In the Matter of the Stipulation of

NORTHWEST UNITED EDUCATORS

-and-

Decision No. 27460-A

ST. CROIX FALLS SCHOOL DISTRICT
to initiate arbitration between said parties

Appearances - Alan D. Manson, Executive Director, for the Union
Stephen L. Weld, Attorney at Law, for the Employer

Northwest United Educators, hereinafter referred to as the Union, and St. Croix Falls School District, hereinafter referred to as the Employer, filed a Stipulation with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein they alleged that an impasse existed between them in their collective bargaining. They requested the Commission to initiate arbitration pursuant to Section 111.70(4)(cm) 6 of the Municipal Employment Relations Act. A member of the Commission's staff conducted an investigation in the matter.

The Union is a labor organization maintaining its offices at 16 West John Street, Rice Lake, Wisconsin. The Employer is a municipal employer maintaining its offices at 650 East Louisiana Street, St. Croix Falls, Wisconsin. At all times material herein the Union has been and is the exclusive collective bargaining representative of certain employees of the district in a collective bargaining unit consisting of all regular full-time and regular part-time employees of the Employer, excluding confidential, supervisory and professional employees. The Union and the Employer have been parties to a collective bargaining agreement covering wages, hours and working conditions of the employees that expired on June 30, 1991.

On February 6, 1992 the parties exchanged their initial proposals on the matters to be included in a new collective bargaining agreement to succeed the agreement that expired on June 30, 1991. Thereafter the parties met on two occasions in efforts to reach an accord on the new agreement. The Union and the Employer filed a petition requesting the Commission to initiate arbitration. After the investigation by a member of the Commission's staff it concluded that an impasse within the meaning of the Municipal Employment Relations Act existed between the parties with respect to negotiations leading toward a new collective bargaining agreement covering wages, hours and conditions of employment. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The Employer issued an order appointing Zel S. Rice II as the arbitrator to issue a final and binding award to resolve the impasse by selecting either the total

final offer of the Union or the total final offer of the Employer. A hearing in the matter was conducted at St. Croix Falls, Wisconsin on February 26, 1993.

This arbitration involves the parties second collective bargaining agreement. The term of the agreement runs from July 1, 1991 through June 30, 1993. The parties first collective bargaining agreement for the term July 1, 1989 through June 30, 1991 was the result of an arbitration award by Arbitrator John Flagler. Because it was a first contract and because there were many unresolved issues the parties requested the arbitrator to issue a voluntary fact finding report and he did so on September 9, 1991. That report resulted in renewed discussion by the parties but did not lead to a resolution of the dispute. On November 4, 1991 Flagler issued a final and binding award directing the parties to implement the Union's final offer.

The Union's final offer, in this case, attached hereto and marked Exhibit 1, proposes that for the 1991 - 1992 school year there be a wage rate freeze and the wage rates in the Article XXIV for the 1991 - 1992 agreement would be the same as in the 1990 - 1991 school year. In the 1992 - 1993 school year all wage rates in Article XXIV would be increased by four percent. The Union also proposed that Article XXIV of the collective bargaining agreement include the following paragraph after "Barrens route": "A long route is a route which requires at least three hours per day and at least 65 miles per day; kindergarten routes are the noon routes due to one-half day kindergarten; the Barrens route is the route which picks up and delivers students beyond Trade River; routes such as Cushing and Dresser, to pick up (and deliver) students after (and before) they are bussed to (and from) St. Croix Falls on a daily basis, shall be paid the extra-driving hourly rate with a one hour minimum per trip." Attached to that final offer was a second sheet designed to illustrate the effect of the Union's final offer. It included the wage rates for cooks, aides, clerical employees and bus drivers. On this second sheet setting forth the wage rates in Article XXIV was the language from the first page that constituted the final offer of the Union on the issue of bus drivers wages in Article XXIV. It also included the following paragraph which was not part of the final offer set forth on the first page: "All other extra-drving and time will be paid at $6.86 per hour. For bus drivers there is a two-hour minimum for extra-driving; and weekend and holiday routes will be paid a minimum of four hours." That language had not been included in the final offer on the first page.

The Employer's final offer, attached hereto and marked Exhibit 2, included a proposal to revise paragraph 3 of Article IV to read as follows: "To subcontract services provided the affected employees shall, assuming compliance with a just cause standard, be guaranteed during the term of the contract or for one year, whichever is longer, the same number of hours and the same hourly rate of pay from the district or the provider of the services." The Employer's final offer also included a proposal to increase the wage rates by two percent for the 1992 - 1993 school year.

The main difference between the two proposals is that the Employer proposes a two percent wage increase for the 1992 - 1993 school year and the Union proposes a four percent increase for that year. The Employer proposes to continue the current language with respect to bus driver wages while the Union proposal would define a long route, a kindergarten route and the Barrens route and provide that routes such as Cushing and Dresser be paid the extra-driving hourly rate with a one hour minimum per trip. The Union proposes to continue the current subcontracting language while the Employer would change that language to permit it to subcontract if it guaranteed the affected employees the same number of hours and the same hourly rate of pay from either the Employer or the provider of the subcontracted service for one year. The final offers of the parties were submitted to the Wisconsin Employment Relations Commission in the same form as set forth in Exhibits 1 and 2. The second page attached to the Union's final offer also contained the language with respect to the wages for extra-driving that was not part of the final offer set forth on the first page and was not in accord with some rates that had already been agreed upon. The Commission issued its order directing arbitration on November 10, 1992. On that same day the Union sent the Commission's investigator a letter making an editorial correction in its final offer that deleted the last paragraph of the language on the second page with respect to bus drivers that referred to extra-driving rates. The letter stated that the first page of its final offer accurately reflected the change being proposed for language in Article XXIV.

UNION'S POSITION

The Union argues that Arbitrator Flagler used the athletic conference schools with represented support employees plus Amery. It concedes that whether or not the non-unionized employees in Luck and Osceola are included changes little. The Union takes the position that the general wage rate increases in the Upper St. Croix Valley Conference Schools for the 1991 - 1992 and 1992 - 1993 school years provided average increases of 4.3 percent in the first year and a 4.4 percent in the second year with a two year average general wage increase of 8.9 percent. It asserts that these comparables reveal the magnitude of the agreed upon wage rate freeze for the 1991 - 1992 school year and the standard wage increases for the 1992 - 1993 school year against which the final offers are to be measured. The Union points out that the Employer provided a combination of wage rate increases over those two years to its supervisors averaging well over 10 percent and the wage rate freeze agreed to by the Union for the 1991 - 1992 school year results in a general wage increase 5 percent below the average of the primary comparables. It argues that the total wage rate freeze of the Employer for the 1991 - 1992 school year meets the standard for making a wage concession of substance in connection with the implementation of expanded insurance benefits. The Union contends that it is not seeking catch up in the second year but is only proposing a general wage increase that is slightly below the conference average for that year. It points out that because of the 1991 - 1992 school year wage freeze, the Employer saves each year the

basic 4 percent wage increase that was received by the comparable groups in the 1991 - 1992 school year plus roll ups that would have accrued in subsequent years. The Union asserts that all bargaining unit members will be paying, in the form of a virtually permanent wage set back, for the implementation of the health insurance benefits to previously uncovered employees in 1991. It argues that under its offer all employees will be paying about 5 percent annually while the Employers offer would result in them paying 7 percent annually. The Union takes position that the current contract contains references to regular route, long route, Kindergarten route and Barrens route but there is no contractual explanation or definition of these routes. It wants to put the definitions in the contract. It asserts that it is appropriate to include these definitions because if there is a written standard in the contract when changes are suggested or occur the possibility of preventing or more easily resolving potential disputes is greatly enhanced. It argues that the Cushing and Dresser routes entail well over a half hour of extra work for each trip and at least from 1977 to November of 1991 the drivers who drove those routes were paid one hour of the then current extra trip hourly rate for those routes. The Union contends that the undisputed past practice was that the person driving the Cushing and Dresser routes would be compensated under the extra-curricular rate contained in the collective bargaining agreement. It points out that the Employer paid retroactive wages for the entire term of the initial collective bargaining agreement for both the Cushing route and the long route driven by driver Wendell Huro. The Union takes the position that its position on the Cushing and Dresser route definition proposal constitutes basic equity and fair ness and is consistent with the Employer's long established past practice. It asserts that implementation of the Employer's proposal will reduce the wages of Huro by $250.00 per month while he continues to do the same work that he has been doing for years. The Union argues that the first page of its final offer contains the actual language in quotation marks to be included in the collective bargaining agreements and is sufficiently clear and compelling to require that its terms be considered its final offer. It contends that its final offer presents its language in the form of a specific quotation to be included in the collective bargaining agreement and the fact that the second page attached to the final offer contains a misprint is a mistake of such a minor nature that it will not impact on the decision. It takes the position that the Employer has not provided any rationale or facts to show why the Employer's subcontracting right should be changed. The Union argues that there are no comparables in the record that match or duplicate the unusual terms of the Employer's proposed subcontracting language. It argues that the Employer's proposal would raise more difficult and disturbing questions leading to litigation in the event of a decision by the Employer to subcontract and lay-off bargaining unit members. The Union contends that the current language which allows the Employer to subcontract but still protects current employees from layoff should not be modified because the Employer has failed to provide convincing evidence as to why the existing language should be changed.

EMPLOYER'S POSITION

The Employer takes the position that the comparable group should include the Upper St. Croix Valley Conference Schools plus Amery. It is not the same comparable group utilized by Arbitrator Flagler in his 1991 award but the Union does not object to it. It asserts that the consideration of the wages, hours and conditions of employment of other employees in the same community is statutorily mandated. Thus the Employer contends that a comparison of private and public sector employees within the school district is a second appropriate comparison pool because that is the group with which the Employer competes in recruiting support staff employees. It argues that the final offers of the Union and the Employer must be considered against the back drop of the Flagler award issued on November 4, 1991. The Employer contends that the Union argued in the proceeding before Flagler that the economic impact of its health insurance demand would not be felt during the first contract and could be addressed in the bargaining regarding this contract and the impact would be shared by the Employer and the employees. It takes the position that the Flagler award increased its health insurance costs for the unit and those increases must be considered by the arbitrator in making his decision in this arbitration. It contends that during the last arbitration the Union promised that it would make significant wage concessions during the current contract term to offset the cost impact of the new health insurance benefits. The Employer takes the position that the statements and promises made by the Union in the last arbitration went beyond the first year of this collective bargaining agreement. It points out that the Union argued before Flagler that the successor agreement in Amery following the Yaffe award would serve as an example to be followed in these proceedings. In the negotiations following the Yaffe award for Amery, the employees and the Amery School District agreed to a wage freeze for the first year and a 2 percent increase for the second year to accomodate the implementation of the new health insurance program which took place during the proceeding contract. The Employer takes the position that its offer of a wage freeze in the first year and a 2 percent wage increase in the second year mirrors Amery's first post arbitration wage settlement. It asserts that its offer will result in a very high total package increase in the second year of this contract term while the Union's proposal would not share the burden of phasing in the health insurance costs. The Employer argues that its offer is competitive when compared to the increase in the cost of living. It points out that the consumer price index measures the increase of all goods and services including insurance costs and the total package costs of the parties offers is the most appropriate measure to use in comparison with inflation indices. The Employer asserts that it sent out 50 surveys to private sector employers in the area surrounding the Employer and received responses from 27 of them. They revealed that the wage rates provided by its offer exceed the average wage rates in the private sector. The Employer takes the position that the Union's final offer has an inherent conflict because the parties have agreed to the rate for the handicapped student routes and the last portion of the second to the last

paragraph on the second page added to the Union's final offer refers to a different hourly rate. It asserts that the arbitrator has no authority to change the language of the Union's final offer without the consent of the Employer and it has not agreed to do it. The Employer argues that the Union's demand for payment for the drivers of the Cushing and Dresser routes of the extra hourly driving rate with a one hour minimum per trip represents a change in the status quo for which there is no quid pro quo. It concedes that drivers for the Cushing and Dresser routes had received extra pay for this part of their route but contends that the initial collective bargaining agreement changed the prior practice. The Employer takes the position that the agreement that resulted from Flagler's award changed the status quo and did not provide for hourly extra-curricular pay for the Cushing and Dresser routes. It contends that the Union proposes a change in the status quo but offers no quid pro quo in exchange. The Employer argues that its failure to put into the contract the operational definitions of routes does not make its offer any less reasonable. It points out that none of the school districts in Comparable Group A provide operational definitions for bus driver routes. The Employer argues that Arbitrator Flagler did not endorse the Union's subcontracting language in his award although it became part of his award. It contends that its proposed subcontracting language adheres to Flagler's recommendations that the language balance the employees needs for job security with the Employer's need to provide its taxpayers with an economically sound operation. The Employer points out that its proposal does provide job security for the employees for at least one year. It asserts that most of the school districts in the comparable group have even more flexibility with respect to subcontracting than it is seeking.

COMPARABLE GROUP

There is no issue in this matter with respect to the comparable group. Both parties agree that the Upper St. Croix Valley Conference Schools plus Amery is an appropriate comparable group. That was not the comparable group used by Arbitrator Flagler in making his award for the contract between the parties for the 1989 - 1990 and the 1990 - 1991 school years. It is an appropriate comparable group. Since both parties find it acceptable the arbitrator is satisfied that it is the proper one for him to use in making this award. Accordingly the arbitrator will utilize the Upper St. Croix Valley Conference plus Amery as the appropriate comparable group in these proceedings.

SUBCONTRACTING

The Union proposal would permit the Employer to subcontract whatever work it wished as long as it did not cause layoffs of any employees currently in the bargaining unit. That is the language in the current collective bargaining agreement that resulted from the award of Arbitrator Flagler. The Employer's proposal would permit it to subcontract services provided the affected employees shall, assuming compliance with a just cause standard, be guaranteed

during the term of the agreement or for one year, whichever is longer, the same number of hours and the same hourly rate of pay from the Employer or the subcontractor.

This issue was before Arbitrator Flagler in the arbitration that resulted in the last collective bargaining agreement between the parties. The Union's proposal was the same in that proceedings as it is in this arbitration. The Employer's proposal in these proceedings is more acceptable than the one that it presented to Arbitrator Flagler.

In his award Flagler stated that neither proposal with respect to subcontracting had any great appeal, although he found that the Employer's proposal was less unreasonable than that of the Union. The Employer's proposal in this proceeding appears to be more attractive from the Union's point of view than the its proposal in the Flagler arbitration but it does not have any great appeal. This arbitrator finds himself in a position somewhat similar to that cited by Flagler in his award. The Union's proposal would protect the employees against the loss of any accumulated sick leave, seniority, participation in the State Retirement System, health insurance, paid holidays and vacations. It is attractive to the employees but it does not give the Employer much latitude to implement subcontracting for a group of employees. The Employer points out that the Union's proposal severely restricts its future flexibility. It argues that its proposal gives it the opportunity to give tax-payers the biggest bang for their buck while giving the employees job security. That would be a strong argument for the Employer's proposal if it had any specific plans for subcontracting. The arbitrator could then balance the number of employees that would be affected and the impact on them against the savings to the Employer. The superintendent testified that the Employer had done nothing more than obtain some cost figures on subcontracting. It has no specific plan and there was no evidence about the number of employees that would be affected. The Employer presented no evidence indicating that the present contract language would preclude any subcontracting that it would like to implement. The Employer's proposal might or might not impose a burden upon the employees who would be affected by it if it were implemented. However there is no evidence for the arbitrator to measure the impact of any subcontracting or weigh it against the advantages to the Employer. In the absence of such evidence the arbitrator is not inclined to find the Employer's proposal particularly desirable. It is not standard language and there are no comparables in the record that match or duplicate its terms.

Because the Employer's proposal does provide more flexibility the arbitrator is satisfied that it is somewhat more acceptable then the Union's proposal on subcontracting. The Employer's language is unique and no evidence was presented that would enable the arbitrator to determine if the Employer needs the broad authority that it seeks in order to subcontract. It may very well be that subcontracting can be achieved within the scope of the current language. No evidence was presented to indicate that it could not.

Because the Employer's language is more flexible and does offer some job security to the employees the arbitrator finds it to be somewhat more acceptable than the position of the Union.

BUS DRIVER PROPOSAL

The initial agreement between the parties resulting from the Flagler arbitration contains references to Regular route, Long route, Kindergarten route, and the Barrens route. The agreement contains no explanation or definition of those routes. The parties agree that the Long route has been and still remains a daily bus route that requires a minimum of three hours a day and a minimum of 65 miles of driving per day. The Union wants to put that definition in the agreement while the Employer opposes it. The Kindergarten routes are noon routes due to one-half day Kindergarten. The Union proposes that as the definition of a Kindergarten route. The Barrens route is the route that picks up and delivers students beyond the Trade River and the Union would have the collective bargaining agreement define it in that way. The Union proposes that Article XXIV also contain language stating "routes such as Cushing and Dresser, to pick up (and deliver) students after (and before) they are bussed to (and from) St. Croix Falls on a daily basis, shall be paid the extra-driving hourly rate with a one hour minimum per trip." It is the definition of the Cushing and Dresser routes to qualify the drivers of those routes for extra pay that has caused the disagreement on this issue.

The Union contends that its proposed language of route definitions should be included in the collective bargaining agreement because changes in those routes can occur. It takes the position that if there is a written standard in the agreement when changes are suggested or occur the possibility of preventing or more easily resolving potential disputes is greatly enhanced. It argues that the Cushing and Dresser route definitions and pay are necessary to clear up a dispute that has arisen in connection therewith.

The Employer takes the position that the Union's bus driver proposal conflicts with the tentative agreement already agreed upon by both parties because it has an inherent conflict. As was pointed out earlier the Union's final offer stated its proposal clearly and concisely in very precise language. Attached to the final offer was a second sheet designed to illustrate the impact of the Union's final offer. That second page contained the following language: "All other extra-driving and time will be paid a $6.86 per hour. For bus drivers there is a two hour minimum for extra-driving; and weekend and holiday routes will be paid a minimum of four hours." The Employer argues that the quoted language on the second page of the Union's proposal creates a conflict with the agreed upon rates to which the parties have stipulated. The arbitrator disagrees. The language on the first page of the Union's final offer is clear and concise. It contains specific language to be included in the agreement. No conflict would result if the Union's proposal was placed in a collective

bargaining agreement. The illustration attached to the Union's final offer does not change its final offer and the arbitrator has not agreed to change it. The proposed language stands by itself and does not create any conflict. The fact that an illustrative page was attached to it that contained language not included in the Union's final offer does not change the final offer. If the arbitrator were to select the Union's proposal the language included on the first page would be included in the contract and the illustrations on the second page would not. The attachment of the second page to the Union's offer for purposes of illustration is not a significant flaw. It did not enhance or detract from the language that the Union proposed on page one. Accordingly the arbitrator finds no real flaw in the Union's proposal.

The real issue in the dispute on the question on bus driver's wages in Article XXIV revolves around the definition of the Cushing and Dresser routes and the pay for them. Cushing and Dresser are two outlying elementary schools that are part of the Employer's system. Since at least 1977 all St. Croix Falls students have been bussed to St. Croix Falls in the morning where all of the elementary students are dropped off at the elementary school. Then the Cushing and Dresser students are put on two separate buses and delivered to Cushing and Dresser Elementary Schools. In the afternoon the same two buses are sent to Cushing and Dresser to pick up the same students and return them to the St. Croix Falls Elementary School where they are redistributed among all of the buses prior to the buses leaving to take the students home for the day. The Cushing and Dresser routes require over half an hour of extra work for each trip and sometimes include the transportation of food from the St. Croix Falls Elementary kitchen to the kitchens in Cushing and Dresser. These routes have been driven by the same people on a regular basis. Since at least 1977 to November, 1991 the drivers who drove the Cushing and Dresser routes were paid one hour per trip of the extra trip hourly rate for those routes. After the Flagler award in November of 1991 the Employer computed the retroactive pay according to the terms of the collective bargaining agreement resulting from Flagler's award. Since the Flagler award did not specifically mention the Cushing and Dresser routes the Employer would not pay the driver of the Cushing route for both a long route and his Cushing Route. Prior to the first agreement resulting from Flagler's award the Employer's practice was to pay the Cushing and Dresser routes on an hourly extra-curricular basis. The Employer also paid the long route rate to those drivers who put in at least three hours and 65 miles per day on their regular routes. The past practice was that the employees driving the Cushing and Dresser routes would be compensated according to the extra-curricular rate in the collective bargaining agreement. The Union argues that its proposal on the Cushing and Dresser route definition proposal constitutes basic equity and fairness and is consistent with the Employer's long established past practice and its retention of other bus routes and conditions. It points out that one employee would have his wages reduced by $250.00 per month while he is doing the same work that he has been doing for years. The Union argues that its proposal to establish a specific reference to the Cushing

and Dresser routes is consistent with past practice, provides for wage equity and fairness for the employees involved and serves to establish a basis that will prevent or allow the speedy resolution of potential disputes.

The Employer argues that the agreement resulting from Flagler's award changed the status quo and did not provide for hourly extra-curricular pay for the Cushing and Dresser routes. It concedes that hourly extra-curricular payments had been made to the drivers of the Cushing and Dresser routes for the first several months of the 1991 - 1992 school year before Flagler's award had been issued. It takes the position that the extra-curricular payments made for the Cushing and Dresser routes in 1990 - 1991 and the first several months of the 1991 - 1992 school year are not indicative of the contractual status. The Employer argues that the Union has provided no evidence that there is a need to provide additional compensation to the drivers who travel to Dresser and Cushing. It takes the position that just because drivers of these routes pick up and drop off students does not mean that their normal route has ended and a new route has begun. It states that the language of the agreement defines routes as regular or long and they are compensated accordingly.

The Union's proposal has merit in that it does define the routes and there is advantage to that for both parties. The definitions of long route and short route and Barrens route and Kindergarten route should be in the collective bargaining agreement. There should be a resolution of the problem that has arisen about the Cushing and Dresser routes and it should be spelled out in the collective bargaining agreement. None of the definitions were included in the language of the agreement between the parties running from February 14, 1989 through June 30, 1991. The language of the contract was a result of an arbitrators award that adopted the proposal of the Union. Apparently the Union "blew" the bus driver portion of its proposal that resulted in the Flagler award. If the Union "blew" its final offer in the Flagler arbitration, it should bargain its way out of the problem and make the concession necessary to address the problem.

The arbitrator is satisfied that the definitions of the routes should be in the collective bargaining agreement. Fairness and equity may require restoration of the past practice that was not spelled out in the Flagler award. However that should be the result of bargaining. Flagler selected the Union's proposal. Now the Union is asking the arbitrator to bail it out of a problem created by its own proposal. That would not be a proper exercise of the arbitrator's discretion.

In view of this the arbitrator is convinced that the Employer's proposal with respect to the bus drivers wage provisions in Article XXIV of the collective bargaining agreement is preferable to that of the Union.

WAGE INCREASE

The most important difference between the Employer and the Union is the issue of wage increase. The parties have agreed that there will be a wage freeze for the 1991 - 1992 school year. The Union proposes a 4 percent increase for the 1992 - 1993 school year and the Employer proposes a 2 percent increase. The general wage increase in the comparable group for the 1991 - 1992 school year averaged 4.3 percent and for the 1992 - 1993 school year it averaged 4.4 percent. The comparable increases reflect the impact of the agreed upon wage freeze for the 1991 - 1992 school year. The Union's agreement to freeze wages for the 1991 - 1992 school year reduced the Employer's wage cost for that year by about $30,000.00 when compared to the increases given by other employer's in the comparable group. However the Employer's health insurance expenditures for the 1991 - 1992 school year increased by approximately $41,000.00, which pretty well offset the wages lost by employees in the bargaining unit as a result of the wage freeze for the 1991 - 1992 school year. The Employer's proposal for the 1992 - 1993 school year would increase its wage cost by about $23,000.00 while the Union's proposal would cost the Employer approximately $39,000.00. The agreed upon health insurance provisions would result in an increase in the Employer's expenditures for health insurance in the 1992 - 1993 school year of about $53,000.00 over the 1991 - 1992 school year.

The Employer offer is reasonable when compared to the cost of living. The average increase in the C.P.I. for the period from July of 1991 to June of 1992 was 2.6 percent and the average increase for the period from July of 1992 to January of 1993 was 2.9 percent. It takes the position that its proposal of a 9.79 percent increase over the two years is reasonable when compared to the increase in the C.P.I. and the Union's offer of an 11.5 percent increase over that same period is excessive. The arbitrator finds that the Employer's offer more closely adheres to the level of increase in the C.P.I. than does the Union's proposal. However the increase in the C.P.I. is only one of the criteria that the arbitrator must consider and it is certainly not the dominant one.

The Employer points out that it conducted a private sector survey by sending out 50 surveys to private sector employers in the area and received responses from 27 of them. That survey revealed that for the classifications of clerical, custodial and assistant bookkeeper the wage rates provided by the Employer's offer exceed the average wage for those positions in the private sector. The statute specifically provides that a comparison of the wages, hours and conditions of employees in private employment in the same community must be considered. However there are some flaws in the Employer's survey. First of all the names of the employers surveyed were not provided to either the arbitrator or the Union. The survey does not contain information about health insurance, pensions and other fringe benefits that the private sector businesses surveyed

provided to their employees. Even if that information was provided the arbitrator is satisfied that the members of the bargaining unit are probably receiving a rate of pay superior to that of the private sector employees performing similar work in the area. However there are other considerations. Most of the Employer's employees do not have jobs for the full calendar year and they are unemployed during the summer. Others are only part-time employees. Thus a true comparison of the wages, hours and conditions of employment of the private sector employees cannot be accurately made based on the results of the Employer's survey alone. Accordingly the arbitrator will not give too much weight to the results of the Employer's survey that show the private sector employees receive wages, hours and conditions of employment that are lower than those received by members of the bargaining unit performing similar work. The most appropriate comparison of the Employer's wages is with the salaries received by those employees in the comparable group. They are performing the same type of work and most of them are either part-time employees or are only paid for the school year and not the entire year.

The Employer objects to the amount of the increase because of the impact on the total final package cost of the health insurance program that became a part of the collective bargaining agreement as a result of the Flagler award. The Employer seems to take the position that arbitrator Flagler adopted the Union's position in the last arbitration proceedings because it promised to make significant wage concessions beyond the first year of the period being considered by this arbitrator. The fact is that the Union did not make any promises to make wage concessions beyond the first year or for any specific period of time. It did argue that because the health insurance program that it proposed in its final offer to Flagler had most of its impact in the agreement covering the period of the contract in which this arbitrator is involved and that should be taken into consideration in bargaining wages and other benefits. The Union has done just exactly that. It accepted a freeze during the first year of the collective bargaining agreement that will result in a reduced wage scale in future years. The freeze saved the Employer an amount that went quite a distance toward covering the increased cost of the health insurance during the first year of the new contract period. The insurance cost for the second year of the contract period increased substantially too and the Employer wants the Union to accept a substandard increase in wages for that year in order to cover those increased costs. That might have been a fair way to deal with the matter if all of the members of the bargaining unit were receiving the additional insurance benefits. However, some employees were receiving benefits prior to the Flagler award. Others will not receive any health insurance benefits as a result of the Flagler award. The arbitrator is of the opinion that the freeze for the 1991 - 1992 school year was a large enough concession on the part of the employees in return for expanding the health insurance benefits to include some who were previously uninsured.

The Employer argues that Flagler must have been influenced by the Union's promised wage concessions. First of all the Union did not promise any wage concessions. It stated that its express intention was to establish economic

fringe benefits within reasonable monetary limits and to do it in a manner that preserved the flexibility of the parties to make appropriate or necessary adjustments through negotiations, particularly in the balancing of wages and future health insurance and other fringe benefit costs, to achieve an acceptable total package compensation figure. That did not mean that the Union was going to forego wage increases for two years for all of the employees in the bargaining unit in order to expand the health insurance program to include more of its members. It stated that the 1991 - 1992 wage negotiations would take place with the specific knowledge of the exact cost of health insurance in 1991 - 1992. There was no suggestion that it would extend wage concessions to the 1992 - 1993 school year. In making his award Flagler stated that the two positions represented a mixed bag where the Employer scored well on the basic wage schedule format and progression but the Union had the better of the case on almost every special pay adjustment issue. Flagler did not base his decision in his award covering 1989 - 1990 and 1990 - 1991 school years on any promise that the Union would make a wage concession in the 1992 - 1993 school year. The Union made no proposal to extend its wage concession into the 1992 - 1993 school year and Flagler did not rely on such a promise. As a matter of fact he pointed out that he had no authority to bind such an outcome for a successor agreement that had to be negotiated.

Flagler did note that the Union had cited the Amery example as a model for an adjustment of the wages in the future collective bargaining agreement. However he did not cite that as the basis for his award nor indicate that it influenced him in anyway.

The Employer argues that after an arbitrator awarded Amery employees an expanded health insurance program it agreed to a wage freeze in the 1989 - 1990 school year and an increase of only 2 percent in the 1990 - 1991 school year. However there was not a total wage freeze at Amery for the 1989 - 1990 school year. Twenty-four of the employees in the bargaining unit received either a $ .25 or a $ .20 per hour raise which totalled approximately 1 percent of the payroll. Amery also increased its payment of the employees share of the Wisconsin Retirement System payments from 2 to 4 percent which resulted in an increase in the total cost for the 1989 - 1990 school year. The increased cost of health insurance at Amery for the 1989 - 1990 school year resulting from premium increases and the cost of extending coverage to previously uninsured employees totalled almost 8 percent of the total compensation. When the insurance costs are combined with the 1 percent increase in the cost of wages and the 2 percent increase in retirement cost the total package at Amery for the 1989 - 1990 school year was almost 11 percent. The Amery total package cost the year following the Yaffe arbitration award extending insurance coverage to employees who had not previously been covered was well in excess of 8.05 total package increase offered by the Employer for the first year. Amery had a three year agreement covering the 1989 - 1990, 1990 - 1991 and 1991 - 1992 school years. Amery agreed to a 2 percent wage increase for the 1990 - 1991 school year, but as part of that package it agreed to a 6.77 percent increase for the

1991 - 1992 school year. When the 1989 - 1990, 1990 - 1991 and 1991 - 1992 school year wage increases at Amery are considered the Union's proposal is not unrealistic. After the Yaffe award extending health insurance coverage at Amery at a considerable cost, the district settled for a low increase on wages that was not a total freeze for the first year. The total package settlement in the 1989 - 1990 school year amounted to nearly 11 percent. In the next two years the wage increases at Amery were 2 percent and 6.8 percent. The wage increases for the last two years of that agreement averaged 4 percent even though the employees only received 2 percent during the 1990 - 1991 school year. The Union is asking for a 4 percent increase which is not a substantial departure from the average increase given by Amery for the 1990 - 1991 and 1991 - 1992 school years. The total package increases in Amery in the years following the extension of health insurance coverage are quite comparable to those that would result from the Union's final offer in this case.

The Employer takes the position that the Union should accept substandard wage settlements when compared to the comparable group for both the 1991 - 1992 and 1992 - 1993 school years in order to pay for the Employer's increased medical cost. The Union never argued before arbitrator Flagler that it was willing to forego wage increases in order to finance the increase cost resulting from the extension of the health insurance program to additional employees. It did tell Flagler that it would make appropriate adjustments in the next round of negotiations by balancing wages and future health insurance and other fringe benefit cost to achieve an acceptable total compensation figure. It has made that adjustment by accepting a wage freeze for the 1991 - 1992 school year. It should not be required to accept another substandard wage increase for all employees for the 1992 - 1992 school year in order to pick up the Employer's additional medical cost for that year. In its brief to Flagler the Union said that the cost of implementing the health insurance offer would be considered as part of the total economic package during the negotiations for a successor agreement and it cited the Amery settlement as a pattern. When the total cost of the Amery settlement for the years following the Yaffe award that extended the health insurance benefits to previously uninsured employees is considered the Union's offer seems to fall right in line as far as total package cost is concerned. It does not follow the exact pattern of wage increases given by Amery but its total package costs had similar percentage increases.

The idea of the Union paying for most of the cost of the increase in health insurance benefits over the two years by accepting wage increases substantially lower than those received by employees performing similar work in the comparable group is not realistic. The Union argued to Flager that it would share in those increased costs and it did so by accepting a wage freeze in the 1991 - 1992 school year. It now seeks a 1992 - 1993 wage increase similar to those given in the comparable group. It is the Employer's turn to assume the cost of the health insurance.

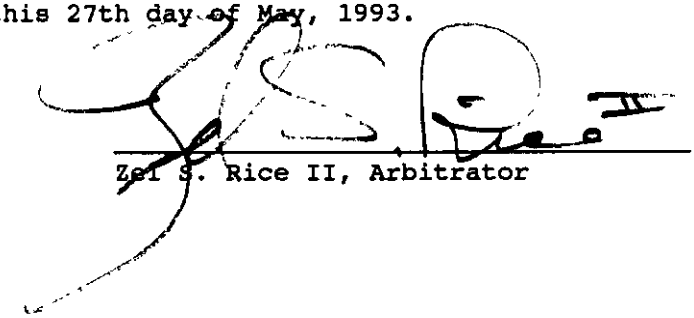
The arbitrator has found that the Employer's positions on subcontracting and the wages for bus drivers are more appropriate than those of the Union. However, the wage issue is the dominant issue in this arbitration and it controls the outcome. Since the Union's position with regard to wages is similar to the average wage increase in the comparable group for the 1992 - 1993 school year and since it accepted a wage freeze for the 1991 - 1992 school year it has shared in the increased cost resulting from the Flagler award extending health insurance to previously uninsured employees.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, arguments, exhibits and briefs of the parties, the arbitrator finds that the Union's final offer more closely adheres to the statutory criteria than that of the Employer and directs that the Union's proposal contained in Exhibit 1 be incorporated into the collective bargaining agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin this 27th day of May, 1993.



Zel S. Rice II, Arbitrator

EXHIBIT 1



**FINAL OFFER OF NORTHWEST UNITED EDUCATORS FOR A 1991-92-93 ST. CROIX FALLS ESP CONTRACT**

WERC Case 32 No. 47259 INT/ARB-6435

October 16, 1992

1. Unless set forth in the stipulations between the parties or in the offer below, the terms of the 1989-91 agreement shall remain unchanged.

2. Article XXIV - Wages (see attached schedule):

   For the 1991-92 year (7/1/91 to 6/30/92) there shall be a wage rate freeze as in the stipulations; the wage rates in Article XXIV for 1991-92 will be the same as in the 1990-91 year (individual employees may move through the schedule steps based on their anniversary dates); for the 1992-93 year all wage rates in XXIV shall be increased by 4 percent.

3. Article XXIV - Wages:

   Add the following paragraph after "Barrens Route":

   "A long route is a route which requires at least three hours per day and at least 65 miles per day; Kindergarten routes are the noon routes due to one-half day kindergarten; the Barrens Route is the route which picks up and delivers students beyond Trade River; routes such as Cushing and Dresser, to pick up (and deliver) students after (and before) they are bussed to (and from) St. Croix Falls on a daily basis, shall be paid the extra-driving hourly rate with a one-hour minimum per trip."

ALAN D. MANSON
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10/16/92

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101692

## ARTICLE XXIV - WAGE RATES

Effective 7-1-91

| | 1 | 2 | 3 | 4 |
|---|---|---|---|---|
| Custodian: | 7.44 | 8.22 | 9.00 | 9.78 |
| Night Differential - 16¢/hr. | | | | |
| Cook: | | | | |
| Regular | 6.03 | 6.50 | 7.02 | 7.54 |
| Aides: | | | | |
| General | 6.03 | 6.50 | 7.02 | 7.54 |
| Clerical: | | | | |
| Assistant Bookkeeper | 7.59 | 8.42 | 9.31 | 10.24 |
| Secretary | 7.02 | 7.54 | 8.11 | 8.74 |

Cook:
Head Building - an additional 21¢ per hour paid with the Dresser and Cushing Head Building cooks being paid for a minimum of 6 hours per day effective 7/1/90.

Meals prepared and served beyond regular hours will be paid at the rate of $9.19 per hour.

Aides:
Certified - an additional 21¢ per hour.

Bus Drivers:
Regular Route - $788 per month for nine months
Long Route - $857 per month for nine months
Kindergarten Route - $337 per month for nine months
Barrens Route - $56.50 per month for nine months

A long route is a route which requires at least three hours per day and at least 65 miles per day; Kindergarten routes are the noon routes due to one-half day kindergarten; the Barrens Route is the route which picks up and delivers students beyond Trade River; routes such as Cushing and Dresser, to pick up (and deliver) students after (and before) they are bussed to (and from) St. Croix Falls on a daily basis, shall be paid the extra-driving hourly rate with a one-hour minimum per trip.

All other extra driving and time will be paid at $6.86 per hour. For bus drivers there is a two-hour minimum for extra driving; and weekend and holiday routes will be paid a minimum of four hours.

(Rest of Article as
in 1989-91 Agreement)

ALAN D. MANSON
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10/16/92 VERSION CORRECTED
11/10/92

# REVISED FINAL OFFER
# ST. CROIX FALLS SCHOOL DISTRICT
# SUPPORT STAFF NEGOTIATIONS

October 16, 1992

1. All items as in prior agreement except:

   A. All tentative agreements.

   B. **ARTICLE IV - MANAGEMENT RIGHTS**, Paragraph 3. Revise to read as follows:

   To subcontract services provided the affected employee(s) shall, assuming compliance with a just cause standard, be guaranteed during the term of the contract or for one year, whichever is longer, the same number of hours and the same hourly rate of pay from the District or the provider of services.

   C. **ARTICLE XXIV - WAGE RATES**

   (1) 2% wage increase in 1992-93

Respectfully submitted,

WELD, RILEY, PRENN & RICCI, S.C.

By: Stephen L. Weld
Stephen L. Weld
Attorneys for St. Croix Falls School District 10/14/92

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