BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition of

Peshtigo Educational Support Personnel Association

and

Peshtigo School District

Case No. 19
No. 45945 INT/ARB-6079
Decision No. 27288-A

APPEARANCES

Charles S. Garnier, WEAC Coordinator, appearing on behalf of the Peshtigo Educational Support Personnel Association.

Dennis W. Rader, Esq., Godfrey & Kahn, S.C., appearing on behalf of the Peshtigo School District.

I. BACKGROUND

The Peshtigo School District, is a municipal employer (hereinafter referred to as the "District," the "Employer," or the "Board"). The Peshtigo Educational Support Personnel Association (the "Association" or the "Union") is the exclusive collective bargaining representative of certain District employees, i.e., all regular full-time and regular part-time aides, custodians, food service, and secretarial employees. Following an election conducted by the Wisconsin Employment Relations Commission, the Association and District entered in negotiations for an initial collective bargaining agreement covering wages, hours and conditions of employment.

Subsequent to the exchange of initial proposals, the parties met on seven occasions but were unable to reach agreement on a new collective bargaining agreement. On July 1, 1991, the Association filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate arbitration. The Commission conducted an investigation which resulted in the conclusion that an impasse existed. An order initiating arbitration dated June 5, 1992 was thereupon issued. The parties selected the undersigned from a panel of arbitrators; an order of appointment was issued by the

Commission on June 24, 1992. Hearing in this matter was held on September 29 and 30, 1992 at the Peshtigo City Hall. No transcript of the proceedings was made. At the hearing the parties had opportunity to present evidence and testimony and to cross-examine witnesses. Briefs and reply briefs were submitted by the parties according to an agreed upon schedule. The record was closed on December 16, 1992.

II. ISSUES AND FINAL OFFERS

The parties were able to reach agreement on several items to be included in their initial collective bargaining. The unresolved issues are:

Article IX	Layoff/Recall Procedure
Article XI	Hours of Work and Overtime
Article XXIII	Leaves of Absence
Article XXV	Vacation
Article XXVI	Employee Benefits and fringes
Article XXVII	Compensation
Article XXVIII	Time Clocks

In addition, the parties have not agreed on the appropriate comparability group.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.70(4)(cm)7:

> 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 proceedings with the wages, hours and conditions of employment of other employes performing similar services.

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

f. Comparison of the wages, hours and conditions of employment of the municipal employes 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.

IV. POSITIONS OF THE PARTIES AND DISCUSSION

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis of this material in light of the statutory factors noted above. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

A. Comparables

1. The District

The District has selected the following as comparable districts:

Coleman
Crivitz
Gillett
Marinette (Custodians)
Wausaukee

Collective bargaining agreements are found in Employer Ex. 50-54).

The District contends that the Association's assertion that an agreement on the comparables had been reached during bargaining is false. It points to the testimony of Michael Rusboldt, bargaining agent for the WEAC, who admitted on cross-examination that this was not the case.

The District argues that Marinette, even though it is not part of the athletic conference, is appropriate for comparison of support staff for whom geographic proximity and commuting patterns are significant factors, unlike teachers whose labor market may be state-wide. Further, contrary to the Association's assertion of inconsistency, the use of the Marinette custodial unit alone for purposes of comparison with Peshtigo custodians is appropriate since custodians are the only unionized bargaining unit in Marinette.

The use of the City of Peshtigo and Marinette County is proper pursuant to the statutory criteria which give the arbitrator the authority to consider wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities. The exhibits make clear that these data represent "wages only."

The District argues that the use of the Peshtigo teachers as an internal comparable is misplaced because of the extreme difference in the nature of the duties of the professional unit. Teachers, for example, work on an individual contract basis for the school year and have a different schedule advancement structure which reflects continuing education credits. Support staff do not have the same requirements.

2. The Association

The Association has proposed as external comparables the unionized school districts in the M & O Athletic Conference. These are:

Coleman
Crivitz
Gillett
Wausaukee

Relevant collective bargaining agreements for these districts are part of the record.

In addition the Association has selected as an internal comparable the bargaining unit of classroom teachers, librarians, guidance counselors, psychologist, nurse, reading coordinator or specialist (represented by the Peshtigo Education Association). Their collective bargaining agreement covering 1990-1991 and 1991-1992 is contained in Association Ex. 17. The Association urges the arbitrator to give weight to the comparison with the professional unit since in the past the support staff was granted many of the benefits and conditions of employment contained in the teachers' contract, e.g., grievance procedure, early retirement benefits.

The Association challenges the District's addition of Marinette School District custodial unit to the comparability group and asks the arbitrator to reject their inclusion. It is asserted that the parties had agreed during collective bargaining that the unionized schools within the M & O Conference would form the external comparability group. Further, Marinette is not a member of the M & O conference, it is almost three times larger than Peshtigo in terms of enrollment and support staff, and it has a much larger tax and financial base when compared with Peshtigo and the other unionized M & O districts. Since Marinette custodians are the only employees who are unionized, it would be inconsistent to compare them to other school districts in which all support personnel are unionized.

The Employer's inclusion of data for Marinette County and City of Peshtigo employees should not be relied upon since these were not used during the course of bargaining. Complete collective bargaining agreements are not

provided nor does the District provide data on other issues in dispute.

Private sector comparables, in Peshtigo and elsewhere, should not be given weight since there has been no showing that job duties are similar to those of the Peshtigo School District employees, nor is it clear whether these private sector employees are unionized.

3. Discussion

a. Selection of external comparable communities

The parties agree on four school districts whose support staff is unionized (Coleman, Crivitz, Gillett, and Wausaukee) with the only disagreement being the District's addition of the Marinette School District's custodians. The Association claims that the parties had earlier agreed that only the unionized support staffs in the M & O conference would be relied upon for comparability. The District denies that any such agreement was reached. The Association's assertion is not borne out by the testimony of the chief negotiator for the Association, Michael Rusboldt. On cross-examination by Mr. Rader, Mr. Rusboldt said that agreement was reached that the external comparables would consist of the four unionized districts, however he also added, "There was no agreement that we would limit only to those four." (Arbitrator's notes).

The fact that Marinette is not part of the athletic conference is not controlling. Arbitrators have long held that reliance on athletic conferences for teacher arbitrations is not necessarily appropriate for non-professional units. While it is true that Marinette is a much larger community than Peshtigo and its economic base differs considerably, a more important factor is that its geographic proximity makes it part of the labor market from which employees are available for employment in Peshtigo.

Comparison of only one part of the Marinette support staff, i.e., the custodial employees, who are unionized, with unionized Peshtigo custodians is in no way inconsistent. Although the Association emphasizes the fact that all of the unionized M & O Conference schools are "wall-to-wall" units, no

evidence has been introduced to maintain that such a circumstance is necessary for purposes of comparison.

Based on the discussion above, the Marinette School District custodial unit is deemed appropriate for purposes of comparison and the comparability group proposed by the Employer is adopted.

The District has provided data on wage settlements for employees of Marinette County and the City of Peshtigo for consideration (Employer Ex. 14, 15). The arbitrator is mindful of the statutory provision that weight is to be given to a comparison with employees generally in public employment in the same community and in comparable communities. It is the arbitrator's opinion that a comparison of the increments negotiated with these other bargaining units would be more persuasive if the Employer were asserting an inability to pay. This, however, is not the case. The disparate nature of the occupational groups in the other municipalities, e.g., nurses, police, street department, etc., leads the arbitrator to conclude that this factor is not sufficiently relevant to be accorded weight in determining which of the parties' final offers is the more reasonable.

The District has introduced evidence of 1990 private sector wage comparisons for the Northeastern Wisconsin Service Delivery Area (Employer Ex. 40-41e). Unfortunately, the value of this information is limited since there is no indication of whether any of the custodians, cooks, food service workers, or secretaries are represented by labor organizations. For example, in the category "Cook, Institution/Cafeteria," hourly rates range from $4.00 per hour to $9.99, with a mean and median rate of $6.40 and $6.42 (Employer Ex. 4d). Without knowing whether these wages were achieved through the collective bargaining process, it is not possible to place any reliance on their comparability with the two final offers. While one important factor is admittedly present, the similarity of comparable positions (assuming arguendo, that job descriptions would be similar to those of the Peshtigo employees), the most compelling category, unionization, which was agreed to by the

parties, is unavailable. Therefore no weight shall be placed on the private sector data.

The Association has proposed an internal comparable, the professional bargaining unit of teachers, librarians, et al, represented by the Peshtigo Education Association. The District contends that comparison between the certified staff and the support staff is inappropriate. This arbitrator's holding in Benton School District has been cited in support of the District's position (citation omitted). The Association argues such a comparison is significant since the support staff has in the past been granted the same early retirement benefit as the teachers and that certain other agreed-upon provisions of the contract at issue are patterned after the teachers' contract. The arbitrator does not agree with this line of reasoning. The fact that a grievance procedure is similar to that found in the teachers' contract is not of such magnitude as to compel rigid reliance on this unit for purposes of comparability. Contrary to the salary scale for support staff, compensation for teachers is tied to an experience/education schedule and is based upon a school-year calendar.

As indicated in Benton, the disparate nature of the occupational groups, i.e., teachers and other professionals versus support staff, makes any comparison insufficiently relevant to be accorded weight in determining which of the parties' final offers is the more reasonable.

To summarize, the arbitrator has considered the proposed comparables submitted by the parties and has concluded that the appropriate comparable group consists of the four unionized school districts agreed to by both parties, i.e., Coleman, Crivitz, Gillett, Wausaukee, and the Marinette unionized custodial unit.

B. Status Quo or Past Practice: Reliance on the Master Agreements

The Association argues that the District should not be allowed to withdraw existing benefits through the collective bargaining process. The support staff has for several years relied upon Master Agreements, the latest

ones in effect for 1988-1989 and 1989-1990 (Association Ex. 4 and 6), and it is strongly held that these conditions of employment represent the status quo or past practice. The Association cites several arbitration awards which support its position. These cases hold that existing conditions of employment are traditionally included in the collective bargaining agreement unless the party proposing the change can produce persuasive evidence of the need for change.

The District contends that the Association's reliance on the previous Master Agreements is misplaced. These unilateral contracts, without the give and take of bargaining, do not constitute a status quo, and thus are not applicable to internal comparability. Arbitrator Freiss' decision in Mellen School District and this arbitrator's decision in the case of Benton School District have been cited by the District in support of its position that the Union cannot rely on the prior Master Agreements as the status quo since that standard is not applicable to unilateral contracts where the give and take of bargaining was not present.

The past practice of parties has sometimes been considered to be a standard in interest arbitration. According to Elkouri and Elkouri, 1985, How arbitration works, (4th ed.):

> The past practice of the parties has sometimes, although infrequently, been considered to be a standard for interest arbitration. This standard is of special significance when parties are engaged in their initial negotiations. It was stated in one instance by Arbitrator Clark Kerr:
>
> "The arbitrator considers past practice a primary factor. It is standard form to incorporate past conditions into collective bargaining contracts, whether these contracts are developed by negotiation or arbitration. The fact of unionization creates no basis for the withdrawal of conditions previously in effect. If they were justified before, they remain justified after the event of union affiliation. It is almost axiomatic that the existing conditions be perpetuated. Some contracts even blanket them in through a general 'catch-all' clause." at page 843; footnote omitted, emphasis added.

The arbitrator believes that Benton is distinguishable from the instant

arbitration. In Benton it was the District which asserted that the Union must show a compelling reason to change the status quo, which in that case meant its wish to increase the benefits which they had been receiving prior to unionization. This arbitrator did not adopt the "compelling reason" standard proposed by the District since that standard is traditionally used when a contract had been in existence and the Union attempts to re-negotiate certain provisions. I said, "There is no status quo because there are no collectively bargained conditions of employment; any benefit previously received by the employees in the newly created and represented bargaining unit is the result of unilateral employer largess or goodwill."

In Benton the Union was seeking added or improved benefits and conditions of employment, the goal of all unions in collective bargaining. I held that the Union did not bear the burden of showing need each time it sought to improve its position. Rather, it was determined that instead of such a requirement, "Each of the proposed non-wage benefits will be considered on the same basis as that of wages, i.e., compared with the level of benefits received by similar employees in the selected comparable communities." Such a standard comports with the statutory criteria
set forth earlier.

However, the instant case differs also from those relied upon by the Union (citations omitted). In Benton for example, the parties, after exchanging their initial proposals, met on only one occasion before filing a petition requesting arbitration. Here, the parties conducted seven bargaining sessions before impasse. It would appear that sometime during these sessions the parties agreed on a radical change from the provisions of the Master Agreement, that is, for the first time, part-time employees would be eligible for fringe benefits. The most recent Master Agreement for secretarial staff, aides, library aides, and food services personnel (Association Ex. 4) and for custodians (Association Ex. 6), covering 1988 through 1990, provided no fringe benefits for part-time employees except for Wisconsin Retirement benefits. The

final offers of both the Employer and the Association, while not agreeing in all of the details, specify benefits for part-time employees, i.e., sick leave, bereavement leave, unpaid leave, court appearance/legal leave, jury duty leave, military leave, emergency school closing leave, vacation, health and dental insurance, group term life insurance, and long-term disability insurance.

Thus by the time this matter reached the arbitrator there had been a substantial departure from any alleged "status quo" which existed in the unilateral Master Agreements; these changes are reflected in the final offers. While the arbitrator is not unsympathetic to the Union's position that bargaining should start from the present level of benefits, there is no absolute requirement that employers must start bargaining at the current level of wages, hours, or conditions of employment. Furthermore, there is no evidence in the record that the Employer has engaged in the kind of behavior cited by the Union in Arbitrator Rice's award in Spring Valley ESP. In that case, Arbitrator Rice noted that no evidence was presented by the District that would justify changing any of the existing working conditions. He concluded that the Employer's position reflected an unwillingness to bargain over working conditions that have a great impact on employees. He said:

> "In its presentation to the Arbitrator the Employer presented no evidence that would justify not incorporating the existing working conditions into the collective bargaining agreement. Its only argument was that it wanted to have the discretion to change those working conditions as it saw fit without ever bargaining with the Association about it....In fact the Employer specifically stated that it wants to have the discretion to change them without having to bargain with the Association about it. The existing conditions of employment are normally and traditionally included or made part of the collective bargaining agreement in the absence of evidence that would justify changing them or not including them." emphasis added.

The arbitrator does not view the actions of the District in this matter to be similar to those cited above. There is ample evidence of bargaining having taken place and it is possible to view as a quid pro quo the agreement to

extend to part-time employees fringe benefits which were no previously granted.

Based upon the discussion above, the arbitrator will consider each of the unresolved issues based on the merits and by comparison with the level of benefits received by similar employees in the selected comparable communities as set forth in Wis. Stat. 111.70(4)(cm)(7)(d).

C. Layoff/Recall Procedure (Article IX)

The final offers of the parties on Article IX differ significantly since the District has included a provision regarding work-hour reduction while the Association has not made any specific reference to such an occurrence. The Association refers to a tentative agreement which the parties reached during bargaining, but which was later unilaterally rescinded by the District. The Association contends that this action was taken after the District reduced hours of food service personnel and was done in order to avoid possible litigation by the Association over what they viewed as a partial layoff. The Association, while acknowledging that the arbitrator has no authority in this matter, urges her to take these actions into consideration when she views the language proposed by the parties. The District contends that no weight should be placed on the tentative agreement since it is moot and asks the arbitrator to focus on the certified offers submitted.

It is the arbitrator's opinion, and it is so held, that any tentative agreement between the parties prior to the submission of the certified final offers to the arbitrator cannot be given any weight in the consideration of which offer is the more reasonable.

The final offers on Article IX, in pertinent part, are as follows:

<u>The District:</u> Section 9.01.4:

> In the event of a reduction in workforce, the Employer shall identify the specific position(s) to be eliminated or reduced, and shall notify those employees in those positions. Employees whose positions have been eliminated or reduced due to the reduction of the workforce, or have been affected by a

> layoff/elimination of position, shall have the right to bump into a position equal to or closest in number of hours in their classification(s) for which they are qualified which is held by the least senior employee in the employee's classification. In no case shall a new employee be employed by the Employer while there are laid off employees who are qualified for vacant or newly-created position(s).
>
> Section 9.01.5: Subsections 9.01.2, 3 and 4 shall not apply when the layoff of employees would result in restricting the District from adequately staffing peak work periods. Instead the least senior employees shall have their hours reduced to the extent consistent with the District's right to adequately staff peak periods.

The Association: Section 9.01.4:

> If further layoffs continue to take place, then employees shall be laid off within their job department in the inverse order of their seniority in the District provided that the remaining employees in the job department are qualified to perform the available work.

The District argues that layoff and reduction of hours are two different things and the failure of the Association to make that distinction in their final offer fails to address how the problem will be dealt with. Arbitral precedent is cited to show that lack of specific language regarding reduction of hours and ambiguous layoff language. In this case, the District's language is explicit and clear in its meaning while the Association's broad layoff language will give rise to future grievances. The District's need to adequately staff during peak periods was clearly demonstrated by the testimony of June Ehler, Food Service Director. While it was determined by management that several hours of work could be eliminated during the school day, it was necessary to have sen employees on duty during the one and one-half hour lunch period. It is the District's position that its language would protect the rights of senior employees during the layoff process, with an exception permitted when it is a certain level of services is required.

The Association contends that the District's offer is not supported by external (M & O athletic conference) or internal comparables. The type of multiple-bumping proposed above differs from the usual procedure in which the position held by the least senior employee is eliminated or reduced. None of

the comparables has a provision like Section 9.01.05 which would allow them to negate their general layoff procedure. The application of the District's proposal would permit it to ignore the procedure merely by asserting that it would not adequately staff during peak periods. Further, the Association contends that its proposed layoff/recall procedure would permit the District to staff adequately.

The arbitrator has considered the arguments of both parties. The District's concern about the Association's lack of specificity regarding work-hour reduction is well-taken and supported by cited awards. It is quite possible that grievances loom on the horizon and that it would be preferable to have unambiguous language in the contract to avoid that prospect. The Union's argument regarding comparability, however, is of worthy of great weight. None of the four school districts in the athletic conference support the District's proposed language, either on the bumping or on the exception for peak periods. The Association further alleges that it never had the opportunity to discuss the District's proposal at the table since it was introduced after impasse had been reached. Based upon the greater weight of the evidence, the arbitrator holds that the final offer of the Association on Article IX, Layoff/Recall Procedure is preferable.

D. Hours of Work and Overtime (Article XI)

A comparison of the District and Association final offer on Article XI indicates that there is no dispute on Sections 11.05, .06, and .07, all of which speak to computation of overtime, weekend and holiday pay. A minor question was raised by the Union about the District's somewhat unclear use of the word "secretaries" in 11.02. The term "high school secretaries" who receive a forty-five minute lunch break, is followed by "aides and secretaries" who will receive either a thirty or forty minute lunch bread. Applying standard contract interpretation techniques, one must conclude that the second group of secretaries consists of all those who are not high school secretaries. Other than this there is no significant dispute on this section.

Major disagreements do exist; however, to set forth the lengthy arguments of the parties on each and every point would not serve any useful purpose at this time. Suffice it to say that the arbitrator has studied them carefully and will attempt to address the major issues therein.

The District's language in Section 11.01 is a standard statement that the intent of the article is to provide a basis for calculating overtime and not a guarantee of hours of work per day or week (Accord,: Coleman, Gillett, Marinette). The Association has no comparable language, but instead proposes instead a definition of normal workday and workweek, lists hours for first and second shift custodians, exceptions for snow removal staff, and provides for notification in the event of changes which are more than de minimis such as, e.g., creation of a third shift. It is the Association's position that the District's silence on what is a normal workweek renders its proposal unreasonable since it would give the District total control to make changes in an employee's work schedule. A comparison with the comparables reveals that only Gillett provides a specific statement of hours for each of the job classifications. (Gillett also contains the intent of article language as proposed by the District).

The practice of the Employer has been to provide employees with job descriptions which outline their specific work hours and thus it is claimed that it is not necessary to include such a statement in the contract. The Union points out that on the job description for custodian is a statement that the job schedule can be changed at any time at the discretion of the Director of Buildings and Grounds, thus leaving employees without protection from arbitrary change.

The arbitrator can understand the desire of the Union to include as many specific protections as possible in the collective bargaining agreement. However in this instance the arbitrator the comparables do not provide sufficient support to permit the adoption the Association's position on this section of Article XI.

The second major issue is that addressed in Section 11.03. The District's proposal requires that all overtime must have prior approval by the district administrator or designee; all hours over forty per week will be paid at time and a half the employee's regular wage. The Union had provided for an exception where an emergency situation arises in which school property could be damaged or the health or safety of students are involved. The Union's concern is that if employees cannot reach supervisors when emergencies arise, they would have the undue burden of having to decide whether to stay and handle the emergency without being certain that they would be paid for their time.

The District contends that it is not unreasonable for management to be notified in case of emergency when overtime is required. Mark Peterson, Custodian Supervisor, testified at hearing that there never has been any problem in reaching a supervisor.

A review of the contracts of the comparable districts shows that Coleman, Crivitz, and Gillett have language similar to that proposed by the District. Marinette requires that overtime be assigned not less than six days in advance, whenever possible. None of the comparables have any provision regarding emergencies similar to that proposed by the Association.

For the reasons discussed above, the final offer by the District on the issue of hours of work and overtime is deemed the more reasonable.

E. Leaves of Absence (Article XXIII)

1. Section 23.01: Sick Leave

The parties disagree on two major components of this section, i.e., the number of days of sick leave per year for full and part-time employees and whether medical appointments shall be deducted in half-day (District) or quarter-day (Association) increments. The proposals on days per year are:

	Association	District
12 month employee	11 days per year	12 days per year
10 month employee	11 days per year	10 days per year
9 month employee	11 days per year	9 days per year

There seems also to be confusion as to exactly what the Association meant when it proposed that employees shall accumulate sick leave from date of hire (versus District: from completion of probationary period), but employees shall not be granted sick leave while serving probation. The arbitrator does not agree with the District's contention that the language and/or the intent of the Union is unclear. Employees continue to earn sick days during their probation, e.g., 90 days, but are not eligible to utilize them should they become ill during their first 90 days of employment. Subsequent to passing probation, they will be credited with the sick days earned during those 90 days.

The Association argues that the 11-day proposal reflects the status quo of the Master Agreements. The arbitrator has indicated earlier that she declines to accept the Master Agreements as the status quo and it is obvious why, in this instance, it would not be appropriate to do so. The most recent Master Agreements clearly provide eleven days of sick leave for full-time employees only. Part-time employees receive no sick leave at all. Since the final offers of both parties agree that part-time employees will receive certain benefits, including sick leave, the Association cannot isolate one segment of what was a past practice and claim reliance upon it while at the same time ignore that fact that it has already nullified any status quo by gaining new benefits for part-timers.

The District claims that the comparables support its position on days of sick leave. It is noted that Crivitz, which bases the number of days granted on years of service, uses as its base rate nine days for nine-month employees, 12 days for 12-month employees. Marinette custodians who are twelve-month employees get twelve days and Wausaukee has the same schedule as the District's proposal. Coleman employees receive fewer sick days than either party has proposed. Based upon the weight of the evidence, it is the conclusion of the arbitrator that the District's proposal on number of days of sick leave is the more reasonable.

Regarding the medical appointments, the Association claims that quarter-day or a two-hour deduction is more reasonable since most medical appointments do not require a full four hours and that productivity will be enhanced by its proposal. Other than a statement by Mark Peterson at the hearing that it might be harder to get a substitute for two hours than for four (arbitrator's notes), there does not appear to be any specific discussion on this topic by the District to indicate that it would be caused severe inconvenience if the Association's proposal were to be adopted. The Association's proposal is therefore deemed to be reasonable, however, it will receive only minimal weight in determining the outcome of the sick leave provision.

Based upon the greater weight of the evidence, the proposal of the District regarding sick leave is deemed to be the more reasonable.

2. Section 23.02: Bereavement Leave

In this matter, the offer of the District exceeds that of the Association by adding "an any family member living in the employee's household" to the listing and definition of immediate family. The Association argues that this addition deviates from the status quo, and while it does not object to the addition as such, it would place greater importance on the sick leave proposal. This argument is misplaced at this stage of the collective bargaining process and is not one which the arbitrator can place any weight upon. The place for a trade-off of this kind is at the bargaining table, not in final offer interest arbitration. For this reason, the proposal of the District on this section is considered to be reasonable and is adopted.

3. Section 23.03: Personal Leave

The parties are in agreement as to the number of personal days granted per year, i.e., one, and that personal days are non-cumulative. There is also a provision in both offers that notice to the supervisor be provided ten working days prior to the date requested. The disagreement lies in the limit on the number of employees in each department who may take personal leave. The District's offer states:

> No more than one (1) employee per shift, per department, per day shall be allowed to use their personal day unless the employee and the immediate supervisor/designee agree otherwise. (emphasis added)

The Association's offer provides:

> No more than one (1) employee per building, per department, per day shall be allowed to use their personal day unless the employee and the immediate supervisor/designee agree otherwise. (emphasis added)

It is the District's contention that its policy would better insure adequate coverage in, for example, the custodial department, than the Association's proposal. The two school buildings each have one day shift custodian. Under the District's offer, if the same day were selected by the two custodians, only one of these employees would be granted a personal day, while under the Association's plan, both could be on leave. The Association contends that the District has failed to establish that the Association's proposal would place an unreasonable burden on the District. Since ten working days prior notice is required, except under extenuating circumstances, it is claimed that the District would have ample time to obtain a substitute worker. The arbitrator notes that there is nothing in the record to suggest that a custodian in the high school would or could also cover the duties at the elementary school in the event of the absence of the elementary school custodian. Mark Peterson, custodial supervisor, testified that he had too small a crew to handle the situation if two employees were off days. However, in response to a question regarding the Employer's proposal, i.e., no more than one employee per shift, that is, one on the first shift and one on the second shift, Mr. Peterson stated that it would be easier to have one gone in the same building (arbitrator's notes). By this, the arbitrator understands Mr. Peterson to mean that either proposal will cause him some level of difficulty in getting the custodial work accomplished.

It seems to the arbitrator that this is a very close case, albeit one that is not of great magnitude in the final resolution of the impasse. However, the Association's argument that with a ten working-day notice the

Employer will have time to arrange for a substitute, if it determines one is required, seems to be eminently reasonable. For that reason, the Association's position on personal leave is preferred.

4. Section 23.04: Unpaid Leave

Both parties have offered unpaid leave to all full-time and part time employees. The District has offered two (2) days of unpaid leave; the Association has proposed ten (10) days. The Association's rationale is that these unpaid leave days would allow employees to coordinate vacations with their spouses. It is noted that only custodians receive vacation days. The District points out that it is extending vacation benefits to part-time twelve month employees so problems of coordination may be reduced in the future. An inspection of the comparables reveals that none of the districts grant a specified number of unpaid leave days; each of them permits employees to take unpaid leave solely at the discretion of the school district administrator. The grant is even narrower in Gillett where unpaid leave may be taken in lieu of sick leave with the Board, at its discretion, willing to grant up to one year of leave for a legitimate medical reason only.

The arbitrator has considered the arguments of the parties as well as the comparable data and concludes that the proposal of the District is the more acceptable.

5. Section 23.08: Emergency School Closings

Both parties' final offers contain language on how full-time and part-time employees shall be effected by school closings. First, both offers state that if school is closed and employees are not required to work, they shall not be paid. The District adds an option, i.e., employees may use a personal day (which may not be deducted from sick leave). The Association contends that such a proposal would benefit only four employees with the remainder losing wages for that day unless the day had to be made up to qualify for state aid. While the arbitrator understands the desire of the Union to provide benefits to all employees, the lack of availability of

personal days to all but a few does not nullify the value of the District's added provision.

The parties differ significantly on how employees shall be paid when school closes early. The District's offer states:

> When school is closed early, employees shall receive pay for all time worked with a minimum of one-half (1/2) of their regularly scheduled hours.

The Association proposes the following:

> When schools are closed early, employees shall have the option to work until the end of their regularly scheduled shift or leave early and receive pay for actual time worked or a minimum of one-half (1/2) of their regular daily rate, whichever is greater.
>
> When schools are closed early and employees are directed to leave work because school district buildings are being locked, employees shall receive full pay for their regularly scheduled daily work hours. (emphasis added)

Despite the language in paragraph one above regarding the option to work until the end of the shift, the District has stated that the first section of the Association's offer is consistent with its offer to pay for actual time worked with a minimum of one-half the daily rate, thus no further discussion is necessary.

The major disagreement lies in the Association's second paragraph above, i.e., employees being directed to leave are to receive full pay, in other words, there is no option for the employee to stay to complete the shift since the buildings are being locked.

The comparables indicate that where schools close early, Coleman and Wausaukee (specifying snow days) provide full pay while Crivitz pays a three-hour minimum, Gillett pays four hours, and Marinette does not provide any payment. Comparing these data would give the District a slight edge in terms of comparison. None of the language in the contracts of these districts speak to the "lockout" which is an integral part of the Association's proposed full-day payment. Because there is no support for this provision in the record, it must be rejected by the arbitrator. The District's offer is deemed to be the

more reasonable of the offers.

F. Vacation (Article XXV)

The parties do not agree on the number of days of vacation, the length of service upon which days are determined, timing of vacation requests, the role of seniority when limitations are necessary, and school-year limits on number of employees permitted vacation by department and building.

A direct tabular comparison of the two Section 25.01 offers on eligibility and accumulation is difficult since the District has only four categories, at one or more years, three or more, eight or more, and seventeen or more and the Association has eleven categories, beginning with one year through 17 years of continuous service. For purposes of the following discussion, the pattern of the comparables was reviewed. Coleman, Crivitz, Gillett have a four-interval schedule, Marinette has three, and Wausaukee has nine. None of the intervals is identical with either the District or the Association. A few consistencies were observed and these referred to days earned, i.e., in the four-interval districts, the number of earned vacation days was similar to that of the District's 5, 10, 15, and 20 days. Marinette, with three intervals, provides 5 days after one year, 10 days after 3 years (similar to the District's offer), and then 10 days plus 1 day for each year of service up to a maximum of 25 days.

The District's schedule would grant an additional five days of vacation to employees one year earlier than the Association, i.e., after 3 years, 10 days compared to after 4 years, 10 days. Thereafter, the Association's schedule would grant one to two day increments. After 8 years the District would offer 15 days compared to the Association's 16. The maximum number of days available after 17 years would be 20 for the District and 25 for the Association. Inspection of the comparables reveals that three have 20 day maximums (Coleman, Crivitz, and Gillett) with Marinette and Wausaukee offering 25 days. By a very narrow margin then, the District's offer more closely resembles the comparables.

The Association argues that its offer comports with the status quo and that the District has offered no quid pro quo for reducing the current benefits received by full-time twelve month employees. This argument cannot be given weight for the reasons set forth in the discussion of the status quo earlier in this award and accordingly, the contention of the Association that the District has the burden of proof to justify a compelling need to reduce the benefit is not justified. Even if the Association's argument was viable, and indeed the District's present offer reduces the number of vacation days presently granted full-time employees, it could be countered by the fact that the District has extended vacation benefits to part-time twelve-month employees which could well serve as a quid pro quo.

A further issue in contention is Section 25.02 (6), the time for submission of vacation requests. The District claims its schedule provides both the District and employees with ample to time to arrange vacations prior to the end of the contract year, since vacation must be used or lost prior to June 30th. The Association's proposal would allow vacation time to be carried over if a request is denied by a supervisor. The arbitrator cannot find any compelling argument to assist in making a ruling on this specific issue therefore it will be determined by the selection of the final offer.

The parties differ on how conflicts will be resolved when limitations are necessary on requests for vacation days. The Association proposes the use of seniority; the District would honor requests on a first-request first-approved basis, with the proviso that an employee may not take the same week in successive years unless no other employee requests it. The Association argues that the District's proposal would be open to abuse and disputes over which employee actually made the first request. The District points out that this can be avoided by documenting the date of the request.

Inspection of the comparables indicates that only Wausaukee provides for resolution of conflicts by seniority. The Association is well aware of this fact and urges the arbitrator to place more weight on the status quo and the

reasonableness of its offer than on the comparables. While the position of the Association is not unreasonable, for the reasons spelled out earlier, the arbitrator must decline to place weight on the status quo. Based upon the weight of the evidence, the District's position on limitations is found to be the more reasonable.

The Association has proposed to allow one employee per department per building to be off at the same time. Under this scenario, for example, the day shift custodian at the high school and the day shift custodian at the elementary school could both be on vacation at the same time. The District's language provides that no more than one person per department on the day shift or night shift may be off at the same time. Under this plan it would appear that the day shift employee at the high school and the night shift custodian at the elementary school could both be on vacation at the same time. Of course a further interpretation is that both custodians at the high school, day and night shift, could be also on vacation, thus leaving the high school without coverage. Obviously under such circumstances it would be necessary for the supervisor to make other arrangements for coverage. The District's contention that it's proposal will insure adequate coverage in each department is not persuasive when all the different permutations are considered. Thus, and for the same reasons discussed in the section on Personal Leave above, the arbitrator believes that the Association's position is the better one. There is no reason to doubt that, having prior knowledge of vacation schedules, that the supervisor would not be able to make arrangements for substitutes or provide additional hours for part-time employees.

Based upon the evidence and the discussion above, it is held that the District's final offer on vacation is marginally preferable to that of the Association.

G. Employee Benefits and Fringes (Article XXVI)

1. Health and Dental Insurance

Both final offers provide that all regular, full-time and part-time

employees shall be eligible for health and dental insurance as allowed by the insurance carrier. The District has offered to pay premiums for eligible employees as follows:

1080--2080 hours	95%
900--less than 1080 hours	75%
less than 900 hours	prorated

The Association's final offer does not include employees working less than 900 hours.

It is the District's contention that its offer is superior to that of the Union by virtue of offering insurance coverage to employees working less than 900 hours. The Union counters by claiming that this proposal is meaningless since WEAIG and most other carriers do not allow enrollment of employees working less than half-time, that few of these employees would enroll because they could not afford to pay their share of the premium based on their earnings, and if made eligible, and fail to enroll during the open period, they lose their right to enroll later without having to pass a "pre-existing conditions" test, and further that the employees do not receive such coverage under the Master Agreement. The status quo argument fails for the reasons set forth before. The arbitrator is not persuaded by the "pre-existing condition" argument since the same conditions apply to all employees who fail to make an election within thirty days (see language in both parties' final offers). It is up to individual employees to decide whether or not they wish to exercise the right offered by the District--the fact that some may not afford the premiums is no reason to place a prior restraint on the opportunity for coverage as the Union apparently wishes to do. The question of whether or not WEAIG does not permit enrollment of less than half-time employees is not fatal to the District's offer. In its Section 26.01 it states, "The District may change insurance carriers so long as there is no reduction of benefits. The benefits shall be equivalent to the WEAIG Plan." While the Association has proposed stricter language in one section, i.e., "The Wisconsin Education Association Insurance Group plan is adopted," it has also included a provision

which permits the District to change insurance carriers so long as there is no reduction in benefits. While it is not clear at this time whether the District has a specific carrier in mind which will cover the less than 900-hour employees, it has made the commitment that, if its offer is adopted, it will extend insurance coverage to this new group of employees. Should it violate any contractual commitment, the Association has its remedies for enforcement. A review of the comparables to see if any provide coverage for less than 900-hour employees shows that Coleman provides coverage for employees working between 600 and 900 hours per year, Wausaukee for employees working between 15 and 30 hours per week for nine months (example: for an employee who works 20 hours per week x 4.3 week per month x 9 months = 774 hours, Wausaukee would pay 50% of the insurance premium), and Marinette which pays 90% of premium for all regular full-time and part-time employees. There is no specific data in the Gillett contract; Crivitz does not provides coverage for this category of employee. After considering the evidence, the arbitrator concludes that the District's position on health and dental insurance is the more reasonable.

2. Group Term Life Insurance

The Association has proposed to add what may be termed "protective" language to this section to insure that employees continue to receive the benefit not suffer should there be a reduction in their scheduled work hours. A careful review of the arbitrator's notes of the hearing do not reveal any testimony on this matter. The District has not addressed the matter in its brief or reply brief. Although the Association has expressed doubt as to the District's intent, the lack of evidence in the record does not permit a ruling on this issue.

3. Workers' Compensation Insurance

The only disagreement between the parties regarding this section is when an employee is required to report an accident incurred during the course of employment. The District's offer requires notice to the supervisor or designee "...immediately after the accident or injury occurs." The

Association proposes a requirement to report all accidents or injuries, "... within twenty-four (24) hours of the occurrence."

The District claims that the reason for reporting an accident immediately is for the employee's protection in the event that it is not evident that an injury has actually occurred. It too much time passes, it becomes more difficult to document that an injury was the result of a work-related accident. Waiting twenty-four hours needlessly exposes the employee to the possibility of being unable to document the accident to the workers' compensation carrier.

The Association contends that its language is preferable since many injuries do not manifest themselves immediately and that also that it could be difficult for employees to immediately reach their supervisors. Further, the Association believes that the District's requirement is arbitrary, that there is no definition of the term "immediately," and it could cause unnecessary litigation.

The arbitrator agrees with the Association that injuries are not always evident following an accident, but reaches a contrary conclusion as to the necessity for reporting an accident immediately after its occurrence. An example which comes to mind is the case of an employee working second shift who falls two or three feet from a ladder during a work assignment, gets up, decides nothing is broken and does nothing about reporting the incident. It is only after one day that the employees back begins to hurt, and finally goes into spasm, necessitating complete bed rest for several days. That employee will be put to a much more severe test of credibility when she claims that her back injury is related to the fall from the ladder since the employer was not on notice of the incident at the time it occurred. In the worst case scenario, if as the Association fears, the supervisor be unavailable in person or by telephone, notice could take the form of a written note, with date and time, giving a brief explanation of what occurred, left in the supervisor's mailbox or desk. The contracts of the comparable school districts are silent

on this matter. The District states that the rationale for its language is to protect future claims of employees. The arbitrator finds this reasoning persuasive and therefore concludes that the District's offer is the more reasonable.

4. Long Term Disability

The District's final offer provides long term disability insurance to all employees at the District's expense. The Association's offer expands upon this to add sections containing definitions, waiting periods, limits on use of sick leave, notice to district administrator upon receipt of payments, and specific language on return to work. The Association believes its proposal to be reasonable since its purpose is to balance the rights of the disabled employee and the legitimate business requirements of the employer. While the arbitrator agrees with the Union's goal of including specific protections for employees, a debate on this kind of expansion of a basic grant of a benefit more properly should take place at the bargaining table, not imposed by an arbitrator. Other than the Peshtigo teacher's contract, which the arbitrator has declined to adopt as a comparable, none of the other school districts relied upon herein provide similar particulars on long term disability. It is the arbitrator's opinion, and so held, that there is insufficient support in the record to permit adoption of the Association's expanded proposal.

5. Early Retirement

At the outset it must be noted that under the Master Agreement the support staff are granted the same early retirement benefit as the teachers. The District's proposal is a radical change from this standard and the Association has argued that it should be rejected. The Association, however, has also admitted: "The District's proposal could be viewed as meritorious only if it were not replacing and existing benefit of greater value." (Association brief, p. 45). It is also argued that the District has not demonstrated a compelling need to eliminate the existing early retirement benefit. In previous sections of this award the arbitrator has explained why

the Master Agreement cannot be considered the status quo as the Association has contended and it is not necessary to repeat that hold for this section. It is sufficient to point out that under the Master Agreements only full-time employees received the benefit and under the present final offers employee benefits and fringes have been extended to part-time employees. The District's early retirement provision states:

> Section 26.07: Early Retirement. The employer agrees that upon retirement the employee shall be paid for one hundred percent (100%) of his/her accumulated but unused sick leave and that payment at the employee's discretion may be used for the purpose of continued payment of the current health insurance plan or the employee may opt for a cash payment.

Although there is no specific mention of either full or part-time status, reference is made to payout of unused sick leave, which will now be earned by all employees, with the option of a cash payment or to apply that amount to continued payment of health insurance, also available to all employees. Since there is no limiting language regarding employee status, a fair reading of the early retirement provision is that it applies to <u>all</u> employees. There is no question that sometime between the Master Agreement and the certified final offers submitted to the WERC and the arbitrator, there has been a radical change in the past practice of the employer. As indicated earlier, the appropriate standard to applied to this provision, as to all others, is the statutorily mandated comparison of the two final offer with the school districts noted earlier.

A comparison of the District's offer of sick leave payout upon retirement indicates that it is the same as that offered to Wausaukee support staff. It is less limited than that of Marinette which permits 100% of unused sick leave to be applied for the sole purpose of continued payment of health insurance. Coleman, Crivitz, and Gillett permit cash payouts for employees leaving the employ of the district, but limit these to between $10 and $15 per day of accumulated sick leave; no information is provided as to an option for payment of health insurance coverage.

The Association proposes that employees retiring between ages 62 and 65 will have their entire health and dental insurance paid by the District until the 65th birthday. Of the comparables, only one, Gillett, has a similar provision whereby employees 59 or older will receive fully paid insurance for three years. Thus it is clear that the majority of the comparables do not support the Association.

Regarding employees who wish to retire at age 62, the Association proposes that in addition to sick leave payout, employees who have been employed a minimum of 15 years shall receive additional compensation. A formula is provided which multiplies up to 100 days of unpaid sick days by the teacher substitute pay rate (approximately $50) and the balance of days over $100 at $5 each. In addition, each such employee is to receive $3,000 in additional compensation. A comparison with the early retirement provisions of the contracts of the five school districts demonstrates with the Association's proposal for cash payout reveals that it is unique among them. Further, the record clearly demonstrates that the proposal to pay $3,000 to each retiring employee with a minimum 15 years of service is not replicated among the comparables.

In the District's costing of the maximum retirement payout for one retiree in 1991-92 (Employer Ex. 34), the total cost of the Board's proposal is $6,984 (below the mean of $8,404 and median of $8,841), while the Association's total compensation would be $25,688.

The Association has argued that the District's offer is not really an <u>early</u> retirement benefit but is more accurately described as a severance pay provision designed to induce employees to use their sick leave sparingly. What was in the minds of the members of the District's bargaining committee, is, of course, not grist for this mill since we are bound by actual evidence, both documentary and testimonial. Nothing in the record, including the arbitrator's notes, provides an answer to that question. The arbitrator does concur with the Association's contention and believes that the present District offer,

which differs significantly from the benefits received by the teachers, is a very small carrot if it is being used to persuade long-term support staff employees to take early retirement. However, the arbitrator is constrained by the statutory mandate and, as indicated earlier, has determined that it is appropriate to compare the Peshtigo support staff with other school districts' support staffs and not with professionals such as those represented b y the Peshtigo Education Association.

For the reasons discussed above, it is concluded that the District's final offer on early retirement more closely reflects those of the comparable communities and it is therefore selected.

Based on the discussion above on the issue of each of the benefits, the weight of the evidence supports the District's offer.

H. Compensation (Article XXVII)

Both parties have provided extensive exhibits, testimony, and written argument regarding compensation. Much of the emphasis was placed on changes in the present classification of positions in two areas, food service and custodial. There as less debate on compensation in the aide and secretarial classifications, with the primary area of disagreement the costing of wages for employees hired after 1988 and how to handle any catch-up for these employees and a down-grade in maximum salaries for the secretaries.

Since the costing of fringe benefits does not seem to be at issue herein, the arbitrator will narrow the following discussion to that of wages only. It is possible to extract wages only data from the Union's exhibits (Ex. 26 et seq) and the District's (Ex. 5 and 6 (plus revised data).

It appears to the arbitrator that the more important issues to be resolved does not lie in the area of discrepancies in costing. In fact the Association stated in its brief, "The corrected cost figure for both proposals for 1990-91 and 1991-92 establish that the proposals of both sides essential cost the same for the years 1990-91 and 1991-92." What is of paramount importance is the way in which positions in food service and custodial are

being classified and how employees presently employed in those department will be placed on the schedule. The preponderance of the hearing was devoted to testimony by bargaining unit employees and supervisory/managerial staff in these two departments. It is, therefore, the arbitrator's intention to focus on the classifications/pay categories in these departments and as previously in this award compare the two offers with the comparable school districts. As before, no weight will be placed on the Master Agreement. The history of changes in work assignments, hours, et al which occurred during the bargain and objected to by the Association are part of the evidentiary record, however, the arbitrator is not authorized to deal with anything but the certified final offers presented to her. The matter of secretarial wages will be resolved based upon the selection of one of the final offers.

1. The Food Service Department

The Association proposed two classifications in food service: Cook/Baker duties and Regular Food Service duties. The hourly rates for non-probationary employees are:

	1990-91	1991-92	1992-93
Cook/Baker	$ 7.78	$ 8.25	$ 8.60
Reg. Food Service	6.93	7.40	7.80

In its proposed Section 27.04, the Union has described the duties of the two job classifications as follows:

> Regular food service duties are those duties performed by an Assistant Cook under previous District policy, including dishwashing, daily lunch count, operating the malt machine, sanitizing, assisting in daily preparation, and other duties requiring a similar level of skill, training, and ability.
>
> Cook/Baker duties are those duties performed by a Cook/Baker under previous District policy, including cooking, baking,menu implementation, food preparation, inventory maintenance, food serving, wanding of identification cards, and other food service duties requiring a similar level of skills, training and ability.

The District's wage offer provides one classification for food service workers,i.e., Food Service Assistant. The proposed hourly rates are:

1990-91	1991-92	1992-93
$ 7.35	$ 7.53	$ 7.88

In addition, lump-sum payments will be made to the three employees formerly classified as Cook/Baker, Andrews, Olson, and Pesmark, in 1990-91 for $371.95 and in 1991-92 in the amount of $182.95.

The District alleges that the Association's offer actually will place all food service worker in the higher-paid category since employees would fall into that category if they were cooking, wanding cards, serving food or if they provided other food service duties requiring a similar level of skills, training and ability. The Association denies this and argues that there is a clearly defined division of labor that is not reflected in the District offer.

The Union relies on the testimony of their witness Donna Andrews who testified that each employee in the two kitchens in the District had a primary functions as cook and/or baker or in lesser positions either serving or handling other duties. Only when their own duties were completed would employees help each other out.

The arbitrator's notes of Ms. Andrews testimony indicate that her duties as a cook in the elementary school were to prepare the main portion of the meal (which may be frozen), slice meats, cheese, etc., prepare menus, decide on the number of portions. The assistant cook prepared for serving such items as fruit, vegetables, peanut butter, butter, grated cheese. One person served as dishwasher and all three acted as servers. Ms. Andrews said that all food workers do not have the same duties or the same level of responsibility and that the cook has the highest level of responsibility. The two lower level employees in her area handle inventory maintenance and the transportation of food to the high school.

June Ehlers, Food Service Director, testified about the changes which were needed in her department because of a deficit in the prior year which appear to have resulted in a blurring of lines among the staff. Also given much weight by Ms. Ehlers was a survey of the food preferences of the students

which were for more pre-cooked entrees and commercially-baked breads and rolls. This survey led to many of the changes in duties either implemented or proposed by the District. The job description provided by the Employer (Ex. 60) was patterned after the recommendations of the American School Food Service Association and reflects the work done by most assistants. Ms. Ehlers noted in reference to Association Article 27.04 that operating the malt machine (a duty in the lower-level category) is more complex than wanding cards (in the Union's higher paid cook/baker category). She also stated that serving and sanitizing are both handled by all food service employees. Ms. Ehlers does not believe it would be possible to monitor employees in two schools to determine when a person in the Regular Food Service category exceeded the de minimis amount of time in order to receive the higher rate of pay pursuant to the Association's Section 27.05. Ms. Ehlers recalled that at a time prior to the employees' selection of the Union as their representative, Donna Andrews and others asked her to speak for them to management about their wish to have one pay rate in food service since all the jobs were equally difficult. Ms. Ehlers noted that over the years food service has changed since more foods are purchased frozen and reheated and less cooking from scratch, including baking, was being done. While she claims that seven employees are required in the two schools, they are not needed for as many hours as in the past.

There is disagreement about the manner in which each party derived its conclusions from the comparables. The District has provided in its Ex. 25y a summary of the comparables' food service job classifications and wage rates. The District objects to the Association's inclusion of Head Cooks claiming that Head Cooks are not comparable with the Cook/Baker position. In spite of the dispute regarding titles, the arbitrator finds that Association Ex. 25Y and Employer Ex. 18 are remarkably alike. Although the Association listed Gillett's Head Cook category, it was not included in the calculation of the average; the Head Cook in Crivitz was used. This inconsistency is not

explained. Even if the District's objections were set aside, and the Association's data were evaluated, there are only minor variations between their final numbers. The Association's figures are somewhat higher than those of the District because of the additional Head Cook data. Because of these discrepancies, it is useful to take an average of the conference averages for all the cook, baker, and other food service positions in order to fully reflect the positions. Utilizing the Association's figures results in the following:

	1990-91	1991-92	1992-93
Conference Average (Baker, Cook, Regular Food Service, Crivitz Head Cook)	$ 7.32	$ 7.60	$ 7.90
Association Offer	7.36	7.83	8.20
District Offer	7.35	7.53	7.88
District with lump-sum	7.65	7.78	----

Inspection of this table reveals that for each of the three years the District offer more nearly approximates the mean or average of the comparables. This is the case even without consideration of the lump-sum payments for 90-91 and 91-92. When these figures are factored in, and acknowledging that the lump-sum payments do not become rolled into the base for the following year, the District's offer exceeds that of the Association. In addition, the arbitrator finds that the Association's definition of the duties of higher-level Cook/Baker category includes tasks which the record reveals are of a lower level. Such contractual language, while its intent may be clear to the Union, appears likely to result in problems of day-to-day operation of the food service department.

For these reasons, the District's offer concerning Food Service is found to be the more reasonable.

2. Custodial Department

The Association's final offer regarding custodial and maintenance duties is also found in Section 27.04 and Appendix A. Section 27.05 provides

for payment of the higher hourly rate when employees are assigned job duties in the higher classification for more than one-half hour in a shift. The Association's offer for non-probationary employees is as follows:

CUSTODIANS	1990-91	1991-92	1992-93
Maintenance Duties	$ 7.97	$ 8.80	$ 9.40
Reg. Custodial Duties	7.87	8.50	9.00

The District's offer contains one category only:

Custodian	8.46 (7.92)	8.73	9.12

There is some question as to the District's figure of $8.46 for 1990-91. The Association points to a discrepancy between the amount of $7.92 shown in Employer Ex. 5b as the custodial hourly rate for all but two of the employees (Presti and Jones at $7.03). The arbitrator notes also that $7.92 is the hourly rate for custodial staff provided in Employer Ex. 2n. Although the District has utilized the $8.46 figure in its exhibit 20, which compares its offer with the comparables, and throughout its briefs, the arbitrator can find no explanation for the two divergent figures.

A threshold question which must be resolved before any comparisons are undertaken is the Association's position that bargaining unit employees are, and have been, performing at two distinct levels of responsibility, maintenance and regular custodial duties. The Association has proposed two hourly rates which reflect the greater skill, effort, and responsibility of the maintenance duties.

Extensive testimony was introduced at hearing by witnesses for both parties as well as documentary evidence. Janet Rich had been employed as a part-time night custodian in 1981; there were two maintenance positions held by the Hanson brothers. In 1984 the Peshtigo Board of Education eliminated both maintenance positions and notified Gary Hanson of the downgrading of his position and wage rate from $7.54 to $5.40 per hour. Mr. Hanson resigned his position thereafter and it was filled by Ms. Rich, who received a letter from the District confirming her wages, hours and conditions of employment. The

letter referred to her assumption of a full-time day custodian as a promotion. She was provided with a job description dated December 4, 1985 which indicates that her position is Day Custodian. A later undated job description also refers to Janet Rich--Daytime Custodian. It was Mr. Rich's testimony, and the assertion of the Association, that her duties included "maintenance" and that she should be compensated accordingly. The District's witness, James Sutherland, Director of Building and Grounds, provided an extensive list of duties which he considered to be maintenance and which were performed by himself and Mark Peterson, Supervisor of Custodial Personnel and those duties performed by custodial staff. The question of why Ms. Rich's assumption of the new assignment was referred to as a "promotion" was explained by Mr. Sutherland as being based on a move up from part-time night work to the more desirable full-time day assignment.

A thorough of the review of the record as well as the arguments of the parties lead the arbitrator to conclude that despite the semantic confusion regarding the term "maintenance" the Association has not shown that Ms. Rich is functioning at a higher level than the custodial job description provides. In addition, the elimination of maintenance positions for bargaining unit employees in 1984 supports the District's position that proper classification for such employees is "custodian."

Following this decision, an appropriate comparison is between the parties' final offers on custodians with the wage rates for custodian's in the five comparable school districts, Coleman, Crivitz, Gillett, Marinette, and Wausaukee. As indicated earlier, there is a discrepancy in the District's 1990-91 maximum hourly rate. The lower figure, $7.92, will be used in the table which follows.

	1990-91	1991-92	1992-93
Conference Average (Custodian)	$ 8.94	$ 9.27	$ 8.54
Association Offer	7.87	8.50	9.00
District Offer	7.92	8.73	9.12

Inspection of the data reveals that the District's offer more closely approximates the average of the comparables.

The parties submitted lengthy and informative briefs on the issue of compensation which have not been specifically addressed, e.g., costing questions, wages for aides, secretaries, remuneration for employees hired after 1988, etc. It is the arbitrator's opinion, and it is so held, that these matters will be resolved by the adoption of the District's final offer on wages which is deemed to be the more reasonable.

I. Time Clocks

This issue seems to have been resolved by the Association's statement in its reply brief: "The Association has no objection to the District's conclusion that the computerization of timekeeping is not an unreasonable request."

VI. CONCLUSION

The external comparables utilized in this award were the school districts of Coleman, Crivitz, Gillett, Marinette (custodians only), and Wausaukee. The City of Peshtigo, Marinette County, and the Peshtigo teachers were rejected as appropriate comparables by the arbitrator. The Association's position that Master Agreements presently in effect for the support staff were to be considered the status quo was likewise rejected by the arbitrator. With the exception of the issues of layoff and recall and personal leave in which the Association's position prevailed, the balance of the issues were decided in favor of the District.

VI. AWARD

The final offer of the Peshtigo School District, along with the stipulations of the parties, shall be incorporated into the parties' written Collective Bargaining Agreement for 1990-91, 1991-92, and 1992-93.

Dated this 8th day of February, 1993 at Milwaukee, Wisconsin.

Rose Marie Baron

Rose Marie Baron, Arbitrator