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STATE OF WISCONSIN

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:
	:
RHINELANDER SCHOOL DISTRICT	:
	:Case 35
	:No. 47807 INT/ARB 6555
To Initiate Arbitration	:Decision No. 27532 A
Between Said Petitioner and	:
	:
NORTHERN EDUCATIONAL SUPPORT TEAM	:
	:

Appearances:

Rhineland School District by Ruder, Ware & Michler, S.C.,
by Ronald J. Rutlin, Esq.

Northern Educational Support Team by Mr. Gene Degner,
Executive Director, Council No. 18

ARBITRATION AWARD

Northern Educational Support Team (Association or Union) is the collective bargaining representative for certain enumerated employees who constitute the majority of the support and maintenance employees of the Rhineland School District. The District and the Association have been unable to agree to the terms to be included in their contract for the period July 1, 1992 through June 30, 1994. After the parties exchanged their initial proposals, on April 9, 1992, the District requested the Wisconsin Employment Relations Commission to initiate arbitration proceedings in accord with Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. The Commission caused the matter to be investigated by a member of its staff. After the parties submitted their final offers, the Commission declared that an impasse had been reached. The undersigned was appointed to act as the arbitrator by order of the Commission on February 4, 1993. The arbitration hearing was held at the District's offices in Rhineland on April 7, 1993, and the record was closed. On May

7, the parties exchanged their initial briefs through the arbitrator. Reply briefs were filed on May 28 and exchanged by the arbitrator on June 1, 1993.

DISPUTED ISSUES

The principal unresolved issue is wages. The Union has included a series of contract adjustments relating to preferences, vacation benefits, leave time and job postings to which the District objects. Both parties have included some different step increases for selected classes of employees. It appears to be the disagreement over the second year wage offers, however, which has resulted in the impasse.

The Union has proposed that all employees should receive 4.5% wage increases on July 1, 1992 and July 1, 1993. The District offered a 4.75% wage increase effective July 1, 1992, but would delay scheduled step increases until January 1, 1993. The District's 1993 "wage offer" is stated as follows:

After the health insurance contribution is determined for the 1993-94 school year, adjust each rate on the 1992-93 salary schedule across-the-board by the percentage that results in a total package increase of 4%, using the cast forward method of costing based on the 1992-93 staff. However, in the event that the state of Wisconsin enacts costs controls or levy limits to be effective on or after July 1, 1993 which are lower than 4%, adjust each rate on the 1992-93 salary schedule across-the-board by the percentage that results in a total package increase equal to the cost control or levy limit percentage, using the cast forward method of costing based on the 1992-93 staff. Total package cost shall be determined by including all wages, fringe benefits, WRS, FICA, and other monetary benefits.

THE DISTRICT'S POSITION

COMPARABILITY. The Board proposed three contiguous school districts, Antigo, Merrill and Tomahawk and the city of Rhinelander and Oneida County as primary comparables. It said that Peterson Health Care should be a secondary comparable "because it is located in the same labor market and employs many

people in the same types of positions as the district." It noted that the Association had proposed that a much larger group which was previously used for Rhinelander's teachers should be considered comparable. The Board argued that in applying the statutory criteria, "employees performing similar service in public employment and in private employment in the same community and comparable communities," non-certified employee groups have historically been treated differently than certified employee groups.

It cited a series of prior arbitration decisions in which arbitrators had discussed the elements of comparability. Other arbitrators have noted that statutory criteria are a guidepost to balance the respective interests of the parties. Labor market conditions within a geographic area are significant. The use of athletic conference comparables is not as important for non-professional employees as it is for teachers, because local labor market considerations effect non-professional salaries more than teacher salaries. The Board argued that its proposed comparables best reflect the conditions which exist in the Rhinelander labor market. It noted that Arbitrator Imes had previously established the Employer's proposed comparables as primary comparables during a 1987 arbitration proceeding between these parties. The Board pointed out that many arbitrators including the undersigned have said that, "once a comparable group has been established, that group should be recognized during subsequent negotiations and proceedings unless there is some objective basis for altering its composition."

The District cited arbitral authority and argued that its recommended comparables are within the same geographic area and are of comparable size. It reviewed comparable data for student enrollments, FTEs, cost per member, state aids per member, levy rates, total equalized value and equalized value per member and concluded that it had met the test for comparability. The District said that it had received 101 applications for employment since January 1, 1992. Seventy-four of these

applicants lived in the city of Rhinelander. Only four applications came from individuals who resided in the Union's proposed expanded comparable group.

The Board criticized the Association's proposed comparables. There is no individual data available for the four K-8 districts; it is difficult if not impossible to consider those districts comparable. The Association's comparables, which range in size from 233 to 8,175 are not even close to Rhinelander's 3,119 students. The Union's use of the athletic conference would be understandable in a teacher arbitration case. It is not appropriate for a support staff case. The only conference schools located in Rhinelander's labor market are Antigo and Merrill. "Appropriate rates of pay for custodians, clericals, aides and food service personnel in the Rhinelander School District will be found to bear little, if any, relationship to those personnel in the Wisconsin Valley Conference solely because the districts happen to fall within the same athletic conference."

WAGES. The Board said that its final wage and total package offer is generous, fair and equitable. It reviewed the fact that the parties had suggested identical individual classification adjustments of 25¢ for carpenter/maintenance/mechanic, elementary head/RHS and custodian/general during the first year of the contract. The Board would implement a 10¢ increase for Secretary I and a 15¢ increase for the Secretary II classification during 1992-1993; the Union would delay this increase until 1993-1994. The Union offer proposes a 50¢ increase for the Administrative Bookkeeper during the second year while the Board does not propose any incremental increase for that position. The District said that those increases and the parties' across the board proposals would result in a first year "actual cost of the district's wage increase (including delayed step movement for half a year) is 7.13 percent. However, the impact of the district offer is 8.47 percent." The Union's offer would result

in a wage increase of 8.04% and a total package increase of 7.91% during 1992-1993.

The Board stated that during the second year of the contract it proposes to implement existing contract language. That provision states:

Any increase in the cost of health insurance contribution shall be paid by the District and shall be costed as part of the contract for the following contract year. Any savings in the cost of health insurance contributions, as a result of a decrease in contributions, shall be applied to the economic package the following year.

"The District said that language was **voluntarily** agreed to by the parties during previous negotiations and it is the district's prerogative to implement this provision of the contract in 1993-1994. In fact, adjustment of salary schedules in the second year of a contract based upon the amount of the increase in health insurance costs are fairly common in teacher contracts." It will not be possible to determine the amount of the District's proposed wage increase for 1993-1994, until after health insurance costs are known. The Board presented data which demonstrated that if there is no increase in health insurance premium cost, its 1993-1994 wage offer, including various increments, will result in a 4.5% increase at a package cost of 3.98 percent. If health insurance costs raise by 15%, wages would be increased by a total of 1.87% at a total package cost of 3.66 percent. The Board said that the 1993-1994 step increase would be 1.87% and there would be .34% added to the wage schedule. It said that the Union's 1993-1994 wage proposal of 4.5% would carry a package cost of 5.78% assuming no increase in health insurance costs. "However, depending on the amount of any health insurance increases, the salary schedule would be reduced in direct proportion to the increase in health insurance pursuant to the provision of Article 15 of the contract which is not at issue in these proceedings."

The Board presented data for salaries paid to maintenance and secretarial personnel at the minimum and maximum benchmarks in comparable situations. It said that the averages for the Antigo, Merrill and Tomahawk school districts, Oneida County and Peterson Health Care averaged \$9.12 minimum and \$9.95 maximum for maintenance in 1991-1992 compared to a \$7.83 minimum in Rhinelander. The average maximum maintenance salary that year was \$9.95 compared to \$9.78 in Rhinelander. There was no data available for Merrill during 1992-1993. The average maintenance salaries for the Board's remaining comparables that year compared to the Board and Union offers are as follows: average minimum \$9.94, Board \$8.71, Union \$8.69; average maximum \$11.02, Board \$10.76, Union \$10.73. For the elementary secretary position in 1991-1992 the comparable averages were \$7.20 minimum and \$8.62 maximum compared to \$6.03 and \$7.89 in Rhinelander. The four comparables paid secretaries between \$7.39 and \$8.76 in 1992-1993. The Board offer ranged from \$6.47 to \$8.41 compared to the Union's offer ranging from \$6.30 and \$8.25 for that year. The Board argued that, "Rhinelander rates compare favorably with those of other comparables and fall within the spectrum of the wage rates paid in the immediate area and with school districts in close geographic proximity. The District cited arbitral authority and argued that the varying lengths of time required to reach the top step in comparable districts is vitally important. Rhinelander employees reach the top step in five years compared to 20 years in Antigo, 10 years in Merrill, 3 years in Tomahawk, 10 years in the city of Rhinelander and 6 months in Oneida County. It concluded that the Rhinelander School District has competitive wages when comparing the number of years it takes to reach maximum wage rates.

The Board argued that it had established a consistent pattern with regard to schedule structure and movement. Prior to 1989-1990, the salary schedule topped out at 13 years. "In 1989-1990, the parties agreed to a collapsed schedule which was ultimately reduced to six steps." It said that more importantly,

the parties agreed that for the years 1987-1988 through 1991-1992 the salary schedule should remain the same and employees would receive movement on the salary schedule only. It cited arbitral authority and argued that, "a consistent bargaining history resulting in an established pattern is of primary significance in this matter." The Board cited testimony that the prior 3 year contract contained first year costs of 8.7% and second and third year costs of 5.48% and 4.08 percent. Under that prior contract: the salary schedule was reduced from 13 to 6 steps, the District agreed to selected adjustments and employees received step movement only during the second and third years. The Board cited a series of recent arbitration awards where arbitrators stated that catch-up pay in arbitration is not required to overcome deterioration which resulted from collective bargaining. "The best measure of a fair level of compensation is the overall package the parties have constructed through years of negotiations across the table." "Wisconsin interest arbitrators will closely consider the parties' past agreements and their negotiating history." The Board concluded this argument by stating that it had "front end loaded" its final offer to maximize the impact of wage increases during the first year. This is in keeping with the pattern of past settlements. Its offer maintains consistency.

The District argued that its wages are fair because it has not had any trouble recruiting or retaining employees. "A vast majority of the District's employees are at the top of the salary schedule. In fact, in 1992-1993, 63 of the District's 157 employees (40%) are either at the top of the schedule or are completely off the schedule. In 1993-1994, there will be 84 employees (54%) at the top or off the schedule." It cited prior arbitration decisions in which arbitrators had discussed the relationship of wage offers with employee recruitment and retention experiences. The Board said that those prior cases were similar to the situation in Rhinelander. Rhinelander's wages have not traditionally been high, but, it has had no

problems recruiting "as is evidenced by the 101 applications received by the District since the beginning of 1992." The Board cited a 1989 Rhinelander Police Department arbitration case in which the employees had been denied a catch-up pay increase, and argued, "the Rhinelander community cannot support wage rates that are as high as other districts.

OTHER ITEMS. The Board argued that the Union had included an exorbitant number of proposals in its final offer and was abusing the interest arbitration process by doing so. It commented on those proposals as follows:

1. "Bargaining unit employees performing extra duties or extracurricular assignments, in which pay is provided for in the teacher contract, receive that same pay. In addition, employees would receive normal work pay if the duties require release time." The Board stated that there is no comparable support for this proposal.
2. The vacation provision would be revised to permit employees to carry over up to 5 vacation days upon notification of the Personnel Director and the employee's immediate supervisor by June 1, of each year. Currently, the 5 day carryover requires the approval of those persons. The Board stated that the Union is attempting to take away the Board's control over vacation carryover without any showing that there is a problem with the existing policy. This "liberal proposal" would be inordinately problematic for the District. It is not supported by the comparables.
3. Currently, after employees accumulate 50 sick days they may earn an additional day of paid vacation if they do not take any sick leave excluding bereavement leave. If they use one day of sick leave they will earn $\frac{1}{2}$ day of vacation. The Union would exclude personal leave days as qualification for incentive leave. The Board argued that no comparable except the city of

Rhinelanders has such a provision and that the proposal is not justified.

4. The Union proposal would require the District to post notices of job vacancies or new positions with the Union for 5 days before posting for the general public. The Board argued that, "none of the comparables give preference to bargaining unit employees with regard to posting of available positions."
5. The Union would require "open enrollment on health insurance following the ratification of this agreement." The Board denied that it had ever agreed to this provision. It said that open enrollment would have a significant cost impact. There is no justification for this proposal among comparables.

The Board concluded its review of these items by saying the Union had been unsuccessful in acquiring them during bargaining. The Union has not met its burden of proof. Comparability does not support these proposals; they should be rejected.

The Board noted that the Union had presented evidence of the Board's previous tentative agreements, some of which had been withdrawn prior to the Board's submission of its final offer. It argued that this evidence is irrelevant and should not be considered in this proceeding. The Board cited prior arbitration decisions in which it had been recognized that giving consideration to tentative agreements would have a "chilling effect in the bargaining process."

OTHER STATUTORY STANDARDS. The District said that the interest and welfare of the public would be better served if its offer is accepted. "Its offer not only takes into consideration the District's ability (or inability) to finance its final offer as well as the concerns of its taxpaying public, but has also fashioned an offer that is responsive to its employees needs." The Board stated that the CPI had averaged a 2.5% increase during 1992 compared to its 1992-1993 wage offer of 4.5 percent. The Board's offer would have a package cost of 7.12 percent.

Considering the CPI, "the District's offer is not only fair, but excessive." When other economic factors are considered, the Board stated, its offer is the most reasonable. The Rhinelander School District has the highest levy rate among the comparables. It has the highest cost per member, and, it does not have an economic base "which would demand wage rates far in excess of the comparable grouping." Oneida County has 80% of its property in a residential tax base and only 14% in commercial and 1.5% in manufacturing. Therefore, residential taxpayers will have to shoulder an overwhelming majority of the tax burden imposed by excessive school operating costs. The District's offer was fashioned to take those matters into consideration.

The District argued that, "current legislation may potentially impact the arbitration process and employer involved in the same. While current proposals include a possible property tax freeze or some other cost control, the fact remains that legislative changes are imminent." It said that the District must act now to control its costs in anticipation of future constraints. It reviewed the estimated impact of proposed legislation and anticipated increased student enrollment upon district finances and forecast that a budget defect would result even without salary increases. The District concluded with the argument that its proposal is the only responsible proposal; the Association's would have a devastating effect upon District programs and staffing levels.

DISTRICT'S REPLY. The Board said that the Union had been unrealistic in proposing that a 16 member comparable group be considered. That group "covers an expansive area which extends into entirely different labor markets influenced by large manufacturing, service and retail businesses that the Rhinelander area lacks." It said that wage rates in larger metro areas will not be comparable to Rhinelander. Further evidence that these districts are not comparable is that six of twelve have separate bargaining units for custodians and other employee groups. This fact results in varying bargaining dynamics. "Historically, when

custodians are covered under their own contract, wages tend to be higher." The District said that the most compelling argument in support of its proposed comparable group is that those comparables had been determined during a previous arbitration proceeding between these parties and that, there is no justification to deviate from that group.

The District contended that the Union's argument, that the District's second year offer contained a new concept which should be awarded in arbitration, is misguided. It said that the contract language which provides that, "any increase in the cost of health insurance contribution shall be paid by the District and shall be costed as part of the contract for the following contract year," had been voluntarily agreed to and that the District has every right to implement the contract language. The Board stated that the association has no basis to oppose this provision of the contract. The Union's contention that the language applies to the period following the last year of the contract is absurd. "Why would the parties include language in a contract that is not effective within that contract period?" It said that under the Association's offer, the parties are required to adjust wages based upon changes in health insurance premiums in the second contract year. The Board argued that its first year 4.75% wage offer for custodians and Secretary I and II positions, which equates to a 7.12% total package increase, is more fair to employees than the Union's total package 5.78% offer.

The Board denied that it was "using the governor's proposed budget as an excuse for anything." It said that its second year offer "is merely in response to, and in compliance with, Article 15 of the contract." In response to the Union's question about how disputes over contract language would be resolved, the Board said, "obviously they would be resolved through the grievance procedure." It concluded this argument by stating, "the only fair choice is for the District to implement the current contract language.

The District restated its position on the Union's other proposals. "It doesn't matter if any or all of the Association's proposals were previously agreed to. That's all part of the give and take of collective bargaining. Those prior positions are totally irrelevant and must be disregarded by the arbitrator.

The Board said that the Union's justification for a 25¢ PHOHI wage adjustment is not supported by any documentation in the record. It said the District had maintained the current level of WRS contributions for quite some time. If the Union thought that this was an important issue, it should have proposed a change. It did not do so.

The Board noted the Union's criticism of its proposal to delay step movement during the first contract year. It said that the parties had previously agreed to step movement "only in an effort to increase wage rates without a pernicious financial impact on the District." In the current contract, step movement was received in the second and third contract years. "In the prior contract, employees received step movement only in the second year of the two year agreement." It said its offer is consistent with past bargains, "but it provides a generous lift in wages of 8.47 percent." The Board responded to criticism of its starting wage rates by saying only a few employees are at the starting rate. Since over half of the District's employees are at the top of the schedule, minimum rates are not a priority. It argued that the number of years that it takes to reach salary maximum is an important consideration.

The District said that the Union's statement, "nothing in the record indicates, nor has the issue been raised, that the district does not have the ability to meet either final offer, must be a joke!" It reviewed evidence of the District's budgetary problems and proposed staff and program cuts. It said that the ten percent of the District's budget which relates to this staff is not insignificant in the overall budget. It argued that the outcome of these negotiations will have an impact upon other negotiations in the District. "Cuts need to be made across

the board, and this unit will feel the impact in direct proportion to the budget dollars allocated to it. No one will escape potential budget cuts."

The Board summarized its position by arguing that the Union had failed to meet its burden of proof for an excessive number of benefits. "The Association has only proven that they are greedy. The Association's offer is unresponsive to current economic conditions and budgetary constraints." The District argued that its offer is more reasonable under all of the statutory criteria.

THE UNION'S POSITION

COMPARABILITY. The Union argued that 16 school districts should be considered as external comparables. Those districts are Merrill, Antigo, Wausau, D.C. Everest, Marshfield, Stevens Point and Wisconsin Rapids which along with Rhinelander constitute the Valley Conference. It said Rhinelander is one of the smallest schools in the conference. The Union said in order to balance the mix of comparables, the contiguous districts of Tomahawk, Elcho, Three Lakes, Northland Pines, Lakeland UHS and four feeder schools to Lakeland UHS should be included in the comparable pool. It argued that Rhinelander has many more employees and narrower employee classification than the smaller contiguous districts. It is necessary to look at classifications in larger school districts to determine the skill level of comparable employees. Economic benefits should be determined after comparisons have been made to both groups of comparable school districts. "For secondary comparables, the Association has included some of the wage rate increases granted to the county and city employees during this same period of time."

WAGES. The Union said that it would be polite to call the Board's wage offer a trojan horse. The Board's first year offer of 4.75% is a little more generous than the Union's 4.5 percent. "Then they whap us good the second year and gain it all back." By delaying incremental increases for six months, the Board is deferring \$16,500 into the second year of the package. The Board's second year offer is a total package increase of 4

percent. It has proposed that if there is a levy freeze or cost control, the package would be limited to that amount. "In all likelihood, there would be no wage increase in the second year." The Union said the Board had not made a complete final offer because, "there are no wages set forth for the 1993-1994 school year." "How does the arbitrator compare? The evidence is incomplete as to total package offers either year."

The Union stated that the state legislature adopts a biennial budget; the District cannot use the governor's budget proposals as an excuse for not proposing a complete package agreement. The legislature did not intend for the budgetary process to impede collective bargaining, or it would not have required parties to submit two year final offers. The Employer has not made a definitive final offer. "As long as the employer is dealing with the hypothetical, they can argue that levy freeze after an arbitrator's award would mean that there is a zero increase for the 1993-1994 year." There is no justification for a zero increase. The Union said that the Employer treats cost controls as synonymous to wage controls. They are not the same; there are many other cost factors included in the District's 20 million dollar budget. It said that if there is anything contrary to law in the Association's final offer, the Employer can invoke the savings clause which is a safety valve that is built into the bargaining agreement.

The Union argued that the District's second year offer is also flawed because it did not indicate how disputes about its package offer would be resolved. It asked whether such a dispute would be resolved as a grievance or through midterm bargaining under Wis. Stat. 111.70? "The arbitrator here would be attempting to plow new ground . . . with a cap and distribution of monies at a later date." Arbitrators have consistently held that new concepts should be arrived at voluntarily. There is no comparable for this kind of proposal; "the parties would not do this voluntarily."

The Union said that if the employer is going to be allowed to argue total compensation, it should have provided total compensation data for internal comparables. There are factors unique to Rhinelander that make the Employer's total compensation package unpalatable. Rhinelander has the lowest starting salaries among comparables, this relates to its high increment cost. It also contributes less toward the employee's share of WRS than any comparable. Rhinelander's overall rate schedule is significantly less than comparable schedules. The Association argued that when comparing total compensation offers, all of the benefits must be considered. It said that if real collective bargaining had occurred there were many quid pro quos among the foregoing items, "rather than throwing the total compensation into the lap of the arbitrator."

The Union said that there was no agreement how to cost the total package or how an additional increase in health insurance would be costed. It noted that the Employer had interpreted the following language:

"Any increase in the cost of health insurance contribution shall be paid by the District and shall be costed as part of the contract for the following contract year. . . ."

to mean that first year cost becomes part of the second year package. "The Association argues that it is the year following the last year of the collective bargaining agreement. Therefore, the parties negotiate over how that money is spent and costed." It said that there is no precedent or evidence to support the Employer's interpretation of the language. If the Employer's version was correct, it would have provided evidence that increased 1991-1992 insurance costs were offset against 1992-1993 wages. There is no such evidence. The Board is attempting to cloud the real issue; its second year package increase versus the Union's complete final offer.

OTHER UNION PROPOSALS. The Union reviewed a series of other proposals that are included in its final offer. "They are items

based on fairness and comparability and should be included in the collective bargaining agreement." Summer school aides and secretarial employment opportunities should be offered to school year employees in those classifications. When hired, they would be paid at the same rate they received the previous year. It is fair that when nine month employees work during the summer they receive the same rate of pay during the summer. "Twelve month employees do not have their rate of pay cut for the summer." Other comparable districts pay school term employees hired for the summer the same rate of pay.

The Union said that secretarial employees should not be required to obtain an exception from the Director of Personnel in order to take vacation time during the school year. Secretaries should be treated the same as other employees. The proposal would not be a burden to the employer who would retain the right to schedule and approve vacation time. School term employees who work beyond the school term should be able to accrue some vacation time. They often enter into summer employment without the benefits of twelve month employees. This is an issue of fairness. Twelve month employees receive four weeks paid vacation after 15 years. School term employees who work 1,800 hours per year, approximately 10½ months, receive no vacation benefits. The Union's offer would bridge that gap, but, it would not provide the school term employees with complete equity. The Union said that there are four nine month employees, working 1,800 hours a year, who earn no vacation benefits, compared to a twelve month employee, working 1,920 hours, who earns four weeks vacation. The rates of pay for these secretaries is identical.

It is unreasonable for a junior high aide to be responsible for a study hall of more than 100 students. Teachers, with more training, are not required to handle a study hall with more than 75 students unless two teachers are assigned to the duty. The Union's proposal would require that two aides be assigned to study halls having in excess of 75 students. This is a matter of fairness. The Union said that its proposal, that PHOHI aides

providing certain special services should receive a 25¢ an hour increase, is an incentive to attract and keep qualified people in those positions. These are the most difficult and least attractive positions. The Union's proposal is an effort to solve an ongoing problem that exists in the District.

The Union described the way both offers would implement incremental increases for custodial, maintenance, secretarial and clerical employees. The difference is one of timing. The Union said that, "this is really a moot point in the arbitration." Both offers would award employees who are off the salary schedule the same way that scheduled employees in their category receive.

The Union argued that there was a big difference in the parties proposed overall rate adjustments. The employer, while offering 4.75% during the first year, compared to the Union's 4.5% offer, would freeze increments during the first half of the first year. It then put the pickup costs for that increment into the second contract year, for which the employer has proposed a total package cap of 4 percent. "There are several things wrong with this proposal." Rhinelander and North Lakeland have "the lowest starting wage, as a percentage of the top, of all the comparable districts. While the average is 88%, Rhinelander is 79 percent." "Freezing the increment without addressing the low starting salary is not even a band-aid on a troubling spot to the association."

The Union said that the Board had previously included a number of items that had been agreed upon by the parties in its tentative agreements. The Board did not include these proposals in its final offer. The Union said that the Board had included some of these items in its initial proposal and then rejected them at a later date. The Union said that the Board had previously agreed to these items. They are all reasonable and there is no evidence that any of these items would cause any harm or be contrary to the District's personnel policies.

OTHER STATUTORY CRITERIA. The Union said that there is no evidence that the District does not have the financial ability to

meet either final offer. The Board has costed the total difference between the two offers at 1.78% out of a total a budget of 20 million dollars. Only 10% of that budget is for support personnel. The difference between the two offers in this proceeding is less than two-tenths of one percent of the total second year budget. The best interest of the public would be served if the arbitrator awarded the final offer which brought finality to each issue. The District's proposal does not permit that finality. The parties would "continue to haggle about things like a levy freeze, cost controls, wage controls, and how the money would be distributed under any of the scenarios."

The Union said that Rhinelander employees are at a distinct disadvantage when their wages and benefits are compared to external comparables. "The Employer's offer doesn't allow comparisons in the second year." It said that its offer is much closer to wage rate increases received by county and city employees than the Employer's offer. The work that the employees in this proceeding do is difficult to compare with the work that is done by private sector employees. Voluntary settlements more accurately reflect what the prevailing rate increase should be than the CPI. Both parties' offers exceed the CPI.

The Association argued that the standard relating to overall compensation clearly favors its offer. Rhinelander support staff have the lowest starting wages, receive less in retirement contributions and have less at the top of the pay scale than comparable districts. "Finally, the wage increase proposed by the employer is offset by the freeze in the increment proposed by the employer for the first year. With the employer's total cost mechanism for the second year there can be no increment granted to the employees."

ASSOCIATION'S REPLY. The Union stated that it was audacious of the District to argue that "it is their prerogative to implement the language contained in Article 15, Insurance." It rejected the District's argument that it is fairly common in

teacher contracts to make salary adjustments based upon health insurance costs, as being totally unsupported by any evidence.

The Union cited the Employer's argument that "Rhineland rates compare favorably with other comparables." It said that, "they tend to skirt the real issue of low wages." It criticized the employer's second year total compensation offer, saying, "the three big components to total compensation would be salary, health insurance, and retirement benefits." It said that Rhineland was last in contributions for retirement benefits. "Any difference that would exist in health payments is offset by Rhineland's contribution toward retirement." The Union said that in view of its position that starting wages in Rhineland are low, and the Association's argument about the number of steps to the top of the wage schedule, "it is only fair to compare the cumulative earnings over a ten-year period and see how they stack up."

The Union, using the District's comparables, compared general custodian, top paid aide, cook and Secretary I earnings over a ten-year period based on 1991-1992 salary schedules. It presented four schedules from data provided in association exhibits which compared Rhineland wages with wages in Antigo, Tomahawk and Merrill. The schedules demonstrated earnings for: a custodian working 2,080 hours a year; a calendar year Secretary I working 2,080 hours a year; a cook working 7 hours a day, 180 days a year, or 1,260 hours a year; and, a top aide at 7 hours a day, 180 days a year, or 1,260 hours. In each instance total earnings were calculated commencing at the beginning wage in 1991-1992 as if the relevant employee had progressed through the salary schedule over a period of 10 years. It summarized the results by saying, "Without exception, Rhineland's accumulative earnings in all four categories fall far below the average of the other districts. Rhineland custodians are approximately \$50,000 below the average of the other 3 districts and can expect to earn only 76% of the average custodian wage over a 10 year period. Secretaries in Rhineland will earn almost \$24,000

less, or only 87% of a secretary in the other 3 districts. Rhinelander cooks and aides will earn 94% and 93% of the average in other districts respectively. "If we were to extend, the length of cumulative earnings longer than 10 years, the difference would increase greater for the districts which are closer to the average of Rhinelander because Merrill and Antigo have longer salary schedules."

The Union argued that Rhinelander employees would need increases of between 24% and 6% to get up to the average wages received by comparable employees in the Board's hand picked districts. It said that Antigo had settled for a 4.5% increase in 1992-1993 and a 4% increase in 1993-1994 and Tomahawk had increased wages by 4.5% in 1992-1993. These increases are in addition to the catch up that is required in Rhinelander.

The Association noted that the District had said "Total package costs shall be determined by including all wages, fringe benefits, WRS, FICA, and other monetary benefits." It asked, "What are these other monetary benefits? How are those . . . accounted for? Where is the comparison of these 'other monetary benefits' to the primary comparables?" It said that the District had not made a complete second year offer in Rhinelander, and had not offered any evidence of total package cost in other districts for the second year of the contract.

The Union concluded its reply by defending its "other proposals." It said the Board was hypocritical to argue that significant weight should be given to voluntary bargains, and at the same time, pull the tentative agreements that were voluntarily agreed to off of the table. It said that the fact that the Board pulled a tentative agreement, which was included in its initial offer, "has a more chilling effect on the bargaining relationship than anything the arbitrator could do." The Union stated that its final offer is the most reasonable.

DISCUSSION

COMPARABLES. In a 1987 arbitration award involving this District and this support staff, Arbitrator Sharon K. Imes

determined that the Antigo, Merrill and Tomahawk school districts, together with the city of Rhinelander and Oneida County were comparable to Rhinelander. In that proceeding, Ms. Imes considered including D.C. Everest and the Wausau school districts and Peterson Health Care Center among the comparables. She said that she did not do so, because there was no sufficient data available for those entities. In this proceeding, the District has urged that the previously established peer group be considered as primary comparables and that Peterson Health Care Center be considered secondarily. The Association renewed the suggestion it made in the 1987 proceeding that the entire Valley Conference be considered comparable. This time it suggested including nine contiguous smaller districts in the comparable group.

It has been recognized that once a satisfactory comparable group has been established, that group of comparables should continue to be relied upon unless there is a compelling reason for making a change. In this instance the Union has suggested making wholesale additions to the comparable group. It has not, however, made a case for change. The arbitrator, after reviewing the evidence and arguments in this proceeding, has concluded that there is very limited information about 1993-1994 settlements in comparable districts available for review. Because the two offers in this proceeding for 1993-1994 are so different, it is necessary to have as much reliable data about other comparable settlements for that year available for review as possible. The arbitrator will consider evidence of 1993-1994 settlements in D.C. Everest and Northland Pines as comparable for a limited purpose in this proceeding. That purpose will be to compare wage only increases granted in those districts for 1992-1993 and 1993-1994.

In making the decision to review data for these two school districts, the arbitrator is relying upon the following determinations. The compelling reason to look beyond three comparable school districts is because of the three comparables,

only Antigo has settled for 1993-1994. D.C. Everest and Northland Pines are proximately located to be subject to similar economic conditions to those which exist in Rhinelander. Considering both Northland Pines with 1,389 students and D.C. Everest with 4,589 students should provide a reasonable balance to Rhinelander's 3,199 enrollment. Most importantly all members of similar support staffs in both districts have entered into contracts for 1993-1994. Other districts for which data has been presented are not being reviewed for the reason that they do not appear to be comparable or because only fragmentary 1993-1994 wage data is available.

WAGE ISSUES. The respective two year wage offers both contain a number of separate elements including across the board increases, incremental increases, step advancement and "longevity, buyout and night premium." The Employer's second year offer is further complicated by the fact that the amount of its proposed wage offer is inversely proportionate to the amount of 1992-1993 health insurance premium increases. There is no evidence about those premium increases in the record. In order to understand what the two offers mean, the arbitrator has attempted to break the two offers down into components, in order to compare the offers to one another and to comparable settlements. The following analysis is based upon data contained upon Employer Exhibits seven through thirteen. The first part of the analysis relates to the parties' 1992-1993 offers only.

The Employer's 4.75% offer would increase wage only costs by 7.13% and increase package costs by 7.12% during the first year. The Union's 4.5% offer would increase wage only costs by 8.04% and package costs by 7.91% during 1992-1993. The components which make up those wage offers are set out on TABLE I which follows. The amounts of \$15,976 and \$13,296 have been attributed to the parties' respective incremental increase proposals. It is not possible to determine whether any other items are included in these derived amounts.

**TABLE I
BREAKDOWN OF 1992-1993 WAGE OFFERS**

	EMPLOYER	UNION
Base Year Cost	\$1,532,141	\$1,532,141
Unions 4.5%	68,946	68,946
Board's Addl. .25%	3,830	
Increments		
Employer	15,976	
Union		13,296
Step Advancement		
Employer	20,493	
Union		40,986
TOTAL 1992 WAGE COST	\$1,641,386	\$1,655,369
	(7.13%)	(8.04%)
TOTAL 1992 PACKAGE COST	\$2,239,162	\$2,255,550
	(7.12%)	(7.91%)

The purpose of the foregoing exercise is to determine what part of the increased wage expense is in fact associated with the parties' wage offers for 1992-1993. The step increases do add to the Employer's increased wage cost, however, under the terms of the prior contract, the employees are entitled to step advancement. For that reason, step advancement should not be considered in calculating the amount of the parties' wage offers in this proceeding. After the costs of step advancement have been removed from the cost summaries, the Employer has offered a 1992-1993 wage increase of 5.79 percent. The Union has offered 5.36% for wages only during the first year.

Data for wage increases in comparable districts is summarized on Employer Exhibits 27-33. Those summaries report minimum and maximum wages for the period 1990-1991 through 1993-1994 for settled Board comparables. The data is broken into separate summaries for custodians, maintenance, special education aides, teacher aides, elementary secretaries, senior high secretaries, and food service personnel. The Employer included data for the city of Rhinelander and Oneida County which it considered equivalent to school district employee designations. Information for the D.C. Everest and Northland Pines school

districts was taken from Union Exhibits 157-160 and 219-229. A summary of the arbitrator's calculations based upon the foregoing data is set out on TABLE II which follows.

**TABLE II
SUMMARY OF 1991-1994 WAGE DATA**

Comparable	1991-1992 Wage		1992-1993 % Inc.		1993-1994 % Inc.	
	Min.	Max.	Min.	Max.	Min.	Max.
ANTIGO SCHOOL DIST.						
Cust. II	\$ 9.82	\$10.57	\$4.48	\$4.49	\$4.49	\$4.39
Cust. I	10.39	11.15	4.52	4.43	4.55	4.50
Maint.	11.22	11.98	9.00	8.00	5.00	4.49
S. Ed. Aide	6.29	8.14	4.56	4.54	4.48	4.46
T. Aide	6.07	7.92	4.45	4.45	4.40	4.46
E. Secty.	6.29	8.44	4.50	.80	4.48	4.46
Sr. Secty.	7.69	9.56	4.45	4.49	4.47	4.50
Fd. Serv.	6.01	7.86	4.50	4.45	4.45	4.50
Fd. Serv.	6.29	8.14	4.60	4.54	4.40	4.46
Fd. Serv.	6.52	8.37	4.44	4.48	4.55	4.45
MERRILL SCHOOL DIST.						
Cust. III	9.17	9.17	N.S.	N.S.	N.S.	N.S.
Cust. II	9.56	9.56				
Cust. I	9.72	9.72				
S. Ed. Aide	5.74	8.50				
T. Aide	5.32	7.87				
E. Secty.	6.66	9.86				
Sr. Secty.	7.47	11.06				
Fd. Serv.	5.52	8.17				
TOMAHAWK SCHOOL DIST.						
Cust.	9.13	10.38	4.60	4.52	N.S.	N.S.
Maint.	9.59	10.90	4.48	4.49		
S. Ed. Aide	7.35	8.35	4.49	4.55		
T. Aide	7.13	8.10	4.34	4.44		
E. Secty.	7.35	8.35	4.48	4.50		
Sr. Secty.	7.42	8.43	4.44	4.50		
Fd. Serv. I	6.79	7.72	4.56	4.53		
Fd. Serv. II	7.13	8.10	4.34	4.44		
Fd. Serv. III	7.35	8.35	4.21	4.55		
RHINELANDER CITY OF						
Cust.	6.56	6.56	3.74	3.74	3.74	3.74
Secty. I.D.	8.51	9.68	3.75	3.77	1.86	1.84
Secty. Pol.	8.57	9.73	3.73	3.75	1.90	1.80
ONEIDA COUNTY						
Cust.	7.73	8.11	5.60	5.50		
Maint.	9.35	9.80	5.64	5.59		
H.H. Aide	6.74	7.06	4.00	4.00		
Secty. I	7.39	7.74	4.00	3.94		
Secty. II	7.73	8.11	5.64	5.50		
D.C. EVEREST SCHOOL DISTRICT						
Step I Employees			7.37		4.28	
Step III Employees			6.81		4.05	
Step V Employees			6.38		3.80	
NORTHLAND PINES SCHOOL DISTRICT						
Dist. Secty.		9.65		6.70		5.93
Secty. I		9.35		5.00		5.10
Secty. II		8.85		5.30		5.40
Para Prof.		8.30		5.70		5.70

S.R. Aide		8.15		5.80	5.80
G. Aide		7.88		6.00	6.00
RHINELANDER SCHOOL DISTRICT					
Cust. Gen.	6.50	8.20			
Board			8.60	7.80	
Union			8.30	7.56	
Carp/Heat/ Mech/Main	8.73	9.78			
Board			11.23	10.00	
Union			10.98	9.70	
S. Ed. Aide	5.65	7.32			
Board			4.78	4.78	
Union			4.42	4.51	
T. Aide I	5.40	7.07			
Board			4.81	4.81	
Union			4.53	4.53	
T. Aide I	5.10	6.75			
Board			4.81	4.81	
Union			4.53	4.53	
E. Secty.	6.03	7.98			
Board			7.30	6.59	
Union			4.48	4.56	
Sr. Secty.	6.03	7.89			
Board			7.30	6.59	
Union			4.48	4.56	
Food Service	5.42	7.18			
Board			4.80	4.73	
Union			4.58	4.46	

The foregoing summary is subject to some infirmities. Job descriptions are not perfectly matched. The raw data does not reveal what trade offs may have taken place during bargaining in other districts. The summary is a reasonably accurate analysis of the best relevant data that was presented by the parties during this proceeding. One final note about the Rhinelander School District offer is in order. The Employer's average wage offer for 1992-1993 was discussed at page 23 above. That average increase is 5.79 percent. The numbers on TABLE II have not been corrected to reflect the cost of the delayed step increase to the employees. That delay would reduce the amount of the Employer's proposed increases from the reported range of 11.23% and 4.73% to approximately 9.88% and 4.16 percent.

From the foregoing it appears that the starting wages at most support staff positions in Rhinelander are significantly lower than comparable positions among the Employer's preferred comparable school districts. Except for the position of "Carp/Heat/Mech/Main," this school district's starting salaries

also lag behind starting salaries in the city of Rhinelander and Oneida County. The picture is not much different at the top of the salary schedule. The Employer makes the point that it only takes these employees five years to reach the top of their salary schedule. That point is offset, however, by the large disparity in wages at the top of the schedule in Antigo which requires 20 years to reach schedule maximum and in Merrill and Tomahawk which require 10 and 3 years to reach schedule maximum. The city of Rhinelander's salary schedule extends over a period of ten years, and Oneida County's over only six months. Comparisons with employees in the city and the county are somewhat troublesome. However, it appears their custodians are paid less and their secretaries generally earn more than the employees in this proceeding. Generally, Rhinelander School District support staff appear to receive lower wages than most comparables at both ends of the salary schedule. The abbreviated period of time that it takes to reach schedule maximum in Rhinelander does not appear to offset lower wage schedules.

First year wage settlements in the Antigo and Tomahawk school districts and in the city of Rhinelander and Oneida County are closer to the Union's 5.36% wage offer. Both of the wage offers which average 5.79% and 5.36% are quite generous in comparison to 1992-1993 increases granted to most categories of employees listed on TABLE II. On the basis of the two 1992-1993 wage offers alone, the Union's offer appears to be the most comparable.

Second year wage comparisons are complicated by the fact that the Board's offer is not known. The Union has argued that it is possible that the Board offer would result in no wage increase during 1993-1994. The Board has estimated that if there is no increase in health insurance premium costs, its 4% offer including increments could result in a 4.5% wage increase during 1993-1994. It said a 15% health insurance premium increase would reduce the wage increase to 1.87 percent. The Board should not have included step increases to arrive at the potential 1.87%

increase. The Board offer would be between 4% and 1.37% unless greater insurance increases, cost controls or levy limits further reduce the offer. For the purpose of analyzing the parties' 1993-1994 wage offers, it is assumed that the District offer would amount to approximately 1.87 percent.

The second year wage analysis is further complicated by the fact that only two of five comparables have settled 1993-1994 contracts. Of those settlements, the one in Antigo is most comparable to the Union offer and the Rhinelander city employee's agreement is most comparable to the Board's offer. In order to observe what other school districts have negotiated with their support staffs during 1993-1994, the Northland Pines and D.C. Everest contracts have been reviewed. Those districts are not considered comparable for all purposes in this proceeding. They are, however, similar enough to the Rhinelander School District so that their second year settlements are relevant to establish settlement trends in other similar school districts in this general geographic area. The data on TABLE II demonstrates that settlements in Northland Pines and D.C. Everest have resulted in 1993-1994 wage settlements which are more in line with the Association's 4.5% base wage increase. Incremental increases would increase the Union's wage offer by an additional amount during the second year. Neither party provided costing data for these increases. Both parties proposed the same increments over the two year term except for the 50¢ an hour which the Union included for the administrative bookkeeper during year two. Because the final offers are so similar on these incremental increases and because costing data has not been provided, that additional cost, though recognized, is not considered significant.

When the two year wage only data which has been discussed above is compiled, there is less of a difference between the two offers than appears to be the case when reviewing data for each year separately. Because complete costing breakdowns have not been, provided the exact amount of the wage offers cannot be

determined. It appears that the Employer's offer would increase wages, including incremental increases, by between 7.66% and 8.14% over two years unless caps, cost controls or insurance increases exceeding 15%, further reduced that offer. It appears that the Union offer with incremental increases would increase wages by between 9.86% and 10.2% over the term of this contract. These conclusions are based upon evidence in the record, not all of which has been discussed herein. Recognizing that the comparable data leaves a great deal to be desired, it appears that the Union offer is most comparable to two year wage settlements in the Antigo, D.C. Everest and Northland Pines school districts. The Employer's offer is most comparable to the city of Rhinelander's 1992-1994 contract.

OTHER ITEMS contained in the Union's offer are outlined in the summary of the Board's position at pages 8 and 9 above. The Board's position that evidence of the Board's prior acceptance of these items should not be admitted into evidence is well taken. The Union has not presented satisfactory evidence to support the need for including any of these items in an arbitration decision. The Board's position with regard to these items is preferred by the arbitrator.

OTHER STATUTORY STANDARDS relating to the District's ability to finance the proposed offers, cost of living comparisons and other factors which may or should affect this decision have been cited and argued by both parties. Those arguments have been reviewed and considered. While there appears to be merit to the Board's arguments that the Union's offer exceeds CPI increases and its description about the concerns of the taxpaying public, those arguments paint with too broad a brush. The support staff in this proceeding can hardly be blamed for the fact that the Rhinelander School District has the highest levy rate among these four comparable school districts. That conclusion is based upon the fact that the pay scale for Rhinelander's support staff is lower than the equivalent scales in comparable districts.

Both parties appear to have developed new arguments or emphasized positions which had not been emphasized during their argument in chief. While the District had talked about the need to control costs and the potential effect of cost controls or levy limits upon its future operations, it did not cite ability to pay as an issue until it filed its reply brief. There is no evidence in this record to support an argument that the District does not have the financial ability to meet the higher cost of the Union's offer. The Union argued the need for "catch-up" for the first time in its reply briefs. The Union did argue that its wage and fringe benefit package lagged behind comparables, however, it did not present evidence of the need for an extraordinary wage increase. The arbitrator is not criticizing these advocates for making their arguments; but attempting to point out that these late found arguments, which have been heard, are not supported by the record in this proceeding.

CONCLUSION. The decision in this case comes down to the choice between the Union's offer which appears to be a bit more generous in terms of wages than comparable settlements and the Employer's offer which might actually result in a wage regression for this support staff over the term of the contract. The Union attempted to support its package offer with comparisons that showed that this staff receives less in the way of retirement contributions and wages than employees in similar school districts. Some of that evidence, but not all of it, failed to be relevant when it was determined that most of the Union's preferred comparables are not relevant in this proceeding. The preponderance of the evidence does establish the fact that this staff has lower wages than comparable employees. That conclusion is supported by wage data introduced by the Employer for its comparables.

The District attempted to support its offer by "proposing to implement current health insurance contract language" and transferring all of the risks of health insurance cost increases and the unknown impacts of a yet to be acted upon state budget to

the employees. That position may be defensible in some circumstances. It does not appear to be defensible under the circumstances that exist in this case. The contract language (see page 5 above) may have been implemented, but that language does not have any effect upon the outcome of this proceeding. Nor could it have. The arbitrator is required to choose between the two offers which are submitted for decision. If either offer was ambiguous, the arbitrator would be required to interpret prior contract language. There is no ambiguity in the costing language. Nor does that language resolve the issue of which offer is the more reasonable in this proceeding.

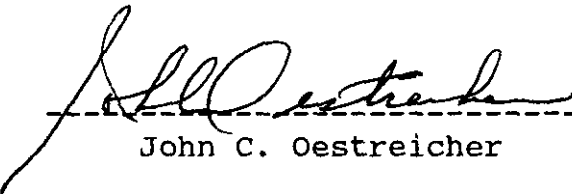
If the evidence demonstrated that the employees in this proceeding had the benefit of an extraordinary wage and fringe benefit package which was driving the state of Wisconsin to enact levy limits or cost controls, it might be proper to defer action in this proceeding until after the State Legislature's action has been signed into law. That is not the case here. If the evidence demonstrated that those employees had a wage and fringe benefit package that was superior to the wage and benefit packages enjoyed by comparable employees, it might be reasonable to propose a total package offer that would result in the erosion of either wages or benefits. There is no evidence that these employees have even an average wage and fringe benefit package. The Employer's 1993-1994 total package offer would result in an erosion in these employees wages if the Employer's projected 15% health insurance increase is realized. The Employer's offer could result in an even more serious erosion in these employees' wages if either levy limits or cost controls are adopted in the 1993-1994 state budget. That possibility makes the Employer's offer which places all of the downside risks upon these employees appear to be unreasonable.

Both parties have recognized the need for identical incremental increases for various employee classifications. Those agreed upon incremental increases, which appear to be justified, together with the Union's second year offer have

caused the Union offer to be a bit more generous than comparable settlements. In view of the fact that the Rhinelander support staff wage scale is generally lower than comparable wage scales elsewhere, the Union's offer appears to be reasonable. For that reason the offer of the Northern Education Support Team shall be incorporated into these parties' 1991-1994 collective bargaining agreement.

Dated this 23rd day of June, 1993, at Madison, Wisconsin.

BY THE ARBITRATOR



John C. Oestreicher