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In the Matter of Final and Binding	
Final Offer Arbitration Between	
CORNELL AUXILIARY PERSONNEL ASSOCIATION	AWARD
AND	WERC Case 14 No. 45921
CORNELL SCHOOL DISTRICT	INT/ARB-6069

Decision No. 27292-B

I. HEARING. A hearing in the above entitled matter was held on September 22, 1992 at the offices of the Cornell School District, Cornell, Wisconsin. Parties were given full opportunity to give testimony, present evidence and make argument. Briefs were exchanged on October 31, 1992.

II. APPEARANCES.

MARY VIRGINIA CHARLES, Executive Director, Central Wisconsin Uniserv/Council-West, appeared for the Association.

WELD, RILEY, PRENN, & RICCI by RICHARD J. RICCI, Esq. appeared for the District.

III. NATURE OF PROCEEDINGS. This is a proceeding in final and binding final offer arbitration between the parties. The Cornell Auxiliary Personnel Association on June 20, 1991 filed a petition with the Wisconsin Employment Relations Commission alleging that an impasse existed between it and the Cornell School District. The Association sought initiation of arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act of Wisconsin. Investigation was made by Thomas L. Yaeger, staff member of the commission. Thereafter the Commission found that the parties had not established mutually agreed upon procedures for final resolution of the dispute in collective bargaining; concluded that the parties had substantially complied with the provisions of the statutes required before initiation of arbitration; certified that conditions

precedent to the initiation of arbitration had been met; and ordered on June 9, 1992 arbitration to be initiated on June 9, 1992.

The parties selected Gil Vernon as arbitrator and the Commission appointed him on June 24, 1992. However, Arbitrator Vernon recused himself on July 7, 1992. The Commission furnished the parties with a new list of arbitrators from which the parties selected Frank P. Zeidler. The Commission thereupon appointed Frank P. Zeidler as arbitrator on August 5, 1992.

IV. THE ISSUES. In this arbitration case the matter involves the accretion of Food Service Workers to a previous contract for all regular full-time and part-time custodial-maintenance employees, including custodial aides. The contract ran from July 1, 1990 to June 30, 1992.

The final offers of the parties are as follows:

FINAL OFFER OF SCHOOL DISTRICT OF CORNELL
TO THE CORNELL AUXILIARY PERSONNEL ASSOCIATION
(Re: Food Service Employees)

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Except as modified by the Tentative Agreements and this Final Offer, the terms of the 1990-1992 Agreement shall be the terms of this Agreement.

1. ARTICLE VII - HOURS - Revise paragraph B.2. to read as follows:

   2. Any full-time employee called to return to work outside of the regularly scheduled shift shall be paid for a minimum of two (2) hours.

2. ARTICLE XII - ABSENCE - Revise second paragraph in A. Sick Leave to read as follows:

   Custodial part-time employees shall be granted sick leave of two (2) days per year, cumulative to ten (10) days. Food service employees shall be granted five (5) days of sick leave per year, cumulative to thirty (30) days.

3. ARTICLE XIII - INSURANCE BENEFITS - Revise the first sentence of paragraph B as follows:

   B. Health Insurance. For full-time employees the Cornell School District shall pay ...

   Add to the end of paragraph E. Dental Insurance the following:

   "for full time employees."

4. ARTICLE XXI - SALARY SCHEDULE - Add the following classifications and wage rates.

Head Cook	7.98
Cook	7.21
Food Service Aide	7.21

5. All of the above changes shall be effective July 1, 1991, except as stated otherwise.

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CORNELL AUXILIARY PERSONNEL ASSOCIATION
FINAL OFFER
MARCH 6, 1992

To incorporate the food service employees into the Agreement, CAPA proposes that the current Agreement be modified by the tentative agreements and the following:

1. Article XII - Absences

   A. Sick Leave: Twelve month, full-time employees shall be granted sick leave of eleven (11) days per year, cumulative to one hundred twenty (120) days. Part-time employees shall be granted sick leave on a pro-rata basis except that part-time custodians shall be granted sick leave of two (2) days per year, cumulative to ten (10) days.

2. Article XIII - Insurance Benefits

   B. Health Insurance The Board will pay 100% of a single policy for all employees. It will pay 87.5% of a family policy for all eligible full-time employees, with part-time employees paying on a pro-rata basis for family coverage; however, the District shall pay no less than the value of a single policy

   D. Long Term Disability Insurance: The Board will provide each employee the WEAIG Long Term Disability Insurance with 90% of covered salary after a sixty (60) calendar day (with interruption) qualifying period, social security freeze, and WEAIG cost of living adjustment.

   E. Dental Insurance: The Board will pay $100 toward a single policy for all employees It will pay $300 for a family policy for all eligible full-time employees, with part-time employees paying on a pro-rata basis for family coverage; however, the District shall pay no less than the value of a single policy

   F Add: The WEAIG option plan shall be provided all employees who do not elect to receive health insurance

3. Article XXI - Salary Schedule

Add:	Lead Cook	$8.06
	Other Food Service Employees	$7 28

6. All changes to be effective July 1, 1991.

Mary Virginia Quarles
4/14/92

V. FACTORS TO BE CONSIDERED BY THE ARBITRATOR. The following provision is found in the Wisconsin Statutes at Section 111.70(4)(cm)7:

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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. Stipulation 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 employees 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.

VI. COSTS OF THE OFFERS. The Association lists 7 employees in the bargaining unit and lists their salary totals and total costs as follows:

TABLE 1

1990-1991	Salary	$46,418.40	
	Total cost	55,586.00	
1991-1992 Association Offer	Salary	48,409.92	4.29%
	Total cost	58,067.70	4.46%
District Offer	Salary	47,941.74	3.28%
	Total cost	57,506.12	3.45%

One employee among the seven retired at the end of 1991.

The District totals for the six employees are as follows:

TABLE 2

1991-1992	Salary	$38,858.40	
	Total cost	46,532.93	

Association Offer Assuming 1991-1992 Dental Insurance at no less than $100/year

1991-1992	Salary	$40,547.52	4.35%
	Total cost	63,228.46	35.88%

Association Offer Assuming 1991-1992 Dental Insurance at no less than Full Single Policy

1991-1992	Salary	$40,547.52	4.35%
	Total cost	63,488.82	36.44%

District Offer

1991-1992	Salary	$40,154.94	3.34%
	Total cost	48,165.85	3.51%

The parties dispute how to cost total compensation. This matter will be treated under Section XVII of this award, TOTAL COMPENSATION.

VII. LAWFUL AUTHORITY. There is no dispute here as to the lawful authority of the District to meet the cost of either offer. There is a dispute, however, over ambiguities relating to insurances, and as to exactly what costs the District would have to meet under the Association offer. This will be treated in Sections XI and XII following.

VIII. STIPULATIONS. The parties have stipulated to all other matters between themselves.

IX. DISTRICTS USED FOR COMPARISON PURPOSES. The Association is using the following districts for comparable purposes: Altoona, Auburndale, Cadott, Cornell, Fall Creek, Gilman, Greenwood, Loyal, Owen-Withee, Stanley-Boyd, and Thorp. The District uses all of the foregoing except Stanley-Boyd. The districts are all in the Cloverdale Athletic Conference, but do not comprise all of the districts in that conference, only the smaller ones. From District exhibits 11 through 16, the following information is derived from among ten districts:

* Cornell is eighth in enrollment with 623 members.
* Cornell is eighth in "FTE" staff at 46.70 FTE.
* Cornell is seventh in cost per member for 1991-92 with a cost of $4,764.01. The change in cost since 1988 percentage-wise is 30.17 percent, second highest percentage increase.
* Cornell, in aid received per member, is second highest with $3,417.94 in 1991-92 or a 26.74 percent change since 1988, 4th highest percentage-wise.
* Cornell with an equalized value per member at $83,663 in 1991-92 is ninth in rank.
* Cornell with a mill rate in 1991-92 of 20.12 has the highest mill rate and with a 27.05 percent change from 1988 to 1992 is also highest in percentage change.

* Cornell with a tax of $1006 levied on a $50,000 home in 1991-92 was the third highest, and in percentage increase since 1998 at 27.05 percent was highest in increase.

In average reported income in 1988 at $18,548 Cornell ranked seventh, and in 1990 with an average income of $20,300 it ranked 6th. In percentage change between those years, Cornell with a 9.45 percent increase was 8th. In 1990 the district population was 10,466, or fourth among the ten districts. Cadott was the highest with 13,342 and Gilman the lowest with 5,630.

The Association is arguing that the Stanley-Boyd district should be added to the list of comparables because Stanley-Boyd is a contiguous district and a member of the Cloverbelt Athletic Conference. According to its exhibit 20 the 1990 enrollment at Stanley-Boyd of 1,190 is less than Altoona which both parties include. The FTE at Stanley-Boyd of 80.50, however, is the highest when eleven districts are considered. Its equalized value per member is 89,140 which is less than eight of the districts of the ten districts the District is using. Stanley-Boyd's mill rate would make it 5th in rank and so would its total taxes levied on a $50,000 home. The Association is holding that the Stanley-Boyd clearly is suitable for inclusion among the comparables.

The District states in two previous arbitrations that an arbitrator beginning in 1984 included only the small districts of the Cloverbelt Conference and that this was supported by an arbitrator in a subsequent arbitration. The District, while not disputing that Stanley-Boyd has always been contiguous, asserts that so is Augusta which the Association is not including. The reason for this policy on the Association's part, according to the District, is that Stanley-Boyd is intended to help the Association case while Augusta would not. The Association is shopping for comparables.

Discussion. The Arbitrator, looking at the map of the area of the Cornell District and at the comparable data for the Stanley-Boyd district, notes that the Stanley-Boyd district is in the same geographical and economic area as the other ten districts, which both parties use as comparables. Stanley-Boyd is not sufficiently larger, given the inclusion of Altoona, to exclude it from being considered a

comparable. The Arbitrator thus will consider Stanley-Boyd among the primary comparables, but will report also on the District's list, though it is of secondary value.

X. COMPARISON OF WAGES. Six present employees are involved in this matter.

Table 3 is derived from Association Exhibits 7-10 inclusive:

TABLE 3
Rank of Cooks in Cornell Among 11 Districts,
Association Comparables

1990 - 1991			1991 - 1992					
		Rank	Assn	Rank	% Incl.	BD	Rank	% Incl.
Lead or Head Cook	$7.75	4	$8.06	5	4.00	$7.98	5	2.97%
Cook or Assistant	$7.00	4	$7.28	3	4.00	$7.21	3	3.00%

District Exhibits 20 and 21 yield the following information:

TABLE 4
Rank of Cooks in Cornell among 10 Districts
District Comparables, Maximums Only

1990 - 1991			1991 - 1992					
		Rank	Assn	Rank	% Incl.	BD	Rank	% Incl.
Head Cook	$7.75	4	$8.06	4		$7.98	5	
Cook or Assistant	$7.00	3	$7.28	2		$7.21	2	

In 1991-92 Exhibit 7 of the Association shows that percentage increases for lead or head cook ran from 7.81 percent at Stanley-Boyd to 1.25 percent at Greenwood. The

average was 4.20 percent under the Association offer, with Cornell included in the averaging. For cook or assistants for 1991-92, the range was from 1.43 percent at Greenwood to 8.18 percent at Stanley-Boyd with a resulting average of 4.31 percent when the Association offer Cornell was included. (Association Exhibit 8)

Using a similar pattern for the District offer, the Association reported that the resulting averages were a 4.10 percent average increase for lead cook in 11 districts for 1991-92 and a 4.21 percent average increase for cooks or assistants.

The District objects to this way of securing averages, insisting that Cornell should not be included to obtain a true average, and further that the inclusion of Stanley-Boyd skews the true average.

Association Position Summarized. The Association notes that the impact of its wage proposal is minuscule, with a grand total cost of $561.58 for 1991-92. It argues that its proposed percentage increase of 4 percent is closer to the average among comparables than the District increase of 2.97 percent. The Association also notes that several districts have longevity provisions.

District Position Summarized. The District holds that its offer is more reasonable because it is consistent with internal patterns and maintains leadership among the comparable Districts. As to the latter point, the District says its wage offer results in a wage rate $.20 above the District comparables and places Cornell second highest in ten districts. The District notes that this top wage at Cornell occurs after only three years, whereas in three districts the top wage occurs after nine years or more.

The District also argues that because there is only one head cook at Cornell, weight should be given to the wages paid to the other five employees, where the position is paid more than the going rate among comparables.

The District strongly objects to the inclusion of Stanley-Boyd wages contending that they are an anomaly.

Discussion. The actual wage cost difference in the offers as noted by the Association is very small. The Arbitrator then relies on percentage increases among comparables. Even excluding Stanley-Boyd as a comparable, and of course excluding Cornell, seven of the remaining nine districts have percentage increases for head cooks roughly from 3.98 percent to 5.44 percent, and for cooks or assistants 3.92 percent to 5.47 percent. The Association offer at 4.00 percent for both classifications is held the more comparable.

As to the inclusion of Stanley-Boyd with its higher wages, it should be noted that both Stanley-Boyd and Cornell do not offer insurance to 6 hour cooks, thus resulting in higher total compensation for employees in older districts.

XI. HEALTH INSURANCE. The District is proposing to pay 100 percent of a single policy for full time employees. The contract under which the cooks are being accreted describes eight hours as full time work The Association language will be stated here again.

> "Health Insurance. The District will pay 100 percent of a single policy for all employees. It will pay 87.5 percent of a family policy for all eligible full-time employees, with part-time employees paying on a pro-rata basis for family coverage; however, the District shall pay no less than the value of a single policy."

Association Exhibit 13 shows that District-paid forms of health insurance are available in some form in nine districts of ten comparable districts, but not in Stanley-Boyd, the eleventh district. Most districts pay from 90 percent to 100 percent of the single plan premium, with all including full-time employees under that category. Four districts are described as including "all food service" workers. Seven districts have some hourly qualifications to attain and three prescribe specifically for part-time employees to participate. Taking those districts which include all food service workers and/or part-time employees, the Association list of comparables comes to six districts in ten comparables.

Association Exhibit 5 shows that of six food service workers, four work 6 hours a day, one 5 hours, and one 5.5 hours. The District contends that there are six employees, three of whom work 6 hours, one 5.3 hours, one 5 hours and one who works only 2 hours as a cook. Thus District's Exhibit 23 lists in columns whether or not health insurance benefits are paid to 6 hour, 5 hour and 2 hour employees. Among the nine districts other than Cornell, 6 offer health insurance benefits for 6 hour employees, 3 offer benefits for a 5 hour employee, and one offers benefits for a 2 hour employee. Of the districts providing health insurance for cooks, 3 districts offer 100 percent payment on the single plan, and three pro-rate the amount the employer pays for the plan.

The Association Position on Health Insurance. The Association asserts that the Association is seeking to provide against catastrophic costs of medical care and therefore has made its offer. Comparables show that the benefit is provided regularly to both organized and unorganized units of food service employees.

The Association argues that its proposal will have impact on only a part of the 1992-93 budget year because of the timing of the arbitration hearing. It is also not known how many employees will sign up first.

The Association argues that the District offer of a language change in Article XIII to state "For full-time employees the Cornell School District shall pay 100 percent of a single policy", instead of "Cornell School District will pay 100 percent of a single policy" results in the District reneging on a commitment to pay for health insurance for part-time custodians. One employee who works as a custodian 4 hours a day when students are in attendance, and 8 hours a day in vacation periods has fully paid single health insurance. The District's offer takes it away from him. The Association argues that the equity consideration here is overwhelming. Further the District offers no quid pro quo for taking health insurance amounting to $144.10 a month or 26.4 percent of his compensation package.

<u>District Position on Health Insurance.</u> The District argues that the Association proposal on health insurance is contradictory to the health insurance carrier's own rules for eligibility, over which rules the District has no control. The District contends that the Association language requiring the District to pay 100 percent of a single employee regardless of the number of hours they work per week is language without a threshold on the required number of hours per week before insurance payments can be made. This becomes problematic when the policies of the District's own health carrier are examined. Under the present carrier, employees must work at least 20 hours per week for coverage. The Association proposal would obligate the District to pay for employees who are not eligible for insurance.

There is one such employee who works 2 hours a day and 8 hours a week in food service. Though this employee also works as a custodian, and exceeds 20 hours, there is nothing to prevent the District from hiring another 2 hour a day employee. Because the Association is lacking a threshold of entry into the health insurance benefit, it is demanding a provision which the District may not be able to provide.

The District also argues that the Association claim that the Association proposals are not retroactive is contrary to the clear language of the agreement.

The District also opposes the Association offer on the grounds that the Association offer changes conditions of employment for custodial employees where contract is settled. The proposal of the Association calling for health and dental care for all employees will bring into the coverage all employees in the Association including part-time custodians who never had dental and health insurance before. The District is arguing that provisions achieved in bargaining for an accreted group of employees are not applicable to the original unit to which the employees already are being accreted. To allow such a result would be to allow the Association to obtain benefits for custodial employees which have not been bargained.

The District also holds that its offer on health insurance restricting this benefit to only full-time employees--that is those who work 8 hours a day--merely codifies the current practice. The Association proposal thus is a major change

in the status quo which it cannot support through comparability. A review of comparables shows little support for workers who work as little as 2 hours a day, or 5 hours a day.

Internal comparables within Cornell do not support the proposal in that part-time custodians, secretaries, or aides do not receive insurance. The fact that a custodial aide, William Stewart, receives health insurance in one half of a single payment does not justify the Association's position on providing health insurance for part-time people. Stewart works part-time some time and full time at other times, but does work 12 months of the year. Another uniquely situated employee who works 1/2 time as secretary and 1/2 time as teacher's aide also receives 1/2 of a single insurance payment. The case of Mrs. Johnson, a long time part-time employee who retired and had been in the insurance plan was "grand-fathered" out for purposes of insurance, a special case. Past practice does not support the Association argument.

The District is also arguing that in such a major change, the Association is offering no quid pro quo, something which arbitrator's generally hold as required.

Discussion. Association Exhibit 13 shows that comparable districts have some form of health insurance for food service workers. This is a favorable factor for the Association proposal. However, the Association proposal would provide for considerably more coverage than the proposals in most of the comparables. Further the changes would have an impact which would include, in the opinion of the Arbitrator, custodial workers who have had a contract limited only to full-time workers. The Arbitrator believes that the public interest would best be served by accreting the food service workers into the existing contract, with as little alteration of the contract covering the custodials as possible...The Arbitrator is also concerned about the problem of comparability which the Association offer presents in respect to extent of coverage for workers working less than 8 hours.

The possibility of the insurance benefits being removed from William Stewart, custodial worker who sometimes works part-time and sometimes full-time is in the view of the Arbitrator not at all certain under the District offer.

Also, there is no certainty under the Association offer, whether the insurance carrier would accept employees working less than twenty hours.

The conclusion here then is that in the public interest for this contract of accretion, the District offer appears less likely to cause immediate difficulty, even though it is not comparable in providing any health insurance for less than full-time employees.

XII. DENTAL INSURANCE. The Association is proposing to add to the Agreement a clause on dental insurance, which is as follows:

> "Dental Insurance: The District will pay $100 toward a single policy for all employees. It will pay $300 for a family policy for all eligible full-time employees, with part-time employees paying on a pro-rata basis for family coverage, however, the District will pay not less than the value of a single policy."

The District has an offer to include dental insurance for full time employees.

Association Exhibit 15 shows that dental insurance receives board payment in some percentage in Altoona, Auburndale, Gilman, Greenwood, Loyal, and Thorp. Of those providing such insurance, five districts have an hourly total to be achieved before the benefit is obtained, five pay 100 percent of single premium, three pay 100 percent of the family premium.

The District in its Exhibit 24 showed that six districts do not pay dental insurance for employees working six hours a day or less.

Position of the Association Summarized. The Association argues that the District discriminates against food service employees by denying them dental insurance. It notes that the District provides dental insurance for teachers and custodians and that comparable districts provide dental insurance for food service workers. The Association also holds that the dental insurance plan of the Association will have no impact on the 1991-92 budget; and even if the plan had been in effect for 1991-92, the District's costs would have been only $937.50.

<u>District Position Summarized.</u> The District holds that the Association offer with respect to dental insurance is fatally flawed and on this ground alone it should be rejected. The District contends that the Association offer on dental insurance is ambiguous with respect to the contribution levels. The District says that the language of the Association offer which requires the District to pay $100 toward a single policy for all employees and "...the District shall pay no less than the value of a single policy" is contradictory. The cost of a single policy has been $186.72. The District then asks what amount it is expected to pay: $100 or $186.72? Where such an ambiguity exists, it is the practice of arbitrators to reject the offer which contains the ambiguity.

The District also argues that by its dental insurance proposals the Association is changing the benefit levels of custodial workers whose benefits have already been settled in an agreement.

<u>Discussion.</u> The Arbitrator is persuaded that an ambiguity exists in the Association offer on benefit levels and, therefore, the public interest is better served by the District offer, even though that offer does not meet the test of comparability as far as some kind of dental insurance being offered in comparable districts. However, the Association offer does meet the test of comparability as to the level at which dental insurance is offered based on hours of employment for the year. Because of the ambiguity in the language of the Association offer, the District offer here is considered the more reasonable one for the present.

XIII. LONG TERM DISABILITY INSURANCE. The Association is proposing Long Term Disability Insurance with the provision stated in the foregoing Section IV. The District has no offer to include it.

Association Exhibit 14 shows that for 1991-92, 9 of its 11 comparables provide Long Term Disability Insurance. This evidence is corroborated by District Exhibit 26, although that exhibit shows two districts required certain hours of work a day must be achieved.

Association Position Summarized. The Association argues that the District provides LTD for custodians and for teachers. The Association notes that LTD is provided in nine comparable districts, and it argues that the insurance proposal can have no fiscal impact in 1991-92.

District Position Summarized. It appears to the Arbitrator that the District is taking a stand against the insurance proposal generally from the standpoint that the costs will be retroactive and this includes LTD.

Discussion. The comparable districts show that the Association offer is the most comparable to what exists in the districts.

XIV. HEALTH INSURANCE OPTION. The Association is proposing that "The WEAIG option plan shall be provided all employees who do not elect health insurance". District Exhibit 25 shows that only 2 of the district comparables have this plan.

Discussion. The District argues that this proposal is brand new and is not currently available to custodians. The plan could have the District make payments up to 100 percent of a single premium into a tax-sheltered annuity. This is a major change in the status quo and is not supported by comparables.

The Arbitrator finds that the Association offer does not meet the test of comparability.

XV. CALL-BACK PAY. The District is proposing that the phrase "any full-time employee" shall be a term included in ARTICLE VII- Hours, Paragraph B. This article at B. Overtime. in Paragraph 2 currently says, "Any employee called to return to work outside of the regularly scheduled shift shall be paid for a minimum of two hours." This language the Association proposes to maintain.

Association Position Summarized. The Association contends the District is seeking to use the accretion of cooks to remove a benefit from part-time custodians who have the benefit now. It removes this benefit with no quid pro quo. If custodians receive this benefit now, it's appropriate for food service workers. If the District does not wish to pay call-in time, it does not have to call any employees back. Internal comparability requires call-back pay for food service workers.

District Position Summarized. The District position is that its proposed change in language merely codifies current conditions. The Association however would make the pay applicable to any employees including part-time employees. The District says it maintains the status quo and provides a level of benefits consistent with internal comparables. The union offer demands a higher level of benefit than is found in any comparable district. The demand is excessive.

Discussion. The lack of information on the practice among comparables outside the District compels one to rely on internal comparables. The District says that part-time custodial workers do not get call-in pay, while the Association says that the contract states they do. The District opposes the Association contention because the Association offer would mean part-time custodians are open to receive a benefit they do not get now. The Arbitrator believes that the language of the current agreement specifies that part-time custodians, if called back, might be eligible to get call-back pay. It also seems reasonable to the Arbitrator that if a regular five hour or six hour employee is called back out of shift, a minimum pay of 2 hours is called for. The Association offer on this issue is the more reasonable one.

XVI. SICK LEAVE. The Association is proposing "Part time employees shall be granted sick leave on a pro-rata basis except that part-time custodians shall be granted sick leave of two (2) days per year, cumulative to ten (10) days". The District is proposing that "Custodial part-time employees shall be granted sick leave of two (2) days per year, cumulative to ten (10) days. Food service employees shall be granted five (5) days of sick leave per year,

cumulative to 30 days". The past agreement said, "Sick Leave: Full time employees shall be granted sick leave of eleven days per year, cumulative to one hundred days. Part time employees shall be granted sick leave of two (2) days cumulative to ten (10) days".

Association Exhibit 11 listed sick days per year allowed with the total accumulation. Ten districts under the Association comparables allowed ten days sick leave per year or more and in eight of these districts the benefit applied to all food service workers. In two of the districts there was a lesser number of days allowed for part time workers. In Cornell, the allowance was five days for all food service workers. Of the accumulations agreed to in one district there was the total of 110 days, one district had 100 days, four districts had 90 days and all districts permitted accumulations larger than that at Cornell with 30 days permitted.

District Exhibit 30 related to internal comparison in Cornell and yielded the following table which is abstracted from this exhibit:

TABLE 5
INTERNAL COMPARABLES ON SICK LEAVE IN CORNELL

	Days per Year	Accumulation
Custodians, FT	11	120
Custodians, PT	2	10
Secretaries, FT	11	120
Secretaries, PT	not applicable	
Teacher Aides	none	
Cooks	5	30
Final Offers:		
District	5	30
Association	Prorated	Prorated

Association Position Summarized. The Association says that its proposal would provide food service employees with eleven of their work days per year as sick days. The District is only offering five. This is far below the average, as is the District's accumulation of days. The Association says that the District position clearly suggests an unjustifiable attitude toward the food service employees in denying benefits of sick leave, health care benefits to food service workers.

District Position Summarized. The District's final offer retains the status quo of 5 days a year cumulative to 30 days. The Association offer, on the other hand, more than doubles the status quo with 11 days accumulative to 120. This means days of 6 hours, not 8 hours. The Association is asking too much too soon. The Association is calling for more days of sick leave than any of its comparables allow. In its demand to exceed all other comparables, the Association is exceeding what part-time custodians get.

The Association pattern does not conform to what other part-time support staff get in Cornell as shown by the Employer's Exhibit 30.

Discussion. The first question here is whether the Association offer is more comparable to other districts in the principle of call-back pay than the District offer. The evidence is that it is. The next question is whether the Association offer is excessive in terms of what other districts offer, and in terms of internal comparables. The Arbitrator concludes that because the Association offer exceeds what is generally prevailing elsewhere, it is desirable to award the District the decision on this issue as more reasonable at this time, even though the District offer is one that sooner or later must come under further scrutiny as to comparability for part-time workers.

XVII. TOTAL COMPENSATION. The Association in costing its offers uses seven employees. As noted before, one of these employees, Irene Johnson, is reported to have resigned after lengthy service. For 1991-1992, the Association calculates the annual salary increases only to be $48,409, a 4.29

percent increase. The total increase would be for salary and benefits, $58,067.70, a rise of 4.46 percent. The Association says it is not costing insurance benefits because they will not start until the Arbitrator's award is effective.

The Association, costing the District offer, says that the annual salary would be $47, 941.74 for 1991-92, an increase of 3.38 percent, and the total District cost for its offer would be $57,506.12, an increase of 3.45 percent.

The District takes issue with this type of costing on two major points. One is that the Association should have included the cost of insurance in the costing of its offers, since according to the proposed agreement they are to take effect in 1991. Also the District argues that the ambiguity in the language of the Association dental insurance offer compels the District to make two different types of costing.

For its own costs, the District says that the salary cost would amount to $40,154.94 for six persons, an increase of 3.34 percent, and for the total compensation the cost would be $48,165.85, an increase of 3.51 percent.

For the Association offer with dental insurance at no less that $100 a year, salary only costs would be $40,547.52 and the total compensation including the insurances would be $64,228.46, an increase of 35.88 percent. If the Association's proposal is costed with dental insurance at no less than a full single policy, the salary cost alone would be the same, but the total compensation would amount to $63,488.62, or an increase of 36.44 percent.

Association Position Summarized. The Association says that its costing for total compensation is correct, and it properly used all the employees in 1990-91 including Irene Johnson and Dawn Phelps. The Association properly deleted the cost of fringe benefits because they can not be implemented for 1991-92 and would impact in 1992-93, and then only by being phased in about 18 months after unionization. The difference from the Association package costs and the District package costs is only about $561,58. But if the Districts package costs for the Association in assuming the insurances and dental costs at no less than $100, then the differences would amount to only $15,062.61 or only 0.47 percent of the District budget.

District Position Summarized. The District says that the costs of the insurances as applicable to the 1991-92 agreement should be applied; and even if some of these costs do not occur in this year, they will occur in the future. The clear language of the Agreement calls of the inclusions of these costs and this is necessary in order to reflect the cost of the Agreement. Further, even if the Association's costing is accepted, the District will incur a substantial increase in the start at the 1992-93 school year. The costs will be incurred at some time. When they are included the Association offer becomes insupportable.

Discussion. The parties did not present comparable total compensation increases in comparable districts except in percentage costs for salaries only. As noted from Association Exhibits the Cornell District offer was lower in percentage increase than the increases in other districts.

However, it must be noted that in most of the districts there were insurance payments made to food service workers which type of payments are not included in Cornell. When these payments are considered in total compensation, the average compensation then of a food service worker was likely higher in most districts. Thus even though the total compensation increase with insurance included jumps to the 35 percent range, the actual dollar total compensation might be comparable to that in other districts.

Under the District offer, the total compensation of food service workers in Cornell probably must be less, as is most likely true in Stanley-Boyd where insurances are not paid either.

The Arbitrator concludes then that the percentage increase shown in the District's estimate of total cost should be accepted, but this does not automatically bar the acceptance of the Association offer under the rubric of "total compensation," because the total compensation in most other districts is likely higher than in Cornell. However, in the absence of specific total compensation in other districts the Arbitrator concludes that he can only hold that the Association offer is not to be excluded from consideration based on percentage increase in total compensation alone.

XVIII. COST OF LIVING. Employer Exhibit 8 showed the annual increase the cost of living (CPI-W) in the Metropolitan Urban Areas in the North Central Region amounted to 4.0 percent for July, 1991 and in July, 1992 the annual increase was 3.1 percent. With the Association offer for salaries only amounting to 4.35 percent and for total compensation under all calculations at 35.88 percent. The District offer amounting to 3.51 percent for total compensation, the District offer is the more comparable one to changes in the Consumers' Price Index.

XIX. THE INTERESTS AND WELFARE OF THE PUBLIC, AND THE ABILITY OF THE UNIT OF GOVERNMENT TO PAY THE COST. Essentially the District is arguing that it is not in a position to meet the increased cost of the Association offer. Employer Exhibit 12 showed a district increase in cost per member of 30.17 percent in the years from 1988-89 to 1991-1992, though aid per member grew 26.74 percent. This change was the highest among the Districts comparable. The equalized value per member in the Cornell district was the second lowest at $83,663. In 1991-1992. The mill rate change from 1988-1989 to 1991-1992 was 27.05 percent, the highest among district comparables. The change from 1990-1991 to 1991-1992 was 20.17 percent, the 3rd highest. The average 1988 average income in the district was 9.45 percent, 8th in rank. (District Exhibit 15) In 1990 the adjusted gross income per capita in the District was 7,965, or fifth in rank among ten district.

The District also provided exhibits which showed that the voters of the district, in a referendum, rejected a $43.8 million bond issue to erect a K-5 addition to the elementary school. This referendum would have cost the owner of a $50,000 home an additional $116 for 20 years. The referendum was defeated by a vote of 390 to 180.

District Position Summarized. The District argues that its offer is in line with comparables. It notes the low equalized valuation in comparison and increase in mill rate. It contends that the average rate of income is not keeping pace with the increase in school costs. The District is also holding that the food service program is supposed to be self-sustaining but the program had a short fall of $6,590

in 1989-90, $24,581 in 1990-91 and is expecting a shortfall of $4,928 in 1992-93. To grant the Association offer, this would produce a dramatic increase in the food service budget, which money would have to come from other sources.

Association Position Summarized. The Association notes that the District has no argument on the inability to pay. Even if the District's costing of the Association offer is accepted, the additional cost would be only $15,062.61, which is less than one half of one percent of the budget. The District made this costing assuming that all employees would select district provided insurance, which the Association said is unlikely.

The Association says that there is a catch-up needed and the District is recalcitrant. Equity demands a major catch-up in the benefits proposed.

Discussion. With the proposed budget for 1992-93 calling for an expenditure of $3,378,700, the Arbitrator is of the opinion that the Association offer is within the ability of the District to pay it even with the higher dental insurance calculation.

The Arbitrator also believes that there is a catch-up need in aspects of the food service workers compensation, especially in insurance and sick leave. Thus the interests of the public would not be so adversely affected on these grounds in accepting the Association offer.

What is troubling about the Association offer, however, is the ambiguity in how the dental insurance clause is to be read. Also the provisions of the Association offer in insurance benefits and sick leave which result in an exceeding of those comparables in an initial accretion to the Association, give this Arbitrator pause.

Further, both parties are offering provisions that will have some impact on the custodians whose agreement is the agreement to which the food service workers are being accreted. This fact calls for an approach in which the food service workers are accreted with the least disturbance to the custodian contract. The Arbitrator believes that the District offer meets this condition better than the Association offer.

The conclusion of the Arbitrator then is that the District proposal would more nearly met the interest of the public at this time.

XIX. OTHER FACTORS. The District has argued against Association proposals contending that they change the status quo without a quid pro quo. Both parties in the opinion of the Arbitrator are doing this in their proposals. The District is doing so especially in its provision of inserting full time into clauses which might have applied to part-time employees, whatever the past practice was. This Arbitrator does not rigidly subscribe to the quid pro quo concept, but where comparables indicate a change may be in order, the concept of quid pro quo does not prevail.

XX. SUMMARY AND CONCLUSIONS. The following is a summary and the conclusion of the Arbitrator.

1. There is no question of the lawful authority of the District to pay either offer, but there is a problem of interpreting the Association offer which the District considers ambiguous in the offer on dental insurance.

2. The parties have stipulated to all other matters between them.

3. The Arbitrator considers the Association offer of 11 comparable districts including the Stanley-Boyd district as the primary set of comparables and the District list of ten comparables as secondary comparables.

4. The Association offer for wages alone is the most comparable.

5. As to health insurance, the District offer, though it does not meet the test of comparability as to health insurance for food service employees, appears to be in the public interest at this time of accreting only because of the extent of the coverage sought by the Association which exceeds that of comparables.

6. As to dental insurance, the Association offer meets the test of comparability as to the existence of such a provision for food service workers, but the Association contains an ambiguity as to the amount the District is to pay, and the Association offer does not meet the test of comparability as to the amounts to be paid. The District offer is thus considered more proper at this time.

7. The Association offer on Long Term Disability insurance is the more comparable.

8. As to a health insurance option, proposed by the Association, the evidence is that this type of benefit is not supported by comparables.

9. As to call back pay, the Association offer is the more reasonable one.

10. As to the issue of sick leave, though the Association offer is more comparable on the days given and days allowed to be accumulated for food service workers, the offer is not comparable in terms of the specific details of the offer and in terms of internal comparables in the District.

11. As to total compensation, the Association offer is not be excluded from consideration even though is higher than the District offer. Insufficient data was supplied on comparable total compensation in other districts for food service workers when insurance benefits are considered. Since most of the other districts offer insurances for food service workers, it is presumed that Association offer would be comparable in total compensation, and it should not be excluded on the basis of percentage increase.

12. As to the cost of living, the District offer on salary is closer to the changes in the consumer price index that the Association offer.

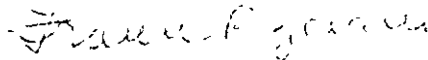
13. As to the ability of the District to meet the cost of either offer, the evidence is that it can meet the cost of the Association offer.

14. As to whether it is in the interest and welfare of the public for the District to meet the Association offer, the Arbitrator is given pause by the Association offer's ambiguity in the dental insurance provision and by its calling for specific insurance and sick leave benefits which rank above or among the highest benefit offered elsewhere. Also both parties are offering provisions which would have an impact on custodians whose agreement is already settled as to benefits. These facts call for an approach in which food service workers ought to be accreted with the least disturbance to the custodian contract. The Arbitrator believes that the District contract meets this condition better than the Association, and the District proposal would more nearly meet the interests of the public at this time.

15. As to other factors, both parties are offering to change the status quo, so this concept has not been applied in judging the offers or specific parts of them. Rather the standard of comparability has generally been applied.

In the view of the Arbitrator the main factor here is the problem of ambiguity in the language of the dental insurance proposal of the Association. Hence the following award.

XXI. AWARD. The proposed terms of the accretion of the food service workers in Cornell as members of the Cornell Auxiliary Personnel Association shall contain the terms of the final offer of the District.



Frank P. Zeidler
Arbitrator

November 23, 1992
Milwaukee, Wisconsin