STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition of Chequamegon United Teachers For Final and Binding Arbitration Involving Education Personnel in the Employ of CESA #12	Case 4 No. 47503 INT/ARB-6483 Decision No. 27601-A

APPEARANCES

For the Union:

Barry Delaney, Executive Director
Chequamegon United Teachers

For the Board:

Kathyryn Prenn, Attorney

PROCEEDINGS

On April 26, 1993 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6. and 7 of the Municipal Employment Relations Act, to resolve an impasse existing between Chequamegon

United Teachers hereinafter referred to as the Union, and the CESA #12, hereinafter referred to as the Employer.

The hearing was held on July 26, 1993, in Ashland, Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on September 29, 1993 subsequent to receiving the final reply briefs.

ISSUES

The issues in this case are as follows:

At the arbitration hearing on July 26, 1993, the Agency and the Union identified three items which are in dispute in this proceeding. The areas in dispute are as follows:

1. WAGES

   Agency Offer:

   4.9% increase to schedule in 1992-93
   4.75% increase to schedule in 1993-94

   Union Offer:

   5.0% increase to schedule in 1992-93
   5.0% increase to schedule in 1993-94

2. PLACEMENT OF EMPLOYEES ON SALARY SCHEDULE AND ADVANCEMENT THROUGH SALARY SCHEDULE

   Agency Offer:

   14.5 Placement of Employees

   14.5.1 Placement of Current Employees:

   A. Employees who were employed prior to July 1, 1991 (and were on the Agency's salary schedule for 1991-92) will be placed on the step which reflects the years of experience upon which the Agency based their wage rate for 1991-92 for providing increments. Employees who were employed prior to July, 1991 (and for whom there was not a salary schedule), shall be placed on the 1991-92 salary schedule on the step which reflects the smallest wage rate increase over what they were earning in 1990-91.

   B. Employees hired between July 1, 1991, and the date of the arbitration award for the 1991-94 Agreement shall be placed on the step that equals or the lowest step that exceeds the rate the Agency paid them (whichever is less).

   C. All employees referenced in Sections 1 and 2 above shall advance one step on the salary schedule each July 1 until he/she reaches the top step on the schedule.

14.5.2 Placement of New Employees (Hired after the 1991-94 arbitration award):

Employees hired before January 1 will advance one step on the wage schedule each July 1 following their placement on the wage schedule until they reach the top step on the schedule.

Employees hired after January 1 will advance one step on the second July 1 after their placement on the wage schedule and each July 1 thereafter until they reach the top step on the schedule.

Union Offer:

14.5 Step Placement of Employees

14.5.1

Employees hired (after the 1991-94 arbitration award) may be placed at any of the above indicated four steps (experience placement) by the Agency. After the initial placement, employees will move through the experience placement steps by moving up one year (one step) on their hiring anniversary date for every year of service until they are at the maximum wage rate (step 3). An example: If a new employee is hired on June 1, 1993 and the Agency places him/her on step 2, he/she will be placed on step 3 on June 1, 1994.

14.5.2

Employees hired between July 1, 1991 and when the 1991-94 arbitration award is issued shall be placed on the step that equals or the lowest step that exceeds what the Agency paid them (whichever is less) for their starting wage rate for their first year of employment. After their first year of employment, such employees will advance one step per year (on their hiring anniversary date) until they are at the maximum wage rate. Example 1: If the Agency hired an interpreter aide on October 3, 1991 at a wage rate of $10.00 per hour, such employee would be placed on step 3 for the first year of employment. Example 2: If the Agency hire an interpreter aide on January 3, 1993 at a wage rate of $10.20 per hour, such employee would be placed on step 2 and would be placed on step 3 on January 3, 1994.

14.5.3

Employees who were employed prior to July 1, 1991 (and were placed on the Agency's salary schedule in effect for 1990-91) will be placed on the step of the above 1991-92 schedule in the following way:

1. Those employees who have a hiring anniversary date between

July 1 and January 1 shall be placed on the same step they were on at the end of the 1990-91 year for the first part of the 1991-92 year. Upon their hiring anniversary date (during the 1991-92 year) such employees will advance one step. Example: If an employee was on step 1 at the end of the 1990-91 year and has a November 2nd anniversary date, he/she will be placed on step 1 for the first part of the 1991-92 year until November 2, 1991 when he/she will be placed on step 2.

2. Those employees who have a hiring anniversary date between January 1 and before July 1 shall advance one step on July 1, 1991 (from where they were at the end of 1990-91). Upon their hiring anniversary date (during the 1991-92 year) such employees will advance one more step (if they were not on step 3). Example: If an employee has a February 22nd anniversary date, he/she will be placed on step 2 for the first part of the 1991-92 year until February 22, 1992 when he/she will be placed on step 3.

14.5.4

Employees who were employed prior to July 1, 1991 (and were not placed on the Agency's salary schedule in effect for 1990-91) will be placed on the step (for 1991-92) which provides such employees with the smallest wage rate increase from what they had in 1990-91. Such employees will receive step increase on July 1st of each year starting July 1, 1992 until they reach the maximum wage rate.

14.5.5

Once employees are placed on their initial step (as described in 14.5.1 - 14.5.3), employees will advance one step on the wage schedule (on their hiring anniversary date) each year until they reach the maximum wage rate.

3. SUBCONTRACTING

Agency Offer:

The Agency retains any and all rights and functions of management that it has by law, except as otherwise specifically provided in the Agreement, and expressly retains the right to contract out for goods and services. In exercising its management rights, the Agency will comply with the requirements of Section 111.70, Wis. Stat. (Emphasis added).

Union Offer:

Subcontracting: The Agency will not subcontract bargaining unit work if such subcontracting results in a bargaining unit member being laid off (in whole or in part).

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union at the hearing and in its initial and reply briefs:

The Union believes that the appropriate comparables should be those school districts within CESA 12 where unit members either work or live. A secondary group of comparables would be the entire 18 school districts that comprise the CESA 12 service area. The Union believes that these are the appropriate comparables because this is the job market available to these employees and, as such, employers are in competition for the services of these employees. The Employer on the other hand argues that comparables should be different for each issue. Therefore, the Employer appears to be shopping for comparables which will support its offer by using a different set of comparables for each issue and by taking the position that no comparables at all should be used in regard to the issue of granting increments. The Union noted that it has been consistent in using the same comparables for all issues.

For support staff units, arbitrators have consistently selected comparables that represent the job availability with respect to the geographical location. Arbitrators have

consistently taken the position that support staff personnel are less mobile than professional employees and the comparable employers should represent a smaller geographical area than that which would be considered comparables for professionals. The Union offered a 1978 decision by Arbitrator Weisberger in support of its position.

In addition, the Union noted that the Employer has not provided data for comparisons of other CESAs. The Employer only provided this data for the issues it had selected. The Union on the other hand has provided all of this data for the Arbitrator to consider. The Union has also provided the complete settlement package of each of the districts to allow the Arbitrator to compare it with the CESA #12 offers. The Employer also claimed that unit employees are spread throughout all 18 districts. This is simply not so. The Employer cited one arbitrator who used all of the districts for a CESA unit comparable but this dealt with teachers, not with support staff. The Union felt that its comparables are certainly the most reasonable and realistic and should be used by the Arbitrator in determining this case.

Of the three issues that are yet unresolved, the Union stated that the most important issue is when employees should become eligible for increments. This is true because of the total dollar value of this issue, the large differences in potential earnings during the first three years of employment,

and the large number of employees who have started their employment with CESA #12 during the last few years. The Union's offer provides for increments on the employee's anniversary date while the Employer's offer would provide for increments on July 1 during either the first or second year of employment depending on when they were hired and increments would be given on July 1 thereafter until the maximums would be reached.

The Employer argued that its increment offer represents the status quo. The Union would note that what transpired previously was unilaterally implemented by the Employer. The employees not only did not agree to this increment procedure, they did not even have input. The Union argued that when arbitrators consider the status quo, they are considering what the parties agreed to in prior collective bargaining agreements. The Union cited two cases in support of its position by Arbitrator Baron and Arbitrator Chapman. The Union further noted that the comparables, both primary and secondary, support the Union's offer. In addition, there are substantial inequities based on the Employer's position. The Union cited examples of these inequities. There are a substantial number of employees who are working their way through the salary schedule for one or more years of the three year contract duration. A majority of the employees are not hired at the beginning of the school year as would be in the case of teachers. If this were a teacher bargaining unit, the argument for a July 1 date for increment

advancement might be more appropriate. There is also a costing difference between the two offers. The Union's offer would cost more than the Employer's offer for those employees hired between January 1 and July 1, but it would be the Employer's offer that would be more costly for those employees hired between July and January 1 because they would receive their increment sooner. Historically, more employees were hired during the later period and the Union provided data showing that the Union's offer saves the Employer a substantial amount, notwithstanding the higher proposed percentage increases by the Union. The Union cited a decision by Arbitrator Yaffe in support of its position.

In reply to the Employer's arguments concerning the increment advancement, the Union stated that contrary to the Employer's contention, the Union's offer is not complex and is easily understood. The Union disputed that this would amount to additional clerical and payroll work for the Employer, and is an easily administered system. In fact, it is the Employer's system which would require additional bookkeeping work and disputes testimony by the Employer's head bookkeeper as self serving and unsworn. There appear to be two classes of employees, those hired before July 1, 1991 and those hired between July 1, 1991 and the arbitration award. The Union stated that the whole issue of when increments should be paid is the one and only issue for all employees, no matter when they were hired. The Employer is well aware as to what the hiring anniversary date means.

Contrary to arguments contained in its brief, hiring anniversary date is the date the Employer hired the employee. The Union was supplied hiring dates for all bargaining unit members on November 8, 1991 and the Employer never questioned what was meant by the term "hiring date." Additional information was required and supplied without any questions to the Union. In addition all of the Employer's calculations of the Union's offer were based on hiring. It seems ridiculous for the Employer to now claim that the term "hiring anniversary date" is an ambiguous term.

With respect to the issue of sub-contracting, the Employer wants the right to sub-contract at any time for any reason no matter how much that sub-contract would negatively affect bargaining unit members. While the Union's offer allows the Agency to sub-contact, if that sub-contracting does not result in employees being laid off in whole or in part, the Union stated that it is its offer that is more reasonable. If the Employer's offer were accepted, the Employer would be able to lay off all of its employees and sub-contract the bargaining unit work for the sole purpose of avoiding the terms of the labor agreement. If the bargaining agreement terms are unreasonable with respect to the marketplace, then the place to deal with this would be during negotiations for the Collective Bargaining Agreement. There is no data by the Employer that indicates that either offer is out of line with what could be procured through sub-contracting. The current system of interest arbitration provides the necessary

safeguard for preventing unreasonable terms to be placed upon employers where sub-contractors could do the work for less.

The Union's offer reflects a fair and reasonable proposal. Employees should be able to work under these conditions without having their jobs taken away by sub-contracting. The Parties have been able to agree to all of the conditions except for the salary schedules of the last two years and the implementation of the increments. The total wage offers are nearly identical, and the Employer has not submitted evidence that the agreed upon terms are inappropriate when compared to potential sub-contracting. Job security is a key element in any labor agreement. The Union stated that the Employer's offer circumvents the just cause standard. In its 28 year history, the Agency has sub-contracted on two occasions. The Union Exhibit 68 shows that the first case involved the Agency being dissatisfied with an employee's work. There is a just cause standard for discharge in the Collective Bargaining Agreement that has been agreed to by the Parties. The Employer is asking the Arbitrator to give the Agency the unilateral right to sub-contract at any time for any reason.

In addition, the Union's offer limitations on sub-contracting do not harm the public. CESA #12 is a sub-contractor to the school districts within its territory. Districts purchase services from CESA #12 where the districts do

not want to provide these services themselves. If CESA #12 then sub-contracts, it becomes a system of the sub-contractor sub-contracting what the school district has purchased from CESA #12. Under the Employer's offer the Agency would be allowed to lay off employees in order to sub-contract what the districts would have purchased directly from the Agency utilizing Agency employees. Even the Agency's own administrator indicated that a school district would probably be better off hiring a sub-contractor directly. The public is better served by having individual districts hire a sub-contractor rather than going through the Agency. The Union's offer does not prevent the individual districts from purchasing services through a sub-contractor directly, and the Agency would be able to lay off employees when school districts purchase services directly. Therefore, the public is not harmed and the districts are still getting the needed services but not through CESA #12. If the Agency cannot compete with other sub-contractors, then the districts should purchase such services elsewhere.

The second case of sub-contracting occurred approximately 10 years ago when the Agency employed an audio/visual repair specialist and found there was not enough repair work so the Agency laid him off and sub-contracted what little work it had through repair shops. The Union noted that, even under its offer, the Employer can simply reduce the hours and/or days the employee works by a partial layoff. The employee would only work

when there was work available. The Union's offer does not require the Agency to employ a worker for times when there is no work. The Union contended that its proposal does not place any undue financial burdens or any other unreasonable burdens on the Employer. Again, the Union contended that the primary and secondary comparables support the Union's position. The overwhelming number of districts in both the primary and secondary comparables either support the Union's offer directly or are silent. It is the Union's contention that those comparables which are silent also support the Union's position. Where the contract is silent and the Employer is contemplating sub-contracting, it has the legal duty to bargain the issue of sub-contracting and/or the impact of sub-contracting with the Union. WERC precedent was cited by the Union.

In response to the Employer's argument with respect to the issue of sub-contracting, the Union responded to many of the Employer arguments in its initial brief as noted above. In addition, the three cases of current sub-contract would not violate the Union's proposed provision. While under some instances the Employer would be restricted in its current practice, the Agency does have other options and these were noted in the Union's reply brief.

The Union stated that with respect to sub-contracting, it is its offer that is the more reasonable. It does not place any

significant hardship on the Agency. The Union's primary and secondary comparables support its position. Even the other CESAs, which the Employer claimed as a comparable pool for this one issue, do not support the Employer's offer. The Union has cited numerous authorities and past cases all in support of the Union's position. Therefore, it asked that the Arbitrator find that the Union's position with respect to sub-contracting more closely meets the statutory criteria.

With respect to the proposed salary schedule, the Union and the Employer seem to agree that the wage issue is not the deciding issue in this case. Both offers are only pennies apart. Where differences do exist, even the Employer's costing shows that the Parties are only $369 apart for the total for all wages for all three years. The Union argued that the comparables show that the increases in total cost to the Agency are based on a unique circumstance having to do with health insurance premiums. In any event both offers provide for total package increases that are less than any district in the comparable group for both years. The Union's wage offer and total economic package more nearly reflect the settlements of comparable districts for which the Arbitrator has data for such comparisons.

Therefore, the Union asked that the Arbitrator find that its offer in full most nearly complies with the statutory

criteria and asked that its offer along with previously stipulated items constitute the agreement between the Parties for the three years of the agreement.

EMPLOYER'S POSITION

The following represents the arguments and contentions made on behalf of the Employer at the hearing and in its initial and reply briefs:

CESAs are unique agencies. Therefore, the determination of the appropriate comparable pool is a difficult task. The Agency proposes to use all the school districts served by CESA #12 and other unionized CESAs as the comparable pool for economics. With respect to the sub-contracting issue, the Agency proposes to use other CESAs as the comparable pool. With respect to economic comparables, the Union's position is that the districts served by CESA #12 should be broken down into primary and secondary comparables, primary comparables being those districts where CESA #12 employees work and live, and the secondary comparables being the other school districts served by CESA #12. The Union has not presented any data in support of its position to create a primary and secondary pool of comparables as noted above. If the local labor market is the most valid comparable pool, then the Union has not provided information regarding the local private sector. The Agency cited a decision by Arbitrator Fleischli involving

CESA #14 in support of its position. The Agency's position is that other CESAs form a comparable pool which meets the statutory criterion.

With respect to non-economic issues, again the Agency referred to Arbitrator Fleischli's award involving CESA #14. He found that a comparison with other CESA districts would be the most appropriate comparison to make. Therefore, the Agency argued that the most appropriate comparable pool for the issue of sub-contracting would be a like group, that being other CESAs rather than school districts. The Agency noted that CESAs are practically self funded receiving only $25,000 from the state for administration. CESAs are run and paid for by participating school districts. CESA cannot assess any costs unless a district enters into a specific contract for service. CESAs have no tax levying authority.

The Agency argued that the most appropriate comparisons should be a combination of school districts served by CESA #12 and other CESAs for economic purposes and other CESAs on the issue of sub-contracting.

With respect to wages, the Agency believes that they are of secondary importance in the dispute. The Parties have agreed on the 1991-92 salary schedule, and the salary schedules of the Agency and the Union are very close for the remaining two years

of the contract. The Agency did note there are some disparities between the costing schedule of the Union and those of the Employer. It would argue that the Agency costing is the most accurate. Based on the wage settlement and the cost of living increase, the Agency would argue that its offer would be closest to the statutory criteria, although both offers are certainly in line.

With respect to placement of employees on the salary schedule and advancement through the salary schedule, the Union has identified this as the most important issue in this case. The Agency disagrees with this assessment. The Agency believes that the sub-contracting issue is the predominant issue in this arbitration. The Parties have identified three different groups of employees, those hired prior to July 1, 1991, those hired between July 1, 1991 and when the arbitration award is issued, and those who will be hired after this arbitration is issued. The Agency maintains that the Union's proposal is very complex and hard to understand and administer. The Agency argued that the majority of employees would be placed at the same level and step under its proposal as under the Union's proposal. The offers differ only with respect to those employees who are moving through the salary schedule.

The Parties also differ with respect to the placement and advancement of employees hired between July 1, 1991 and the

issuance of the award in this matter. The Agency noted that under the Union's proposal all would receive a percentage increase on July 1, and then employees would have to wait until their anniversary date for their increment increase. That calculation will have to be made for approximately 12 employees, all of whom have different hiring dates. The Agency believes its proposal is more reasonable since employees do not have to wait until their anniversary dates to receive the increment increase and bookkeeping is made simpler, since the bookkeeping department does not have to calculate how many hours an employee works prior to and after the employee's anniversary date.

Finally, for those employees hired after the 1991-94 arbitration award, the Agency's offer attempts to strike a reasonable compromise between the current practice and Board policy. The Union's proposal would be a drastic change in the status quo of an administrative procedure. The Agency maintained that under commonly accepted principles in Wisconsin interest arbitration, the Union has not demonstrated a need for the change. It has not established exceptional arguments or provided a quid pro quo for the proposed change in the status quo. The Union argued in its brief that there is no status quo in this case since this is the first contract between the Parties. The Agency submitted that the Union's argument is misplaced since there was a status quo for many provisions from which the two Parties had to start bargaining and which have been

agreed to by the Parties prior to this proceeding. A status quo existed for wage schedule adjustments. In addition, the Agency noted that it had utilized an increment movement system based on anniversary dates. The Agency has proven that the anniversary system creates problems. Arbitrators have found status quo exists in an initial contract and cited an award by Arbitrator Briggs in support of its position. The Agency strongly disputed the Union's contentions that there are inequities in the Employer's offer and would point out that its own example involving an employee, Matt Ollanketo, is not adversely affected by the Agency's offer as was portrayed by the Union. In addition, most employees are working their way through the salary schedule. Employees who have been hired during the 1991-92 and 1992-93 school years all have hire dates between July 1 and January 1, and they would benefit by the Agency's position. The Agency also disputed the Union's costing of the respective increment proposal. Finally, the Agency noted that the authority cited by the Union, that being Arbitrator Yaffe's decision in the Fort-Atkinson School District case, is lukewarm at best. Fort-Atkinson is distinguishable from the present situation.

With respect to the sub-contracting issue, CESAs are unique and unusual operating entities that are essentially owned and operated by the school districts that they serve. They are almost totally at the mercy of the local school districts for revenues. It is absolutely essential that CESA #12 remain

flexible and be able to operate in an efficient and cost effective manner. Districts may drop or add programs from year to year based on the smallest of incremental cost increases and decreases. Since CESA #12 is the smallest of the 12 CESAs in Wisconsin, it is particularly vulnerable to these changes in operating income.

Because of the above, it is the Agency's proposal with respect to sub-contracting that is the more reasonable offer before the Arbitrator. The Union's offer is much too restrictive. The very nature of its business demands that the Agency be both flexible and cost effective from year to year. This is absolutely critical to the Agency's survival. The Agency disagrees with the Union's characterization of the two examples where sub-contracting led to the layoff of an employee. The Agency contended that neither of these sub-contracts would have been possible under the Union's language. Sub-contracting is a reality and a necessity for this Agency. Sub-contracting is looked at every year as a means of being more cost effective in delivering programs and services to school districts. The Agency's only criterion for determining the effective means of packaging programs and services to school districts is which method of delivering services is most cost effective.

The Agency argued that Employer Exhibit #19 shows that seven of the CESAs are not unionized and, therefore, have an

unlimited right to sub-contract. One of the unionized CESAs has language similar to that proposed by the Agency. The other three unionized contracts do not contain any provision and such contracts would be open for negotiation regarding sub-contracting. The Arbitrator's decision in this matter will have an impact on CESAs around the state. This is a very important issue throughout the state of Wisconsin.

The Agency is only asking the Arbitrator to retain a right that it has always had in the past. That right has been exercised in a reasonable and responsible manner. The issue of sub-contracting is a mandatory subject of bargaining and should be dealt with in bargaining. Therefore, the issue of sub-contracting is a critical issue in an initial contract. The Agency believes that if it loses the right to sub-contract in this the initial round of bargaining, it will be difficult, if not impossible, to regain that right in later negotiations. The Agency has acted responsibly in the past with respect to sub-contracting and if the Union believes that job security is an important part of any Collective Bargaining Agreement, the Agency would argue that the best guarantee for job security is to keep the Agency fiscally viable. If the Agency goes out of business, all of the jobs will be lost. This is particulary true since the Agency is totally dependent on the good will of the school districts which it serves. While the Union argued that sub-contracting could be used as a way for the Agency to skirt the

just cause provisions of the contract, the Agency fully agrees that sub-contracting should not be a subterfuge for discharging employees without just cause. If this were to happen, the Union would challenge the Agency in an appropriate forum. The Union argued that the public will not be harmed by the Union's offer. The Agency argued that the statute requires that the interests and welfare of the public be part of the determination. In any event, the Agency believes that the public would be harmed since the CESA's mission is to "serve the educational needs in all areas of Wisconsin by serving as a link both between school districts and between school districts and the state." The public is harmed if the Agency cannot adjust and adapt to changing economic conditions. The Agency believes that the comparables show that its position with respect to the sub-contracting issue is the most reasonable and that, along with the other arguments made above, indicate that it should be the Agency's position which is selected.

The Agency asserted that the outcome of the arbitration hinges on three issued--wages, placement and movement on the salary schedule, and sub-contracting. It believes that the evidence and arguments reflect that it is the Agency's offer which is most reasonable and more closely follows the statutory criteria and should be the one selected by the Arbitrator.

DISCUSSION AND OPINION

The Parties have presented testimony and extensive arguments in their initial and reply briefs regarding the three outstanding issues in this case. Predictably, the result is a very close decision with excellent arguments being made on behalf of both sides.

The Arbitrator feels constrained to comment on the comparables put forward by both sides. The comparables do not offer determinative guidance with respect to the outstanding issues in this case. This is a first negotiation and the Arbitrator believes that the comparables should be defined so as to provide guidance to future negotiations.

After consideration of the arguments presented by the Parties and as noted above, the Arbitrator has determined that the appropriate comparables for economic issues would be primarily all school districts within CESA #12. The Arbitrator does believe, however, that at least some additional weight should be given to those districts wherein CESA has employees providing services. Secondary comparables are provided by all of the other 11 CESAs within the state of Wisconsin with substantially more weight given to CESAs 8, 9, 10 and 11.

With respect to non-economic operational issues, the Arbitrator is persuaded that CESAs are a unique entity, much different than the normal school district and that appropriate comparables for those issues would be all CESAs within the state with again more substantial weight given to CESAs 8, 9, 10 and 11. The rationale for the above is based on criteria that has been developed by arbitrators over the years that is 1. contiguous entities 2. employing like positions in a reasonably close geographic area, and 3. providing similar work in comparable communities. Because of the above, the Arbitrator has determined that the weighting of comparables is appropriate based on their relevancy to CESA #12 and the labor market wherein the hiring takes place. Based on the foregoing, the Arbitrator finds that the delineated comparables are appropriate for the consideration of the outstanding issues in this case.

There was much argument and discussion between the Parties regarding the status quo. The Union's main contention is that since this is an initial contract, the status quo does not exist. The Arbitrator is not persuaded by this argument. All bargaining has a starting point, and the starting point in this negotiation is the terms and conditions that were in existence prior to the Union's representation of this group of employees. Obviously, the Union and the Employer found much to agree upon including all fringe benefit issues, language items, and even the wage increases for the first year of the contract. They have reduced

their issues to only three. Much of this progress can be attributed to the utilization of the concept of status quo as a beginning point for negotiations. Therefore, the Arbitrator finds that the concepts concerning status quo are appropriate to his consideration of the issues before him.

When one side or another wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the Party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. It is the Union that wishes to alter the status of the collective bargaining relationship in this case. The Union has asked for a new system of incremental increases and a significant change in the previous sub-contracting practice of the Employer. Therefore, it is the Union that bears an extra burden in this case since it is the Union that proposes these significant changes. The two items to which the status quo concept applies do not carry the same weight, i.e. they do not deviate from the previous status quo with the same intensity. The placement and increments proposal of the Union, while having some economic impact, do not have the same effect on the Employer

as the Union's proposal in the sub-contracting area. This is borne out by the Union's contention that it is the placement and increment proposal which is the key and most important proposal of this arbitration while the Employer's position is that the sub-contracting proposal is the most far reaching proposal. Therefore, the Arbitrator must look at each of the three open issues with respect to the statutory criteria and in particular the two items noted above and determine which side's proposal is more reasonable under the circumstances.

Regarding the wage issue, for the second and third year of the contract the Parties' offers are almost indistinguishable, particularly based on total wage costs for the duration of the Agreement. The Arbitrator finds that either side's wage proposal fully meets the statutory criteria, therefore, the Arbitrator finds that the wage proposals are not determinative as to which side's position is more reasonable under the statute.

With respect to placement and increments, the Arbitrator has determined that it is the Union's proposal that is favored, notwithstanding the status quo arguments made by the Employer. The Employer's proposal would essentially treat employees differently based on which half of the calendar year they were hired, while the Union's proposal would treat all employees the same based on their hiring anniversary date. The Employer's argument that this would be an undue burden and difficult

bookkeeping simply is not persuasive since there are relatively few employees and the split check calculations would be simple to calculate.

In addition, because of the nature of the Agency's business, employees are hired throughout the year unlike school districts which conduct the majority of their hiring decisions at a specified time period prior to the beginning of the school year. Clearly, the comparables somewhat favor the Union's position. The inequities that would arise from the Employer's proposal all add up to a result which favors the Union's position.

With respect to the sub-contracting proposals, the Arbitrator has been persuaded by the Employer's arguments regarding the importance of the continuation of its practice regarding sub-contracting. Contrary to the Union's arguments, the Employer has shown that it has acted responsively and reasonably when faced with decisions regarding sub-contracting. If the Employer attempts to circumvent the just cause standard, this would certainly be a situation that would be subject to arbitral review. There is no showing that the Employer would utilize this provision to circumvent the other aspects of the Collective Bargaining Agreement, and in any event even where management rights are clearly spelled out in a collective bargaining agreement, the Employer is charged with acting

reasonably and not in an arbitrary and capricious manner. This Arbitrator has had a number of arbitration cases in which he was charged with reviewing management decisions with respect to the above tests. Therefore there does not exist strong reasons or proven need.

The sub-contract comparables do somewhat favor the Employer's position. The Arbitrator, having found that those CESAs where the contract is silent are neutral and those CESAs which are not unionized or which have provisions allowing sub-contracting, would favor the Employer's position. As noted above, the Arbitrator does not feel that other school districts within or outside of the CESA #12 service area are simply not comparable for this issue, there being a substantial difference in their method of operation and funding. Therefore the Union has not shown comparables or a quid pro quo. In any event, without this provision CESA #12 would not have the opportunity to compete if a district decided to contract for services directly thus depriving the employer of potential revenue.

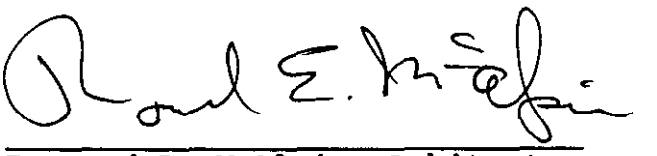
In the absence of a showing that the Employer has acted unreasonably or irresponsibly in the past or is likely to act so in the future, the Arbitrator finds that under the concepts of status quo and the other statutory criteria, the sub-contracting issue favors the Employer's position.

All in all this leaves the Arbitrator with a very difficult decision. The wage issues are not determinative in this case. The potential harm to the Employer and the status quo considerations of the sub-contracting proposals slightly overshadow the effect on the bargaining unit of the Employer's placement and increment proposal versus the Union's proposal. The Arbitrator notes that those employees negatively affected by the Employer's increment and placement proposal will receive the appropriate pay eventually. The Arbitrator finds that on a very close call it is the Employer's proposals that most nearly meet the statutory requirements and criteria and he will so award in this case.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of CESA #12 is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 1991-1994 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 15th day of October, 1993.



Raymond E. McAlpin, Arbitrator