BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition for
Interest Arbitration by

Middleton Education Staff Association
(Education Assistants)

and

Middleton-Cross Plains School District

Case No. 58
No. 46860
INT/ARB-6566

Decision No. 27599-A

APPEARANCES

Mallory K. Keener, Executive Director, Capital Area UniServ South, appearing on behalf of Middleton Education Staff Association.

Jon E. Anderson, Esq., Godfrey & Kahn, S.C., appearing on behalf of the Middleton-Cross Plains School District.

I. BACKGROUND

The Middleton-Cross Plains School District, hereinafter referred to as the "District" or the "Board" and the Middleton Education Staff Association, ("MESA", the "Union", or the "Association") representing all regular and EEN full-time and part-time education assistants have been parties to three previous collective bargaining agreements. In April and May of 1992, the parties exchanged initial proposals; they were not able to reach an agreement for a successor contract. The Association filed an petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission issued an order of arbitration on March 25, 1993. The undersigned was selected by the parties from a panel submitted to them by the Commission and received the order of appointment dated May 26, 1993. Hearing in this matter was held on June 15, 1993 at the Middleton Senior High School. No transcript of the proceeds was made. At the hearing sworn testimony was heard by District and Association witnesses; both parties had the opportunity to present documentary evidence. Post-hearing briefs and reply briefs were submitted by the parties

according to an agreed-upon schedule. The record was closed on September 9, 1993. The parties were advised at the hearing and by letter dated September 15, 1993 that the arbitrator would be out of the country for almost six weeks and that the award would, of necessity, have to be delayed until her return. No objection was made by either the District or the Association. The Commission was also notified of the extension of time necessary for the preparation of this award.

II. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.70(4)(cm)7:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
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> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
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> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
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> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

III. POSITION OF THE PARTIES ON ISSUES IN DISPUTE AND DISCUSSION

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

A. The Comparables

1. The Association

At hearing the Association introduced data for its "Primary Comparable Group" (Association Ex. 8 and 9) and supporting labor agreements and personnel policies for the unionized and non-unionized support staffs in those school districts (Association Ex. 10). This group consists of school districts which are part of the Badger Athletic Conference; this is consistent with comparables in Middleton teacher labor disputes.

DeForest
Fort Atkinson
Monona Grove
Monroe
Oregon
Sauk Prairie
Stoughton
Waunakee

In addition, the Association has proposed three additional comparable communities:

Madison
Sun Prairie
Verona

In its Initial Brief, the Association argues that Middleton has more in common with larger districts and indeed it is scheduled to move out of the Badger Conference within the next two years and into a conference with Sun Prairie, Beloit, Janesville, and the Madison metropolitan school districts. Therefore, comparison should not be made with the smaller, more rural Badger Conference school districts and the appropriate primary group should consist of unionized employees performing similar services in the following school districts:

Monona Grove
Oregon
Stoughton
Sun Prairie.

A secondary group is also proposed:

Madison
Verona

The Association argues that Madison, as the major urban hub for the area in which Middleton is a suburb, exerts enormous economic and political influence. It is reasoned that the nearer a satellite community is to Madison, the greater the influence on the community, thus Middleton and Verona will be more influenced than Sauk Prairie, Fort Atkinson, and Monroe. The arbitrator is urged to give arbitral weight to the use of Madison as a comparable; Arbitrator Frank Zeidler's 1990 award, Stoughton Area School District, is cited for the proposition that Conference school districts have a primary

value for comparison and Madison (among others) have a secondary value. (Association Reply Brief, p. 2).

In addition to external comparables, the Union has provided data concerning the salaries of other unionized employees of the Middleton-Cross Plains Area School District as internal comparables, i.e., custodial (Association Ex. 17) and clerical (Association Ex. 19), and the teachers (Association Ex. 44).

2. The District

The District has proposed a list of comparables, both primary (the athletic conference) and secondary (Sun Prairie and Verona). The list is similar to that of the Association with the exception of Madison which the District does not include. (Employer Ex. 18).

The District's position is that Madison, although geographically proximate, does not compare with Middleton in terms of size, e.g., 1991-92 enrollment is 23,849 to 4,208; 1,734 teachers to 265. Arbitral precedent is cited in support of the District's position that reliance on geographic proximity without regard to size and other variables is not appropriate. In a 1987 Middleton teacher's arbitration, Arbitrator Sharon Imes (Decision No. 24092-A) rejected certain school districts as comparables based on size, i.e., some were too small, while Madison was held to be too large. The District contends that if the Madison School District is considered too large to use as a comparable for Middleton teachers, it should not be used as a comparable in the instant case.

Comparability is based on geographic proximity, similarity of positions, and similarity of size. The ten districts which both the Board and Association submitted meet these criteria. The Madison School District fails the comparability test and should be rejected by the Arbitrator.

3. Discussion and Findings

At the outset the arbitrator must note that the proposal by the Association of comparable communities is extremely confusing. At the hearing

the Association offered exhibits which provided 1991-92 data on school costs, state aid, equalized value, membership (number of pupils), and school levy rate for eleven school districts (the Badger Athletic Conference, plus Verona, Sun Prairie and Madison) entitled "School District Statistics for Primary Comparables." (Association Ex. 8). In addition, collective bargaining agreements for the unionized school districts, as well as personnel policy handbooks for those non-unionized districts, were provided as Association Ex. 10 through 38. In its Initial Brief the Association notes that teacher labor disputes in Middleton have utilized the Badger Athletic Conference (page 4) but then goes on to cite awards by Arbitrators Zeidler and Krinsky which apparently held that Monona Grove, Oregon, Stoughton, and Sun Prairie were the most comparable (page 5). Sun Prairie, however, is not in the Badger Athletic Conference. In an assertion, without attribution, the Association states that a "number of arbitrators in non-teacher, public school arbitration cases" have held that a contiguous or nearby municipality has greater influence on the wages, hours and working conditions of satellite communities. The unanswered question is "greater than what?" While the arbitrator believes that geographic proximity is entitled to weight, it is certainly not the only, and most likely not the most compelling, criterion utilized to determine comparability.

Further note is made that the school district has grown so large that it is scheduled to move out of the Badger conference in the next two years into a group consisting of Sun Prairie, Beloit, Janesville, and Madison. It is asserted by the Association that Middleton already has more in common with these larger districts than it has with the other smaller school districts in the Badger conference. The arbitrator is hard-pressed to respond to this latter argument: first, no evidence was presented to support this future happening, and even if there had been such evidence, it is not clear why today's problem should be resolved based upon anything but today's factual record. The arbitrator, therefore, cannot base a decision upon some event which may occur in the future.

Having made its argument, the Association concludes that the primary group of comparables should consist of unionized employees in Monona Grove, Oregon, Stoughton, and Sun Prairie. A secondary set of comparables consisting of Madison and Verona should be given weight, while the other school districts in the Badger conference should be given little if any weight in the dispute. (Initial Brief, p. 6). The logic underlying the Association's argument is not persuasive. First, the record indicates that Stoughton Aides are not unionized (Association Ex. 34, Classified Handbook). Although Stoughton custodial and maintenance employees are organized, this group does not meet the basic element of comparability, i.e., employees performing similar services. While the statute provides for comparison "of other employes generally in public employment...in other communities" arbitrators place greater weight on comparing employee groups which perform the same duties and have similar education and training. Thus the Association's reliance on organized employees noted above is misplaced in the case of Stoughton.

The Association also has designated Oregon as one of its unionized primary comparables. At the time of hearing, the Oregon Instructional Aides and Education Aides were not covered by a labor agreement (Association Ex. 30 and 31, Employer Statements). It was pointed out that Oregon had become affiliated with a union and the Association intended to inquire about its status. On July 2, 1993, the Association notified the arbitrator and counsel for the District that "MESA learned that a group of school district employees has organized and affiliated with AFSCME; however, since the union and district are currently engaged in contract negotiations for an initial labor agreement, no contract is submitted for the Oregon School District." (Letter, July 2, 1993 from Mallory K. Keener). At this time it is not clear to the arbitrator if the "group of employees" includes education and/or instructional aides. Even assuming that these employees were now organized and engaged in collective bargaining, the product of that bargain is not part of this record and can be given no weight. Here too, the Association's reliance on

"unionized" employees is not supported by the evidence.

The Association further contends that Middleton has more in common with Madison than with the smaller, more rural school districts in the Badger Athletic Conference. There may be some cases where this conclusion would be correct, however, since both parties chose to include Verona and Sun Prairie, although they are not in the athletic conference, the base of comparison expands and such a narrow analysis would not be appropriate. Taking all the agreed-upon school districts as an entity, that is, they will all be considered as primary comparables, it is possible to demonstrate how similar or dissimilar Middleton might be in the variables generally taken into consideration. It has long been this arbitrator's position that median is the appropriate statistical technique for determining an average, rather than the arithmetic mean. The median is a better measure of central tendency particularly where a few high or low numbers may inadvertently skew the results. In doing so, each set of numbers is ordered from lowest to highest in order to find the center. Where as here there are ten comparable districts, the median falls between the fifth and sixth. The arbitrator has taken the analysis provided by the District which utilizes the median as the statistical method of comparison of Middleton to the eight members of the athletic conference plus Sun Prairie and Verona and compared it to Madison alone (see, e.g., Employer Ex. 20 through 25A) in Table 1 below.

TABLE 1

1991-92	Comparables-Median	Middleton	Madison
Enrollment	2,606	4,208	23,849
FTE (Teachers)	171	265	1,734
Cost per Member	5,009	4,994	5,443
Aid per Member	2,164	771	0
Equalized Value per Member	170,518	267,335	297,429
Levy Rate	16.98	15.77	18.30

Inspection of this table shows that in terms of the variables that measure size, i.e., enrollment and FTEs, Middleton is far more similar to the comparables than to Madison. The difference in cost per member is not as striking, nonetheless, the difference between the average of the comparables and Middleton is only minus $15, while Madison spends $449 more than Middleton. Middleton's aid per member is closer to Madison, however, the significance of this variable has not been discussed by the parties and the arbitrator finds it difficult to extrapolate from the data alone. In terms of equalized value per member, Middleton exceeds the median by some $96,000 and is only some $30,000 less than Madison. Middleton's levy rate is $1.21 less than the median but deviates from Madison by $2.53. These data indicate that Middleton more closely resembles the selected comparables, and thus has more in common with them, than it does with Madison.

The Association provided income data for its eleven proposed comparables and Middleton for 1991. Taking the data from Association Ex. 45 which ranks 1991 total income, divided by 1991-92 membership, for total income per member, and subjecting it to the same analysis as in Table 1 above, the following information is derived:

TABLE 2

	Comparables-Median	Middleton	Madison
Total Income 1991	184,377,642	440,204,759	2,962,086,131
1991-92 Membership	2,547	4,071	23,154
Total Income per Member	74,615	108,132	127,930

Inspection of this table shows that Middleton is more similar to the districts in the comparable group both in total income for 1991 and membership in 1991-92. In total income per member, Middleton is higher than the comparables by $33,517 and lower than Madison by $19,798, thus being more similar to Madison.

Association Ex. 46 sets forth income by school district for 1990 and 1991. Among the comparables cited by the Association, Middleton's average total income per return in 1991 was $39,237, Madison was $30,534, and the median of the remaining comparables was $31,489. Here Middleton is considerably higher than either the comparables median or Madison.

The problem with the material on income is that the arbitrator has received no guidance from the Association as to the purpose or application of the data. As a rule a union will introduce evidence on, for example, equalized value per student or household income when it is arguing that a community can afford to meet the final offer's added costs and that it is improper for the district to rely on an inability to pay argument. A district may offer such evidence to show that it cannot readily meet any additional obligations over and above its final offer. In the instant case there has not been any contention that the District is relying on an inability to pay argument. Thus, even though in certain variables noted above, Middleton is closer to Madison than to the agreed-upon comparables, the arbitrator must conclude that these variables are not entitled to an appreciable quantum of weight.

Ultimately, the decision as to whether it is appropriate to include Madison at all must to made. While it is true that Middleton is not an isolated rural community with limited employment opportunities, and is on the doorstep of the Madison labor market, one must not apply comparability standards in a mechanical way. In this case the extreme difference in size deserves far greater weight in a determination than proximity. For example Madison has approximately five and one-half times as many students enrolled than Middleton and six and one-half times as many full-time equivalent teacher positions. In the arbitrator's opinion, the effect of Madison may be characterized as indirect, that is, the nearby communities already reflect the effect of being in or near an urban labor market, some more than others, whether teachers or non-professionals. However a direct comparison with Madison would be erroneous because of the extremely large size differential.

After a careful review of all the documents and the parties' briefs and reply briefs, it is the arbitrator's conclusion that the school districts proposed by the District are the more reasonable and they are, therefore, adopted for purposes of analyzing the parties' final offers.

B. Compensation

There are three major issues to be considered: restructuring of the salary schedule, hourly wage increases for the Education Assistants, and the longevity benefit.

1. Restructuring the salary schedule and the wage offer

The present salary schedule consists of seven steps; the Association proposes to compress it to five steps, while the Board wishes to maintain the status quo. The Association supports its proposal for a five-step schedule with an agreement that all new employees will be placed on step one. It is claimed that this will provide internal equity in starting pay and reduce friction between bargaining unit members resulting from perceived inequity in initial placement. (Section 12.00 of the present contract gives management the right to take a new employee's experience into account by placing her at a higher step on the schedule, not to exceed three steps). The Association further contends that a comparison with Middleton organized units of custodians/maintenance and clerical employees supports its proposal to lessen the time needed to reach the maximum salary (Association Ex. 17 and 19).

The District argues that the current salary structure has been in effect since at least 1985-86 and objects to the Association's attempt to make such a fundamental change in the arbitration process instead of at the bargaining table. Precedent is cited for the reluctance of arbitrators to tamper with a salary schedule as well as the need for the moving party to demonstrate that exceptional circumstances exist which would justify restructuring. Further, it is contended that the Association has not offered a quid pro quo in exchange for such a fundamental change.

As to the wage offer, the parties differ significantly on the percent of increase per cell, approximately 2.5% for the District and 3.3% for the Association. For 1992-93 the Association proposes an entry wage rate of $7.88 per hour, an increase of $.87, compared to the Employer's offer of $.45 per hour. At the maximum (taking into account the differing number of steps in the two offers) the Association's offer is $8.98 (5th step) while the Employer proposes $8.65 (7th step). The parties are not in agreement as to the date in January 1994 when the final step increase is to be awarded (the Employer has selected January 1st, the Association, January t which is the beginning of the second semester).

It is necessary for the arbitrator to first resolve the question of the restructuring of the salary schedule. The Association has candidly stated in its briefs that its offer is a bold and ambitious one offered to meet the Union's needs: to provide for attractive starting pay, to adjust the time needed to reach maximum salary steps (thus providing equity with other District unionized employees), and to build salary increases which will be meaningful to its members. It stated as follows:

> The Employer's characterization of its wage offer is accurate as far as it goes. The Union does not say that the Board's offer is a poor one compared to area Education Assistants. The Union does say that it is not sufficient in comparison to wages paid to other district employees who are not teachers or administrators. No internal equity can be achieved through the Employer's offer....No objective reasons exist why the Education Assistants should not receive compensation as attractive as these other groups of employees....MESA wants to see this wage gap closed. (Reply Brief, p. 3; emphasis added).

While the Union's intentions are commendable and internal equity would certainly be advantageous to these employees, it is the arbitrator's opinion that the arbitral forum is not the place for achievement of this goal. It is not for the arbitrator to substitute her judgement for that of the parties as to the comparative value to a public employer of different units of employees or to go beyond the mandate of the statute. Suffice it to say that even if "no

objective reasons exist" for the lesser pay of this bargaining unit, no compelling evidence has been submitted to the arbitrator to support the Union's argument regarding internal equity.

Like many arbitrators, this arbitrator is generally reluctant to place considerable weight on a comparison of differing bargaining units in the same community. A concern regarding reliance on internal comparability involves the difference in the occupational make-up of the units under consideration. For example, in considering a unit of professional social services employees in Trempealeau County (Decision No. 26389A-A, 12/13/90), Arbitrator Morris Slavney followed an earlier analysis by Arbitrator Fredrick Kessler. Kessler had held that courthouse employees were "white collar" whereas highway department unit employees consisted primarily of "blue collar" employees. Slavney concluded that the internal comparison should be of "white collar" with "white collar." Following that logic in the instant case, it would be inconsistent to compare education aides whose skill, effort, and responsibility are applied to work with children to that of maintenance and custodial employees or to clerical employees. While historical, social, and political forces may have combined to pay primarily male occupations such as maintenance/custodial at a higher rate than education assistants (who are predominately female in Middleton), it is beyond the scope of this arbitration to ameliorate the situation. (Complicating such an analysis would be the fact that most clerical units are predominately female, thus diminishing any gender-based argument which might be raised as to aides versus clericals).

Another important point when considering internal comparables relates to the essence of separate bargaining units, i.e., the unique quality of each and every unit. Even though the Union in this case would prefer uniformity in wages with other units, there are cases where Unions argue to the contrary, such as when employers rely on voluntary settlements with other bargaining units to argue in arbitration for consistency in percent of wage increase and other benefits (and in this case where the District argues for consistency

with other district units regarding personal days, infra).

In the instant case the comparable evidence on internal equity is not persuasive. The community of interest in a unit of education assistants is different from that of a custodial unit or clerical unit. Each unit uses the collective bargaining process to achieve the specific goals of its members to the best of its abilities. It is the arbitrator's opinion that she must examine the final offers of the parties for the education assistants on their merits and avoid the temptation to blur the unique aspects of this bargaining unit. It is held therefore that the disparate nature of the occupational groups compels the conclusion that internal comparability is not sufficiently relevant to be accorded weight in determining which of the parties' final offers on wages is the more reasonable.

Furthermore, the arbitrator believes that where a party attempts to introduce fundamental changes to the collective bargaining agreement, whether it be salary structure or revision of previously bargained language, something more than a mere assertion of desire or need is required--a quid pro quo is expected an inducement to the opposing party. In the instant case, the Union seems to be saying that it has given something in exchange for reducing the number of salary steps by permitting the Employer to place each new hire at the first step of the salary schedule (Initial Brief, p. 9). It seems to the arbitrator that this is not relinquishing anything, but rather an intrusion into a right previously given to management to determine whether to credit a prospective employee's past experience. Although the Association contends that a compressed salary structure would be advantageous to its members, there is nothing in the record to indicate that the Association has offered any quid pro quo in exchange for such a substantial change to the contract.

The appropriate comparables are those school districts which have education assistants as noted in Section III(A) above. Inspection of comparative data submitted by the District (Ex. 28A-C) show that all the districts (except Oregon) have a schedule structure; these range from a low of

four (4) steps with three (3) years to maximum (Stoughton) to a high of 26 steps with 25 years to maximum (Monroe). The median number of steps among the nine comparables is eight (8). The District's offer of the status quo of seven (7) steps more closely approximates the median than does the Association's proposed five (5) steps and is, therefore, deemed to be the more reasonable offer.

The wage offers of the parties compared with the ten comparables (the Athletic Conference, Sun Prairie and Verona) are shown in Employer Exhibit 29A and 29B. Inspection of the data reveals that, for example, the median wage for the base year (1991-92) at the maximum was $7.91 and that Middleton education assistants were receiving $8.20. The 1992-93 median at the maximum rate is $8.20, with the Board's offer at $8.65 and the Association's at $8.98. For 1993-94, the group median is $8.74; after the second increment in January 1994, the Board offers $9.20, the Association $9.67. It is clear that the Board's offer exceeds the median of the comparability group. The Association has, in fact, agreed that the Board offer is fair when compared with the area education assistants, but argues that internal equity should be given greater consideration.

In light of the evidence, and the great weight which it is entitled to, the arbitrator concludes that the wage offer of the Middleton School District is the more reasonable of the two offers.

It is held that on the issue of compensation, i.e., salary schedule and wage increments, the District's offer is selected.

2. Longevity

The Union proposes to restructure the longevity benefits received by the education assistants; the Board wishes to retain the status quo.

Current benefit		Association offer	
8-10 years	3% of base	6-10 years	4% of base
11-13 years	7% of base	11-13 years	7% of base
14-16 years	10% of base	14-16 years	12% of base
17+ years	12% of base	17+ years	15% of base

The Union argues that both the District custodial and clerical bargaining units are eligible for their first longevity benefit after 5 years and a second after eight years, thus its offer is supported by internal equity. The District, on the other hand, argues that in addition to asking for eligibility three years earlier, the Association is also demanding an increase to 4% at the first step, as well as increases at the third and fourth step, resulting in exorbitant hourly rates. The internal comparables all begin at 3% with a maximum of 9% for custodians and a maximum of 12% for clericals and food service, thus showing that the Association's offer lacks internal support. See, e.g., Employer Ex. 38A. In addition the District alleges that the external comparables support its offer. A table comparing maximum annual longevity, derived from Employer Ex. 39A-C, indicates that the District already has the most lucrative longevity benefit (Employer's Brief, p. 25). Inspection of the table shows that of the ten districts, five have no longevity benefit at all. Inspection of this table for maximum payout in 1992-93 shows a range of $225 to $1,487.23; the Employer's offer of $1,605.03 greatly exceeds the highest dollar amount. Although Sun Prairie provides the $1,487.23 after 14 years and an employee in Middleton must wait until the 17th year, the higher payout makes this a moot point.

The Association has provided no argument or data regarding the external comparability group.

Based upon the evidence of record, the arbitrator concludes that the District's final offer on the longevity benefit is the more reasonable.

C. Paid Holidays

At the present time education aides receive three paid holidays: Thanksgiving Day, Memorial Day, and Labor Day. The Association has requested an additional paid holiday, Christmas. The District wishes to retain the status quo.

The Association presented supporting data based upon its selected external and internal comparables (Association Ex. 39) and Table 2, external

comparables only (Initial Brief, p. 13).

The District notes that school-year employees in Middleton are the only appropriate internal comparables: clerical unit--5 paid holidays; food service--3 holidays; transportation--none. It is argued that it is not appropriate to compare full-year, full-time employees such as confidential clerical and custodial. The Association indicates that neither the food service unit nor the transportation unit is unionized. The paucity of relevant data regarding the internal comparables, as well as the arbitrator's previously stated rationale for limited reliance on them, does not give rise to a meaningful comparison. The better measure will be, as stated earlier, on the ten comparables selected earlier as being the most representative of education aides.

Inspection of Employer Ex. 46A-C indicates a wide range among the ten school districts with Fort Atkinson providing nine (9) paid holidays and Verona and Sauk Prairie providing none. Applying the same statistical technique as adopted above, the median number of paid holidays is three (3). It is therefore held that the offer of the District of three (3) paid holidays, which is exactly at the median, is preferable to that of the Association for four (4) paid holidays.

D. Parental Leave

Section 7.00(F), Reimbursable Absence, of the present contract provides one day of paid leave to a male employee upon the birth of a child to his wife. The Association does not wish to delete this section but believes that it does not suffice as a statement for parental leave. It is therefore proposed that Section 8.00 Childrearing Leave be revised by retitling it "Parental and Childrearing Leave" and providing two new sections, 8.01 Parental Leave and 8.02 Childrearing Leave. The latter section will continue as in the present contract; the parental leave section will reflect those benefits provided by state and federal laws for parental (family) leave. The Association's position on parental leave is fair, reasonable, affordable, and

better meets the needs of a predominately female bargaining unit. Finally, it is alleged that the Board did not give any reason why this proposal is unacceptable nor did it offer any alternative proposal to meet the needs raised by the Union.

The District argues that there is no need to include parental leave language in the contract since the District must comply with state and federal laws. There is no question that the one day provided in Section 7.00 is in addition to any other leave. It is noted that the burden of showing that a problem exists which demands a change in contract language is on the Association. The arbitral standard to be applied is that the party proposing the change must demonstrate a need for the change; if this is shown, then the party proposing the change must show that it provided a quid pro quo for the change and that the foregoing be demonstrated by clear and convincing evidence. The District contends that the Association has not met this test: the language is unnecessary, no need has been demonstrated, and no quid pro quo has been offered. Furthermore, none of the internal or external comparables have similar contract language.

The Association's goal is to provide a clear statement of the benefits available to employees who become parents by birth or adoption in the collective bargaining agreement. The arbitrator understands its concern that bargaining unit members be aware of the protections of the state and federal law. Believing that inclusion of specific language in the agreement will not impose "any undue financial burden on the employer," the Association seems unable to understand the Board's objection and subsequent refusal to accept the Association's language or to propose an alternative.

The arbitrator is of the opinion that inclusion in collective bargaining agreements of certain statutory protections is not unusual. For example, many contracts now have a safe work-place statement or a non-discrimination clause under state and/or federal law. A review of the 1989-92 agreement between the parties reveals that there are no specific safe-place, non-discrimination, or

other relevant provisions. If there had been, the arbitrator probably would have leaned more toward the Union's position for inclusion of a separate, more inclusive, parental leave section.

It is noted also that in Section 2.00, Management Rights, the Board had agreed to comply with state and federal law. There is no question that the Board is aware of its obligations regarding the parental leave laws and certainly no argument has been made that there has been any denial of such benefit to any member of the bargaining unit. While it might be helpful for employees to have their legal rights spelled out for them in their collective bargaining agreements, it seems to be a matter which cannot be implemented on a unilateral basis. The fact that none of the comparables, be they internal or external, have contract language similar to that proposed by the Association, detracts from its position.

Based on the evidence of the record, the arbitrator concludes that the offer of the District on parental leave is the more reasonable.

E. Personal Leave

The District has proposed changes to the present contract language covering personal leave since the education aides unit is the only one in the District with no restrictions on the use of these days. Section 7.00(H) states: "Personal leave--two (2) days per year. Employee shall give the principal as much advance notice as possible when personal leave is requested. The Superintendent or designee must approve such requests." The District wishes to add language which, following the other internal units' contracts or policies, places certain restrictions on the use of the days, e.g., not to be taken as vacation or for shopping, for supporting any work stoppage, or to extend holidays or vacations. The District notes that since full-year, full-time employees are subject to the same restrictions, no special hardship will occur if a unit of school-year, part-time employees are subject to the same restrictions. As for the group comparables, the District points out that each of them has certain restrictions, e.g., six deduct personal leave from sick

leave; employees may not use personal days to extend holidays or recesses, etc.

The District argues, and cites arbitral precedent, for the proposition that when a proposal is so inherently reasonable or of a de minimis nature, the change does not require a quid pro quo. The District also contends that the Association claim that this benefit arose as a trade-off in a past bargain is not supported by the testimony of its Director of Human Resources, Craig von Behren.

The Association argues against any change in the personal days benefit citing bargaining history. Its witness, Mary Mrochek, was a member of the bargaining team when the parties agreed to a trade-off for unrestricted personal leave, that is, the Union's acceptance of a non-duplication of insurance coverage. At the present time, non-duplication agreements are not legal and thus such language has been removed from the contract.

It is the Association's position that the present personal leave provision is adequate, that there has been no allegation of abuse by the employees, and that the District has shown no compelling reason for a change. Further, the District has offered no quid pro quo as incentive for the Union to accept such a change. The District's rationale that its proposal would make the MESA contract consistent with the other district employees is not sufficient--if it were than the Union's proposals on longevity, salary, and paid holidays should prevail.

The arbitrator will apply the same test to the issue of personal days as was proposed and applied by the District to the Union's request for a change in parental leave. First, has the District as the proponent demonstrated a need for the change? Second, if there has been a demonstration of the need for the change, has the District provided a quid pro quo? Finally, has the District met these tests by clear and convincing evidence. In the present circumstances, the arbitrator does not believe that the District has shown any compelling need for a change in language. Assuming that consistency among

units may indeed be desirable in terms of benefits as is now contended by the District, in considering other benefits, the District has opposed the Union's attempt to gain internal equity. For example, the Union attempted to increase the number of holidays for this unit to four (4), arguing that the organized Clerical unit already receives five (5) paid holidays. Nor has there been discussion as to why the Clerical unit should be eligible for the first longevity payment after five (5) years, while the education aides have had to wait until the eighth year. It can only be concluded that internal consistency does not yet exist within the District in relation to benefits.

Since the arbitrator does not believe that the District has shown by clear and convincing evidence that a compelling need exists for its proposed change in the personal leave language, it is not necessary to consider the offer of a quid pro quo.

The arbitrator has considered the testimony of the bargaining history of this provision, the relevant exhibits, and the arguments made by the parties. Based upon this review, it is concluded that the position of the Association regarding the issue of personal days is the more reasonable.

IV. CONCLUSION

The external comparables utilized in this award were the members of the Badger Athletic Conference, DeForest, Fort Atkinson, Monona Grove, Monroe, Oregon, Sauk Prairie, Stoughton, and Waunakee, and two additional districts, Sun Prairie and Verona. With the exception of the issue of personal leave in which the Association's position prevailed, the balance of the issues, comparability, compensation, paid holidays, and parental leave, were decided in favor of the District.

V. AWARD

The final offer of the Middleton-Cross Plains School District, along with the stipulations of the parties, shall be incorporated in the parties' written Collective Bargaining Agreement for 1992-93 and 1993-94.

Dated this 4th day of December, 1993 at Milwaukee, Wisconsin.

Rose Marie Baron

Rose Marie Baron, Arbitrator