that the fact that both parties proposals exceed the general pattern of wage increases nationally is of some relevance in this arbitration, and that, in this respect at least, the Board's proposal, as closer to this pattern, is the preferable.

#### VI. Interest and Welfare of the Public

Subsection (c) of the MERA directs the Arbitrator to give weight to the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

While the Board does not contend that it is unable to pay the Union's final offer, it argues that the interest and welfare of the public criterion is the most important criterion in this arbitration. The Board argues, with extensive exhibits, that (1) the taxpayers of the Black Hawk School District have serious economic problems, (2) the Arbitrator should take into account the current economic and political environment both nationally and in Wisconsin and the Black Hawk region in selecting the most reasonable offer, and (3) that the interests and welfare of the taxpayers in this District consequently favor selection of the Board's more modest final offer.

The Board presents extensive evidence to show that the Black Hawk District is primarily agricultural, that farm prices and income generally, and the prices and income of Wisconsin dairy farmers in particular, have declined substantially in the last several years, and that a sizable portion of the District's taxpayers have suffered economically. It argues that the District's school taxes have increased 27% in the last two-year period and that the average Black Hawk resident has the lowest average income among the group of comparable districts. It argues that it is in the interest of welfare of the public for the Arbitrator to take into account the farmer's ability to pay property taxes when their income has declined significantly, and notes that other arbitrators have cited poor economic conditions facing farmers as a major factor in defining interests and welfare of the public.

The Board also argues that the Arbitrator should take into account the broader economic and political environment including the fact that the U.S. is in a recession, that Wisconsin's economic environment is in a precarious position, and that taxpayers in Wisconsin are heavily taxed and clamoring for property tax relief.

The Union contends that its offer would best serve the interests and welfare of the public. It argues that the District

has the financial wherewithal to meet the costs of the Union's proposals. It points out that the total dollar difference between the two proposals for both years of the contract is only about \$4370, and that State aids are consistently increasing in the District; it contends that such state aids will increase by \$266,994 in 1992-93. The Union also argues that the citizens of the Black Hawk District are neither worse off, nor better off than the citizens of any other Southwestern Wisconsin school district, and thus that they have the ability to pay of at least the average school district. It argues in particular that the Black Hawk District has a lower per pupil expenditure and tax rate than some of the comparables the Union has cited, that its state aids will be increasing, and that it has substantial cash on hand.

The Arbitrator agrees with the Board that it is appropriate that he take into account the current generally depressed economic situation with respect to both the agricultural sector in Wisconsin and the Wisconsin and national economy as a whole. As the Board suggests, this lends some support to the Board's offer as the less costly of the two. However, it is also clear, as the Union urges, that the financial costs at issue in this arbitration are relatively limited, and within the District's means, and that this factor must be weighed against the various other criteria provided in the MERA.

#### VII. Overall Assessment of the Respective Offers

Since this is an initial contract between the parties, it is not surprising that there are a large number of issues outstanding between them which the Arbitrator must consider. However, the parties have given the Arbitrator some assistance in this respect by identifying particular issues which they regard as most important. Thus, both parties agree that the issues of health insurance, retirement benefits, holidays and work schedule are particularly significant. The Board would add to this list what it regards as the already high level of wages and total compensation in its offer, and what it argues is the generally depressed condition of the economy in the District and elsewhere. Moreover, the differences between the parties involve for the most part only the level of benefits in the second year of the agreement.

In broad terms, the Board argues that its offer should be selected because: (1) both in its specifics and when viewed as a total package, it is closer to relevant comparables than is the Union's offer, and that, indeed, the Board's wage and total package offer places these employees in a more favored position than similar employees in almost all other comparable districts; (2) the additional benefits proposed by the Union, ranging from increased health care and retirement contributions to additional holidays and pay for lunch breaks, school closing days or other additional leave days, would add significantly to the Board's costs and put these employees in an even more favored position as

compared with comparable districts; (3) the already generous wage and total package schedules which would be accorded these employees under the Board's offer make it not unfair to ask these employees to share in certain costs, such as health insurance and retirement, and this is particularly the case with respect to health insurance, where there is a broad trend towards cost-sharing and cost-containment; and (4) selection of the Union's more costly offer would be inappropriate in view of the current generally difficult state of the Southwestern Wisconsin farm economy and less-than-affluent situation of the district's taxpayers. Thus, the Board argues that with respect to the issue of additional time off alone, the Union's proposals would add substantially to the District's total package costs. It calculates that, if the Union's proposal is accepted, taking a 12-month custodian as an example, the Board would be obligated annually to pay up to 3 more holidays, 2 more sick days, one more personal day, and time and one-half when school is closed, amounting to at least six more days of paid leave; considering there are three full-time custodians, at over \$408 per employee this would amount to over \$1225 additional cost to the District for the full-time custodians alone.

The Union argues that: (1) its proposal is closer to the external comparables it believes are relevant; (2) its proposal is the closer in terms of the relevant internal comparable, since the Black Hawk teachers currently have a better deal than the support staff on health and dental insurance, employer paid retirement, personal leave, emergency leave, and sick leave accumulation, and equity requires that all school employees be put on a level playing field in these respects; (3) the District is able to pay the higher Union proposal, and the effect of the present economic conditions should not be exaggerated; and (4) the parties' wage and total package offers are so close that these should not be regarded as a significant factor in this arbitration. The Union argues in particular that the Board's proposal would require these employees to pay significant amounts in health premiums and retirement contributions, which it calculates would amount in the case of a full-time custodian, for example, to \$534 in health premiums and \$1174 in retirement costs; it contends that, in contrast, teachers would pay only half as much in health insurance.

Each party has ably argued why its offer should be preferred, and there is certainly much to be said for each of them. In reaching a decision on this matter, it may be useful first to review the Arbitrator's assessment of the respective offers in relation to each of the relevant statutory criteria invoked by the parties before turning to an overall assessment of the respective offers.

As regards the criterion of comparability with other employees performing similar services (subsection (d) of the MERA criteria), the two offers appear in the aggregate fairly close. Some issues are in the Arbitrator's opinion too close to call;

this is particularly the case as regards health insurance, where the parties offers are each equi-distant from what the Black Hawk teachers get, and the external comparables appear fairly evenly split, and also as regards dental insurance, where the internal comparable favors the Union but the external comparables favor the Board. On certain other issues, the Board's offer seems to the Arbitrator more closely comparable to the conditions of employment in other comparable districts, as is the case particularly with respect to holidays and the various issues involving work scheduling, such as paid lunch breaks, early dismissal and pay in cases of school closing. As to still other issues, the Union's offer seems more comparable, particularly where comparison with the conditions of employment of the Black Hawk teachers appear relevant, as with respect to sick leave, personal leave, and bereavement leave. This is also the case regarding the issue of retirement contribution and continuing employment letters where the Union's offer seems slightly closer to relevant comparables. With respect to wages and total package, on the other hand, the Board's offer appears closer to other comparable districts. Looking at the two offers overall in terms of comparability, and giving weight in particular to those issues identified by the parties as most important, such as health insurance, holidays, work schedule, retirement contributions and wages, the Arbitrator in this respect has concluded that the Board's offer is generally more in line with the wages, hours and conditions of employment in comparable employment within and outside the district than is the Union's offer, and is thus preferable.

With respect to the factor of rise in the cost of living (subsection (g) of the criteria), the Board's offer appears closer to the rise in the CPI than the Union's, and thus is, in the Arbitrator's opinion, on at least this basis the preferable.

With respect to the factor of comparability more broadly with the conditions of other public sector and private workers (subsections (e) and (f) of the criteria), the Board's offer again appears closer to the general conditions of such other workers and thus on at least this basis the preferable.

With respect to the factor of general interest and welfare of the public and financial ability of the District (subsection (c) of the criteria), the Arbitrator is of the opinion that the generally nonprosperous economic situation of the rural economy in Southwestern Wisconsin as well as of the nation as a whole cannot be ignored and that this situation supports the Board's less costly offer.

Finally, with respect to the overall compensation and other conditions of employment and benefits presently received by the Black Hawk School District school support employees (subsection (h) of the criteria), the Board, as indicated, argues that these employees are presently doing well as compared with almost all the comparable surrounding school districts; that the Board's

offer will maintain this comparatively high level; and that the Union's offer, on the other hand, will consequently result in an excessive and unreasonably high level of total compensation for these employees. As regards this factor, the Arbitrator considers the overall compensation and other conditions currently received by Black Hawk School support staff as at least as favorable as that of similar employees in other comparable districts and is of the opinion that this factor also tends to support the Board's offer.

Looking at the two offers in relation to all of these statutory criteria taken cumulatively and together, the Arbitrator is of the opinion that the factors favoring the Board's offer are on balance preponderant. The employees here in question are presently at a level of total compensation which compares relatively favorably with that of most other surrounding comparable districts. On balance, the Board's offer seems closer to the wages, hours and conditions of employment of comparable districts than does the Union's, at least in most of those respects such as wage increase, holidays, and work schedule which the parties consider especially important, with the health insurance issue a tossup. It is true that the acceptance of the Board's offer perpetuates some differences in benefits between the school support workers and the Black Hawk teachers, particularly with respect to health and dental premiums and retirement contributions. On the other hand, acceptance of the Union's offer would, on its part, have the effect of placing the school support employees in a better position than the teachers as to health insurance premiums, arguably creating a difference which might lead to criticism the other way. Moreover, as indicated, the Board's wage and total compensation package is closer to that of comparable districts and should serve to maintain these employees' generally good position as compared with other districts. While the Arbitrator has not considered determinative the Board's evidence that its offer well exceeds the rise in the CPI and that these are economically troubled times for many people in the District and elsewhere, these factors are, in the Arbitrator's opinion, of some relevance and tend also to reenforce a decision in favor of the Board's proposal.

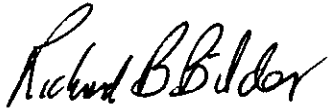
## VII. Conclusion

The Arbitrator concludes that, for the above reasons, the Board's proposal is the more reasonable.

AWARD

Based upon the statutory criteria contained in Section 111.70(4)(cm)7, the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the Black Hawk School District (the Board), and directs that it, along with all already agreed upon items, be incorporated into the parties July 1, 1990 through June 30, 1992 collective bargaining agreement.

Madison, Wisconsin  
November 13, 1992

  
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Richard B. Bilder  
Arbitrator