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In the Matter of an Arbitration between

CAMERON BOARD OF EDUCATION

and

NORTHWEST UNITED EDUCATORS for the CAMERON SUPPORT STAFF

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Case 27 No. 47686
INT/ARB-6528
Decision No. 27562-A

Appearances:

Mr. Richard J. Ricci, Attorney, of Weld, Riley, Prenn & Ricci; representing the Board.

Mr. Michael J. Burke, Executive Director, Northwest United Educators; representing the Union.

Before:

Mr. Neil M. Gundermann, Arbitrator.

Date of Award: August 25, 1993.

ARBITRATION AWARD

The Cameron School District, hereinafter referred to as the District or Board, and the Northwest United Educators, hereinafter referred to as the Union, reached an impasse regarding certain terms and conditions to be incorporated into their 1992-94 collective bargaining agreement. The parties, utilizing the appointment procedures of the Wisconsin Employment Relations Commission, selected the undersigned to hear and determine the matters in dispute. A hearing was held in Cameron, Wisconsin, on May 3, 1993. The parties were present and given full opportunity to present evidence and make such arguments as were pertinent. The parties filed post-hearing briefs.

FIRST ISSUE:

1. Holidays

Current Contract Language:

Article XIV - Holidays

"The following holidays will be fully-paid holidays (pay that is normally paid for the employee's normal workday) with the employee not working during such days:

A. For calendar-year, full-time employees, the holidays are Memorial Day, Thanksgiving Day, Christmas Eve Day, Christmas, New Year's day, Good Friday, 4th of July, and Labor Day.

* * * * *

D. For school-year full-time employees, the holidays are Labor Day and Memorial Day. For the school-year part-time employees, the holiday is Labor Day.

Board's Final Offer:

Revise as follows:

D. For school-year employees, the holidays are Labor Day and Memorial Day.

Union's Final Offer:

Revise as follows:

A. For calendar-year employees, the holidays are Memorial Day, Thanksgiving Day, Christmas Eve Day, Christmas Day, New Year's Day, Good Friday, 4th of July, Labor Day, and one-half day on New Year's Eve Day.

* * * *

D. For school-year employees, the holidays are Labor Day, Memorial Day, and one-half day on Christmas Eve Day.

BOARD'S POSITION:

The Board asserts there is no dispute regarding the primary pool of comparables. Both parties recognize arbitral precedent for establishing the athletic conference as the primary barometer of comparability, and both agree on the Lakeland Conference.

The Board notes that the Union has provided comparative data for organized groups only. The Board believes that it is appropriate to rely on comparative wage and benefit information for all comparable support staff within the Conference, whether represented or not. In support of its position the Board quotes from a number of arbitration decisions in which the arbitrators accepted as comparables non-represented groups of employes. According to the Board there is no economic or statutory justification for the Union's omission of unorganized groups in this proceeding. Therefore, all support staff employes performing similar duties with the athletic conference are comparable.

The only change contained in the Board's final offer is the addition of one paid holiday for school-year part-time employes, thereby removing the distinction between school-year full-time and school-year part-time employes and treating all school-year employes equitably by providing two paid holidays to all.

The District asserts that it is the Union which must bear the burden of changing the status quo with respect to holidays, and the status quo is the number of holidays provided in the labor agreement. The Union will likely argue that the status quo includes all days previously paid but not worked, including the past practice of paying for parent-teacher conference and teacher convention days when employes do not work.

In City of Kaukauna, Decision No. 26092-A (2/5/90), the issue was health insurance for retirees, an existing benefit provided not by the labor agreement but by the employer's policy. When the employer sought to modify the benefit the union argued that the

employer was not maintaining the status quo. Arbitrator Gil Vernon rejected the union's contention by stating:

> "However, under the unique circumstances of this case, the City carries no special burden. This is because the previous retiree health insurance policy was not the product of collective bargaining or part of the labor agreement."

The Board contends that a similar situation exists in this case, as the payment for parent-teacher conference and teacher convention days is not provided for in the collective bargaining agreement. Therefore, the District has no greater burden for its proposed change than does the Union. Arbitrator Vernon in City of Kaukauna went on to state: "Plainly the Employer has no legal obligation to continue a non-negotiated benefit. As the saying goes, 'bargaining starts from scratch.'"

It is contended by the District that the status quo in this case, pursuant to the statements of Arbitrator Vernon in City of Kaukauna, is the number of days provided in the labor agreement. Thus, the burden is on the Union to justify a change in the status quo by adding paid holidays.

It is generally recognized by arbitrators that the moving party, in order to sustain its burden of proof in altering the status quo, has several conditions which must be met. Arbitrator Gil Vernon, in Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (12/24/90) summarized those considerations as follows:

> "1. If, and the degree to which, there is a demonstrated need for the change.
> 2. If, and the degree to which, the proposal reasonably addresses the need.
> 3. If, and the degree to which, there is support among the comparables.
> 4. The nature of the quid pro quo, if offered."

The Board asserts the Union has failed to demonstrate a need for the change in the status quo. A prohibited practice decision relating to the issue of holidays provides a history of the District's attempt to eliminate the "practice." Both prior to and after the parties entered into their first collective bargaining agreement in 1986, cooks and aides were allowed the day off with pay for parent-teacher conference days. The District tried to eliminate the practice in 1989, and when the Union objected the District agreed to maintain the practice. In bargaining for the 1990-92 agreement the District failed to give proper notice of its intent to discontinue the practice of paying for days not specified in the contract. Assuming it would no longer have to honor the practice, the District agreed to add one additional holiday for all employes in the 1990-92 agreement.

When the District discontinued the practice in November, 1990, the Union filed a prohibited practice claim and prevailed, thus the District was compelled to implement the practice. When the negotiations began for the 1992-94 agreement, the District gave timely notice of its intent to eliminate the practice.

The District had no legal obligation to continue a non-negotiated benefit, and the District believes there is no need to add paid holidays simply because the District has discontinued the practice of paying for days when employes did not work, particularly when the District already agreed to an extra holiday in the 1990-92 agreement and has included in its offer in the instant dispute an equalization of the number of paid holidays for all school-year employes, full-time and part-time.

The Board argues that if no need exists, then the Union's proposal cannot reasonably address the "need" to add paid holidays. However, should the arbitrator determine that the Union has demonstrated a need to increase the number of paid holidays due to the fact that the Board eliminated the practice, the Board contends the Union's means of answering that need is not appropriate in that it provides additional paid holidays for employes who are not losing any paid days.

The District noted that 10 of the 32 employes in the bargaining unit received the benefit of the past practice and would lose paid days due to elimination of the practice. Under the Union's offer, the remaining 22 employes would gain paid holidays.

The District further claims that the comparables do not support an increase in the number of paid holidays. For 12-month employes the Board offers eight paid holidays and the Union demands 8.5 paid holidays. Only four of the 14 conference members provide more than eight holidays. Even excluding the unorganized conference members, only four of 11 organized schools provide more than eight paid holidays.

For school-year employes the Board's offer provides two days while the Union demands 2.5 days. Only five of the 14 conference members provide more than two paid holidays. Even excluding the unorganized conference members, only five of the 11 organized schools provided more than two days.

Clearly the comparables do not support the Union's demand for an increase in the number of paid holidays provided to school-year or calendar-year employes.

The Union has offered no quid pro quo for its proposed changed in the status quo. Therefore, the Union has failed to meet what has been generally recognized by arbitrators as a condition necessary to change the status quo. The Union's failure to meet any of the recognized criteria for changing the status quo must weigh in favor of the District's final offer.

UNION'S POSITION:

The parties' 1990-92 contract reflects an additional holiday for both full-time calendar-year and school-year employes. In addition, the parties created a school-year, part-time employe category with one holiday. Thus, the 1990-92 contract provided for eight holidays for full-time calendar-year employes, two holidays for full-time, school-year employes and one holiday for part-time school-year employes.

In addition to the contractual holidays, several bargaining unit members received additional paid holidays pursuant to a past practice. These holidays occurred on the two days of teachers' convention and during fall parent-teacher conferences. The total number of paid holidays pursuant to the past practice was 13 days.

Following ratification of the 1990-92 agreement, the District informed the employes it would no longer provide the paid holidays pursuant to the past practice. The Union filed a prohibitive practice alleging the discontinuance of the 13 paid holidays was a unilateral change in a mandatory subject of bargaining in violation of the statutes. The WERC agreed with the Union's position and restored the 13 paid holidays for the 1990-92 agreement. In the negotiations of the current agreement the Union

sought to codify the paid holidays that had been granted pursuant to the past practice. Additionally, the Union sought to equalize the holidays received by school-year full-time and school-year part-time employes.

The parties' final offers reflect the differences that exist on the holiday issue. The District's final offer simply equalizes the holidays for school-year employes. The Union's final offer equalizes the holidays for school-year employes and adds an additional one-half holiday for all employes. Since there are 32 employes in the bargaining unit, the Union's final offer amounts to an additional 16 holidays over the District's final offer.

While the Union's final offer expands the number of holidays within the bargaining unit, several factors support this position. First, no other school in the conference has a school-year part-time category for holidays. Thus, the equalization of school-year holidays for full-time and part-time employes was overdue. Even at two holidays per year, the school-year employes in this bargaining unit are below the conference average.

The elimination of the historical days off and the granting of an additional holiday for school-year part-time employes is simply not an equitable solution to the holiday issue. In addition to the equalization of school-year holidays, it is necessary to add an additional one-half holiday to compensate for the loss of the historic holidays. Despite its initial proposal to codify the historic holidays, the Union decided that the "cleanest" way to address this issue was to add one-half holiday for all employes. Even under the Union's final offer, 10 employes

in the bargaining unit will have fewer holidays under the 1992-94 contract than they had in the 1991-92 school year. Under the District's final offer, 16 employes will have the same or fewer holidays than they were receiving in the 1991-92 school year. Finally, since 26 of the 32 employes are school-year employes, the vast majority of the bargaining unit will receive fewer holidays than their counterparts in the athletic conference.

It is emphasized by the Union that the monetary difference between the final offers is approximately $1,050 for the two years of the contract. The Union takes the position its final offer is the more equitable approach to the holiday issue, taking into consideration the bargaining history, past practice and comparability factors between the parties.

DISCUSSION:

The parties are in general agreement that the appropriate set of comparables in this case is the Lakeland Athletic Conference. There appears to be some difference of opinion as to whether all of the schools in the conference should be included as comparables, as urged by the District, or whether only the organized schools in the conference should be included, as urged by the Union. The District provided data for all schools in the conference while the Union provided data only for the organized schools in the conference.

The issue of whether organized or unorganized units should be considered in determining the appropriate comparables has been addressed in a number of arbitration decisions. A review of those decisions leads to the conclusion that arbitral authority supports

the proposition that the statute does not contemplate selecting comparables based on union representation. The undersigned shares the view held by a number of arbitrators and believes both represented and non-represented districts within the conference should be included in the comparables.

The following table reflects the number of paid holidays provided by the conference schools for school-year and 12-month employes.

School	School Year	12 Month
Birchwood	4	8
Bruce	6	9
Clayton	2	8.5
Clear Lake	2	6.5
Flambeau	2*	6.5*
Lake Holcombe	2	5***
New Auburn	0	10
Northwood	2.5	8
Prairie Farm	1	4
Shell Lake	1	8
Siren	5	10
Turtle Lake	2	7
Weyerhaeuser	1	6
Winter	3	9* 3**
Union's Offer	2.5	8.5
District's Offer	2	8

* Full-time employes only
** Part-time employes only
*** Includes half day on Christmas Eve and New Year's Eve if they fall on a work day.

The evidences establishes that for 12-month employes five of the comparables grant 8.5 or more paid holidays, three grant 8 paid holidays, and six grant less than 8 paid holidays. Nine of the comparables grant the same number or less paid holidays than is contained in the District's final offer. In contrast, only five of the comparables grant the same or more paid holidays than is contained in the Union's final offer.

For school-year employes five of the comparable districts grant the same or more paid holidays than is contained in the Union's final offer and nine of the comparables grant the same number or less paid holidays than is contained in the District's final offer.

On the basis of comparability, the District's final offer regarding paid holidays more closely reflects the prevailing pattern than does the Union's final offer. However, it must be noted that the Union's final offer of 8.5 paid holidays for 12-month employes and 2.5 paid holidays for school-year employes would not make the District the leader in paid holidays.

In support of its request for an additional one-half paid holiday for all bargaining unit members, the Union contends that a number of the bargaining unit members lost paid holidays as a result of the District's repudiation of the past practice of paying certain employes who did not work during teachers' convention and parent-teacher conferences. The Union claims it sought to codify the past practice and when it was unable to do so, it sought to distribute the holidays throughout the bargaining unit.

The District offers a different interpretation of the events surrounding the past practice. The District claims that in the negotiations which resulted in the 1990-92 agreement, it gave an additional holiday in return for the elimination of the past practice. While recognizing that the WERC found the District guilty of a prohibitive practice as a result of eliminating the past practice relating to the payment of employes who did not work during teachers' convention and parent-teacher conferences, the District asserts it granted the additional day in return for the elimination of the past practice.

The District further argues that the status quo is the number of paid holidays contained in the agreement, not the number of paid holidays resulting from a past practice, and directs the arbitrator's attention to the decision of Arbitrator Vernon in City of Kaukauna, supra, in support of its position. The position espoused by Arbitrator Vernon is consistent with the view generally held by arbitrators, that a past practice can be repudiated at the expiration of the contract term.

This is what occurred in the instant case. Prior to the expiration of the 1990-92 agreement, the District informed the Union that it was repudiating the past practice of paying certain employes holiday pay for teachers' convention days and parent-teacher conferences for the ensuing contract. The Union was given advance notification of the District's intent, and, the Union sought to codify in the agreement the past practice but was unsuccessful in doing so. Consequently, the status quo is the

number of holidays specified in the agreement, not the number of holidays paid under the previous past practice.

Additionally, the Union's attempt to distribute the days to the entire bargaining unit is contradictory to the argument the employes who lost a benefit should have the benefit restored. The granting of an additional half holiday to all members of the bargaining unit does little to make those employes who lost paid holidays whole.

The District has proposed granting an additional holiday to the part-time school-year employes to provide them with the same number of holidays received by full-time school-year employes.

Based on the record, it is the opinion of the undersigned that the Union has failed to establish justification for the additional increase in paid holidays either on the basis of the comparables or the elimination of a past practice.

SECOND ISSUE:

2. Elementary Secretary Wage Rate

	1992-93	1993-94
Union's Final Offer:		
High School Secretary	9.87	10.26
Elementary Secretary	9.34	10.26
District's Final Offer:		
High School Secretary	9.87	10.26
Elementary Secretary	8.84	9.19

UNION'S POSITION:

It is emphasized by the Union that both the incumbent in the High School Secretary position and the incumbent in the Elementary

Secretary position are extremely competent, hard working employes with a full workload. It is the Union's position that the pay disparity between these two positions should be eliminated.

During the 1986-87 school year, the High School Secretary made $1.10 per hour more than the Elementary Secretary at the maximum, 2-year, pay level. By the 1991-92 school year the disparity was $.99 per hour, only a slight reduction at the maximum, 3-year, pay level.

A review of the historical evolution of the secretarial positions may help to understand the origin of the disparity. The present incumbent in the Elementary Secretary position, Jo Ann Trowbridge, was hired as an assistant secretary in 1977. At that time K-12 students were located in one building. Ms. Trowbridge performed the duties assigned to her by the head secretary. In the fall of 1980, the head secretary moved to the new junior/senior high school and Ms. Trowbridge remained at the elementary school. As a result, both secretaries are now head secretaries in the respective buildings.

Both secretaries perform mainly clerical tasks at the direction of their principal. Ms. Trowbridge has a much greater emphasis on school nurse type duties and the High School Secretary has a greater emphasis on athletic department duties.

The Union contends there are simply no reasons to justify the pay disparity between the two positions. The fact that the High School Secretary has been employed by the District for 22 years and Ms. Trowbridge has been employed by the District for 16 years does not justify the differential.

According to the Union, the vast majority of schools in the conference pay their elementary and high school secretaries the same wage rate. It is taken for granted that elementary and high school teachers are paid the same.

The Union submits that its proposal to equalize the secretarial wage rates is only fair and equitable. Its final offer eliminates the wage disparity by the second year of the agreement, and does not impose an unreasonable burden on the District. The Union further asserts that arbitral authority clearly establishes that not all changes in the status quo must be accompanied by a *quid pro quo*.

DISTRICT'S POSITION:

The District shares the Union's view that both employes are considered valuable employes. There is, however, a distinction between the duties and responsibilities delegated to both positions, with a significant number of responsibilities placed on the High School Secretary for which there is no counterpart at the Elementary Secretary level. A review of the previous agreements and bargaining history reveals that, prior to the certification of the Union and in each agreement since the initial contract, the two positions have been paid at different rates of pay.

Due to the age of the children and the nature of injuries at the elementary level, the health-related duties of the Elementary Secretary are greater than those at the high school. Ms. Trowbridge has been given responsibility for many duties which could or would be given a school nurse in a larger district. She is under the direction of the Barron County Health Nurse and

administers medication to 20 of 539 students at the elementary school. The District does not wish to minimize the importance of administering medication or other health related duties or responsibilities. However, the wage disparity has existed since 1979 when the two secretaries undertook their respective positions. As the District has grown, the duties and responsibilities placed on the secretarial staff have grown as well. However, four years ago the District removed from the duties performed by the Elementary Secretary responsibility for the preparation of the District newsletter and annual meeting book.

Ms. Trowbridge testified that several programs have been added to the elementary level, however she did not testify as to how the addition of those programs changed or added to her job responsibilities. According to the testimony of a District witness the programs require very little, if any, time from Ms. Trowbridge.

The disparity issue has been raised in previous negotiations. As a result District Administrator Howard Hanson discussed the job descriptions with both the elementary and high school principals, and he testified that in 1990 he worked with both secretaries to develop written job descriptions, during which time he gained a good understanding of the secretaries' duties and responsibilities.

In addition to collecting student fees and selling items for resale, the High School Secretary has a greater volume of correspondence related to discipline notices and detention

correspondence than does the Elementary Secretary. The High School Secretary is involved in a number of special events held at the high school. In addition, the High School Secretary has responsibility for the receipt of funds for 23 high school organizations and/or accounts totaling over $60,000.

Additional duties associated with the athletic program include preparation for as many as 55-60 athletic events per year with 21 teams involved at various times, preparation of athletic game tickets and counting receipts, typing game schedules, maintaining records of participants, monitoring student eligibility and notifying parents if students become ineligible for athletic participation.

A major portion of the High School Secretary's duties consist of student record keeping. Due to the centralization of record keeping at the high school and the "Mac" system, more advanced computer skills are needed by the High School Secretary. There is no counterpart at the elementary level to the amount of record keeping required of the High School Secretary.

The District directs the arbitrator's attention to Sheboygan County (Courthouse), Dec. No. 19799-A (2/10/83), in which Arbitrator Krinsky concluded that job classifications should not be changed through the arbitration process.

The Union argues that many districts in the conference pay the same wage to their high school secretaries and elementary secretaries. However, the District asserts that some of the information provided by the Union may be misleading.

The District is the largest in the conference and has only three secretarial personnel: elementary secretary, high school secretary and the administrative secretary/bookkeeper. There are only two other districts, the smallest within the conference, that have only three secretarial personnel.

The High School Secretary is the only secretary in the high school and is so busy she does not have time to take breaks; she is paid for her morning and afternoon breaks. The District contends that the $8.84 per hour wage rate proposed for the Elementary Secretary under the Board's offer in 1992-93 surpasses the majority of wages paid secretarial personnel in comparable districts, and the $9.19 per hour wage rate surpasses all wages settled for 1993-94. The District's offer is reasonable, and the District asserts the Union has not provided evidence that would require the arbitrator to conclude otherwise.

DISCUSSION:

The parties are in agreement that both the High School Secretary and the Elementary Secretary are valued employes who contribute to the successful operation of the District. Their competency is not an issue. The issue is whether the two classifications should be paid the same rate of pay. The Union takes the position the two classifications should be paid the same and the District takes the contrary position.

In support of its position, the Union notes that the majority of districts within the conference pay their high school secretaries and their elementary secretaries the same rate of pay. Thus, the external comparables support the Union's position. The

District responds by noting that four of the districts within the conference have one clerical employe performing both jobs and those districts can't be considered as paying the same rate for two positions when in fact they don't have two separate positions. The District does concede that in four of the districts the high school secretary and the elementary secretary receive the same rate of pay.

The Union appears to attribute the different rates of pay to the historical evolution of the Elementary Secretary position noting that prior to 1980, when a junior and senior high school was built, the current Elementary Secretary was an assistant to the current High School Secretary. Since 1980, the Union asserts that both secretaries became head secretary at their respective schools. While this is true, it is also true that when the junior and senior high school was built and the current High School Secretary moved to the new facility she continued to receive a higher rate of pay than did her assistant who remained at what had become the elementary school.

This differential in pay was in existence at the time the parties negotiated their first collective bargaining agreement. That agreement continued the differential in pay between the High School Secretary classification and the Elementary School classification which at that time, according to the Union, was $1.10 per hour. The fact that the parties initially negotiated a differential in pay between the two classifications suggests the parties recognized that there was a difference in the duties and responsibilities of the High School Secretary and the Elementary

Secretary. The parties continued in subsequent negotiations to recognize a difference. There is nothing in the record to suggest that the duties of the Elementary Secretary have significantly changed warranting pay equal to the High School Secretary.

There was testimony that a number of new programs have been added to the elementary school, however, there is no evidence that the addition of those programs has increased the duties, responsibilities or work load of the Elementary Secretary. Testimony also established that certain functions were removed from the responsibility of the Elementary Secretary.

In defense of its position that the High School Secretary should be paid more than the Elementary Secretary, the District asserts that the work load of the High School Secretary is such that she does not have time to take morning and afternoon breaks and is therefore compensated for her breaks. Work load is not a critical factor in job evaluation; the critical factors in job evaluation are the duties and responsibilities of the position.

Based on the above facts, discussion thereon and after having given due consideration to the statutory criteria, the undersigned renders the following

AWARD

That the District's final offer be incorporated into the 1992-94 collective bargaining agreement.

Neil M. Gundermann, Arbitrator

Dated this 25th day
of August, 1993 at
Madison, Wisconsin.