STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of an Interest Arbitration	:	
	:	
between	:	
	:	Case 18
SHAWANO-GRESHAM EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION/WEAC/NEA	:	No. 46708
	:	INT/ARB-6276
and	:	Decision No. 27726-A
	:	
SHAWANO-GRESHAM SCHOOL DISTRICT	:	

Appearances:

Charles S. Garnier, WEAC Coordinator, Northeast Regional Office, appearing on behalf of the Shawano-Gresham Educational Support Personnel Association/WEAC/NEA.

Godfrey and Kahn, S.C. by Dennis W. Rader, Attorney appearing on behalf of the Shawano-Gresham School District.

Background

The Shawano-Gresham Educational Support Personnel Association, hereafter the Association, and the Shawano-Gresham School District, hereafter the District, on June 18, 1991 exchanged their initial proposals on matters to be included in their initial collective bargaining agreement. Thereafter, the parties met on six occasions in efforts to reach an agreement. On December 16, 1991 the Association filed a petition with the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On July 19, 1993 the WERC certified that an impasse had been reached and ordered arbitration.

On August 18, 1993 the WERC, on the advice of the parties, appointed the undersigned to arbitrate the dispute. A hearing was held on November 15, 1993 in Shawano, Wisconsin at which time the parties were present and given full opportunity to present written and oral evidence. Briefs were filed by the parties and the last of which were exchanged through the arbitrator on January 28, 1994.

In addition, on January 21, 1994 and again on January 31, 1994 through Attorney Steven Pieroni, Staff Counsel for the Wisconsin Education Association Council, the Association filed a supplemental brief before the arbitrator arguing that the District had improperly attempted to change its certified final offer. The District replied with a statement of its position on the allegation on January 26 and February 3, 1994. The arbitrator notified the parties of his decision on the Association's allegation concerning the District's final offer on April 10, 1994.

Final Offers of the Parties

As indicated above, in a communication to the arbitrator on January 24, 1994 the Association challenged the District's final offer as contained in District Exhibit #5. Specifically, the Association contended that the District was attempting to amend the certified final offer made to the Association on June 11, 1993. The Association asserted that the amended final offer would substantially enhance the District's position, that only the WERC has the authority to permit a unilateral change once the

final offers have been certified and, finally, that the Wisconsin Administrative Code, Chapter 32.10(3) clearly states that a final offer may be changed only with the consent of the other party. In support of its position, the Association cited Peshtigo Educational Support Personnel Association v. Peshtigo School District, WERC Dec. No. 27730-A, January 6, 1994.

The District responded that it was not making a request to alter its final offer but only to make a number of corrections to minor, unintended miscalculations. The District cited Arbitrator Baron's decision in Cassville School District, Decision No. 27188-A (10-3-92) as permitting the rectification of "harmless errors." The District also offers a portion of the reply brief submitted by Mr. Garnier in conjunction with the Oconto Falls Educational Support Personnel interest arbitration then before Arbitrator Morris Slavney.

In my reply to the parties on April 10, 1994 the undersigned responded as follows. First, the few pages taken from Mr. Garnier's reply brief are but a fragment of the entire record before Arbitrator Slavney. In the absence of that record there is no context by which to judge the relevance or value of this fragment. Second, Arbitrator Baron, in Cassville, indeed, excused the omission of a specific statement regarding vertical\horizontal increments from that Association's final offer as a "harmless" error. But the omitted statement aside, Arbitrator Baron also was explicit that her award was based solely on the certified final offers of the parties to that

dispute.

Third, on July 19, 1993, the WERC officially closed its investigation of the instant dispute following receipt of the parties' final offers. As the Association maintains, the language of the Wisconsin Administrative Code in ERB 32.10(3), Modification of Final Offers Following Close of Investigation is explicit. When an investigation has been closed and the final offers are certified, "a party may modify its final offer only with the consent of the other party." The Association makes clear that it has not given such consent.

Fourth, the Association argues that the District's modified final off would make substantial changes including affecting the wages of a significant number of its employees as well as raising the value of the District's total package by .5%. While the modifications, in the District's view, may have been necessitated by previous miscalculations, on their face, the consequences of these corrections are potentially more serious than the harmless omission of the statement which drew Arbitrator Baron's scrutiny in Cassville.

In sum, the undersigned's evaluation of the evidence and arguments as the parties have presented them lead me inevitably to conclude that this dispute must be governed by the final offers of the parties as they were certified by the WERC on July 19, 1993. The Association's objection is sustained.

The Unresolved Issues in the Final Offers of the Parties

A number of issues were tentatively settled after the final

offers were certified by the WERC. Those which remained unresolved at the time of the arbitration hearing are listed below by topic.

1. **DEFINITION OF EMPLOYEE AND PROBATIONARY STATUS**

Association Proposal

8.01 Regular Full-Time: Employees in this category shall include employees who are assigned to a position for thirty-five (35) or more hours per week.

8.02 Regular Part-Time: Employees in this category shall include those employees who are assigned to a position for less than thirty-five (35) hours per week.

District Proposal

Section 8.02: A regular full-time employee is any employee who works 1820 hours or more per year.

Section 8.03: A regular part-time employee is any employee who works less than 1820 hours per year.

Section 8.04: Any employee who works less than one thousand (1000) hours per year shall not be eligible for fringe benefits unless specifically provided for in this agreement.

2. **SENIORITY**

Association Proposal

11.03 For purposes of this Agreement, all employees shall be placed in one or more of the following classifications based on their current assignments.

(a) Janitor and Cleaner
(b) Maintenance
(c) Secretarial/Bookkeeper
(d) Cook and Assistant Cook/Server
(e) Aide I (as defined in Appendix A)
(f) Aide II (as defined in Appendix A)

District Proposal

Change Section 10.03 to read as follows:

For purposes of this Agreement, all employees shall be placed in one or more of the following classifications based

on their current assignments:

(a)	Janitor	(e)	Secretarial/Bookkeeper
(b)	Maintenance	(f)	Cook
(c)	Certified Aide	(g)	Cook/Server part-time
(d)	Aide	(h)	Cleaner part-time

3. **WORK SCHEDULES AND OVERTIME**

Association Proposal

14.01 Work Year: The normal work year for each employee shall be the same as he/she enjoyed during the 1990-91 fiscal year of the District. The number of days worked by employees during the District's fiscal year may be changed by the District with the providing of two weeks notice to the employee and the Association. Any reductions in the length of any employee's work year shall not result in any reduction in pro-rated benefits for that fiscal year. This section shall not be deemed to restrict the ability of the District to implement provisions of Article XII, Layoff, of this Agreement.

14.02 Full-time Employee Work Day and Work Week

14.02.1 Secretaries

The normal work week will be 40 hours, Monday through Friday. This shall consist of 8 hours per day from 8:00 a.m. to 5:00 p.m. 5 days per week, plus an unpaid lunch break of at least 30 minute duration. (Effective upon the arbitration award)

The district office, school offices, and secretaries will maintain regular schedules during the work year even though teachers and students are not present. Regular hours when students are not present are from 8: a.m. to 4:00 p.m. including one hour off with pay for lunch. This clause shall not be deemed to restrict the ability of the District to implement provisions of Article XII, Layoff.

14.02.2 Cooks

The normal work week shall be 35 hours, Monday through Friday, consisting of seven (7) continuous hours per day from 7:00 a.m. to 2:00 p.m. including a paid, unspecified lunch break of one-half hour in duration. (Cook/servers shall not receive a paid lunch.) On the days that are designated as kitchen preparation days prior to the opening and following the close of the school year hours will be set by the District

Administrator or his/her designee and shall consist of the aforementioned seven (7) continuous hours including one-half hour with pay for lunch. This clause shall not be deemed to restrict the ability of the District to implement provisions of Article XII, Layoff.

14.02.3 Janitors and Maintenance Workers

(1) The normal work seek shall be 45 hours per week Monday through Saturday (a.m.), plus a 30 minute unpaid lunch break each day. All hours worked beyond 40 hours per week will be paid at a rate of 1-1/2 times the regular hourly rate. Work schedules will be set by the Supervisor of Buildings and Grounds with the approval of the Superintendent.

(2) Night Schedule: 3:00 p.m. to 12:00 a.m. Monday through Friday including a twenty (20) minute paid meal break.

(3) Custodians assigned to night work shall follow the regular night schedule, however, they will remain on duty until the building is cleared, see that all lights are out and all entrance doors are locked. This clause shall not be deemed to reinstate the ability of the District to implement provisions of Article XII, Layoff.

14.02.4 Aides

All full-time Aides, including "one-on-One handicapped aides" and "teachers' secretaries", shall work a 37.5 hour week, Monday through Friday consisting of seven and one-half continuous hours per day from 7:00 a.m. to 4:30 p.m. plus a 30 minute unpaid lunch break per day. Regular hours when students are not present are from 8:00 a.m. to 3:30 p.m. including one hour, with pay, for lunch.

14.02.5 Work hours for all employees shall be continuous hours (i.e., except for the aforementioned unpaid lunch breaks, there shall be no other unpaid work breaks during an employee's work day).

District Proposal

Section 13.01. This Article is intended only to provide a basis for calculating overtime and shall not be construed as a guarantee of normal hours of work per day or per week.

Compensation shall not be paid more than once for the same hours of work. All work schedules and work hours shall be posted or provided to employees prior to the beginning of the school year.

Section 13.02. Should it be necessary in the judgement of the employer to establish daily or weekly work schedules departing from the normal work day or work week, notice of such change shall be given to the employee affected as far in advance as is reasonably practicable.

Section 13.03. Custodians and maintenance personnel scheduled more than forty hours (40) hours per week from 1990-91 forward, shall have their hours reduced annually beginning in 1993-94 to offset any wage increase guaranteeing no reduction in contract year wages until a normal forty (40) hours per week level is reached. (Effective upon the arbitration award.)

Custodians and maintenance personnel working the daytime shift shall have a thirty (30) minute unpaid lunch break each day. Custodians staying on school premises and who are available for on-call duty during the lunch period will be provided lunch by the District. Custodians working the night schedule will receive a twenty (20) minute paid meal break.

Section 13.__. Normal work hours for secretaries shall be eight (8) hours per day with an unpaid lunch. (Effective upon the arbitration award.)

Section 13.__. Normal work hours for aides (excluding regular part-time aides) shall be seven and one-half (7-1/2) continuous hours, including a thirty (30) minute unpaid lunch break per day. (Effective upon the arbitration award.)

Section 13.__. Cooks, excluding regular part-time cook/servers, shall receive a paid unspecified lunch break of one-half (1/2) hour in duration.

Section 13.__. Union proposal 14.03, 14.04,14.05. 14.06,14.07.1 are acceptable.

4. **Holiday Pay**

Association Proposal

14.07: If an employee is called into work on a holiday he/she will be paid his/her holiday pay plus all time worked at a rate of time and one-half.

District Proposal

No District proposal.

5. **Emergency School Closing**

Association Proposal

14.08 Emergency Closing

14.08.1 When classroom instruction is canceled, or if instruction is held but ended early in a school day because of an emergency situation all personnel will be expected to report for work (or remain at work) except for aides, cooks, part-time custodians, and (on a case-by-case basis) other employees designated by the District Administrator. When it is impossible for such employees to report to work, they shall be granted Emergency Leave, if available, under the provisions of Section 18.05 of this Agreement for the number of hours that they were unable to get to work.

14.08.2 When classroom instruction is canceled or if instruction is held but ended early in a school day because of an emergency situation, all other employees not called in or expected to work will not receive pay but shall be granted Emergency Leave, if available, under provisions of Section 18.05 of this Agreement for the number of hours that they were not paid.

District Proposal

Section 22.01: Announcements informing employees of school closing shall be made on the local radio station. On the day of inclement weather, employees shall be responsible to listen for this information. Employees are subject to call-in for plant safety, maintenance, snow removal and other reasons given by the District Administrator. If school is canceled, employees not called in or expected to work will not receive pay.

If school is held and closed early, employees shall be released from duties, if they are not required by the District Administrator/designee to perform their regular duties. Under said early dismissal, employees sent home early shall may use available emergency leave.

5. **Pay for Substituting for an Absent Employee**

Association Proposal

Any employee who substitutes for an absent employee shall be paid at the absent employee's rate of pay or at the employee's rate of pay, whichever is higher.

District Proposal

No Proposal

6. **Vacations**

Association Proposal

17.01 All regular full-time or regular part-time employees working 20 or more hours per week for a full calendar year, who have been continuously employed for a period of at least twelve (12) months shall be entitled to vacation as follows:

17.01.1	6 months	One week
	After one year	Two weeks
	10-19 years	Three weeks
	20-24 years	Four weeks
	25 or more	Five weeks

17.02 All years of vacation accrual shall be computed from the employee's anniversary date of employment.

17.03 Employees may take vacation on days of their choosing upon notification to their immediate superior no less than fifteen (15) working days prior to the start of said vacation.

17.05 Vacation pay shall be computed at the employee's regular scheduled hours at the employee's regular hourly straight time rate of pay for each week of vacation.

17.07 A "week" of vacation for each employee shall be the same as his or her regular work week.

17.08 Should a paid holiday fall during an employee's vacation, his/her vacation period shall be extended one (1) day for each holiday.

[Note: The Association also accepts the inclusion of the District's proposal for Section 17.04.]

District Proposal

Section 17.01: All regular full-time or regular part-time employees working 20 or more hours per week for a full calendar year, who have been continuously employed for a period of at least twelve (12) months shall be entitled to vacation as follows:

Years of Continuous Service	Length of Vacation
One (1)	One (1) week (five work days)

Two (2)	Two (2) weeks (ten work days)
Eight (8)	Three (3) weeks (fifteen work days)
Seventeen (17)	Four (4) weeks (twenty work days)

Any employees receiving more vacation than the proposed schedule shall retain all vacation rights in effect during the 1990-91 school year.

Section 17.03: Selection of vacation days must have prior written approval of the employee's immediate supervisor. A minimum of fifteen (15) days of advance notice in writing, must be filed by the employee with the District Administrator. It is understood that the employer may limit the length of vacation any employee takes at any one time and also reserves the right to approve the scheduling of vacations so as not to interrupt the operations of the School District. Employees having three (3) weeks of vacation may take up to two (2) days at any time during the year; however, all other vacation days must be taken during the summer when school is not in session or during vacation periods when school is not session.

Section 17.06: Should there be any conflict between employees desiring the same vacation period, the employee whose absence would least disrupt the school operation as determined by the District Administrator shall be granted vacation leave. The District Administrator's decision shall not be grievable. Employees who began employment prior to December 31st will be considered a one (1) year employee on the following July 1st of their employment. Thereafter, all years of vacation accrual shall be computed on a July 1-June 30 fiscal year. Employees who began employment prior to July 1st shall receive prorated vacation for the prior year after reaching the first July 1 of their employment.

7. **Paid and Unpaid Leaves**

Association Proposal

18.01 Employees will accumulate sick leave according to the following schedule:

Employee Category	No. of Sick Leave Days/Year Accumulated One (1) per Month of Employment	Maximum Accumulation
1820+ hour employees	12	95
school year employees (720 hours or more per year)	10	95

Personnel who have exhausted their sick leave credit will be

deducted in salary an amount equal to one day's salary for each day the individual exceeds his or her sick leave credit. Additional sick leave accumulation will not be granted for each year until the employee has completed one full day of work.

18.01.1 If an employee is absent from work more than three (3) consecutive days, the District may require a physician's statement verifying that the employee is sick.

18.01.3 With the approval of the employee's health care provider, employees may be required to report for work while recuperating from an accident or injury if appropriate work is provided for the employee.

18.02 Absences Other Than Sick Leave

18.02.1 Funeral Leave

A maximum of three (3) days shall be allowed when requested due to a death in the immediate family provided that such three (3) day allowance shall not extend beyond two work days after the funeral. The immediate family is interpreted to include: father, mother, sister, brother, husband, wife, son, daughter, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandchild, step-brother, and step-sister and any person whether related by blood or not with whom such employee lived in the same household.

18.03 Illness in the Family

A maximum of two (2) days each year shall be allowed for absence due to illness of members of the immediate family or household, when the illness is critical and requires the immediate presence of the employee. Absence from work is not allowed to take care of a patient but allowed only when the illness of a relative is considered at a crisis state or when surgery requires the attendance of an employee. Immediate family includes parent, spouse, or child.

18.05 Emergency Leave

Up to three (3) days per year of emergency leave shall be allowed in the event that a serious, unexpected situation occurs that calls for immediate action by the employee and absence from work. Emergency leave shall also be granted for occurrences that prevent employees from reporting to work and over which they have no control. Anytime school is dismissed because of weather conditions or other emergencies, time lost may be classified as emergency leave,

at the employee's discretion.

18.06 District Personal Leave

Up to two (2) days of leave for personal business shall be allowed to conduct necessary personal matters which cannot be conducted after school hours or on weekends. An employee shall file a written request with the District Administrator or his/her designee seven (7) days beforehand, if possible.

18.08 Jury - Court Leave

Absence resulting from a summons to serve on jury duty or to appear before any court or tribunal (through no fault of his/her own) will be considered as an excused absence with pay. The absence with pay shall be limited to the difference between the amount of compensation the employee might receive as a result of the absence and the regular daily rate. The employee shall present the District with a statement showing the amount of pay received as a result of the absence.

18.10 Extended Leaves

18.10.1 After one year of service and upon exhaustion of accumulated sick leave benefits, the Board may, by special action, grant extended sick leave without pay up to a maximum of one (1) year plus the unfinished year to an employee who submits such as request.

18.10.1 An employee on extended leave which has been approved by the Board prior to commencement of the leave will return at the same position on the salary schedule where he/she would have been at the beginning of his/her leave.

18.10.3 Employees on extended leave will be permitted to continue insurance benefits at their own expense.

18.11 Unauthorized Absences

All unauthorized absences shall be deducted from the employee's pay according to the following formula: number of days absent multiplied by the employee's daily pay rate. If a request for an authorized absence is denied and the employee willfully absents himself/herself from his/her work station for any two days or more,or makes false representation to obtain such leave, this absence can be cause for dismissal.

District Proposal

Section 18.01: Employees will accumulate sick leave according to the following schedule:

Employee Category	No. of Sick Leave Days/Year Accumulated One (1) per Month of Employment	Maximum Accumulation
1820+ hour employees	12	95
school year employees (720 hours or more per year	10	95

Sick leave will be kept in hours based on the employee's normal work day.

All employees must report for work, while recouping from accident or injury if appropriate work is provided for the employee. All employees absent from work due to accident or injury are to have their doctor provide a description of their injury, the prescribed treatment, and what the employee can do.

Section 19.01.1: Up to three (3) days of Funeral Leave shall be granted per year of occurrence in the event of the death of: father, mother, sister, brother, husband, wife, son, daughter, father-in-law, mother-in-law, provided such allowance shall not extend beyond one (1) work day after the funeral.

Section 19.01.2: One day of Funeral Leave per occurrence shall be granted for the death of a sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandchild, stepbrother, and stepsister and any person whether related by blood or not with whom such employee lived in the same household for attendance at the funeral.

Up to a cumulative total maximum of two (2) days shall be granted per year for the following:

Section 19.02: Illness of parent, spouse or child when illness is critical or surgery is to be performed.

Section 19.03: Emergency Serious, unexpected situations that call for immediate action by the employee requiring leaving the job. Also, for occurrences that prevent the employee from reporting to work and over which they have no control. Anytime school is dismissed because of weather conditions, time lost will be classified as emergency.

Section 19.04: Personal for conducting personal business that cannot be conducted outside of working hours.

Section 19.05: All leave requests under this article are subject to verification.

Section 20.01: Absence resulting from a summons to serve on jury duty will be considered as an excused absence with pay. The absence with pay shall be limited to the difference between the amount of compensation the employee might receive as a result of the absence and the regular daily salary rate. The employee shall present the District with a statement showing the amount of pay received as a result of the absence.

8. **Insurance**

Association Proposal

19.01 Health, Dental and Vision Insurance - Effective thirty (30) days after the ratification of this Agreement or receipt of the Arbitrator's award the Board will pay for the following portion of the annual single or family combined health, dental and vision insurance premium according to the following chart:

19.01.1	Hours Worked Per Fiscal Year	Percent of Board Payment
	1260 and above	96.5% for family premium 98.25% for single premium
	720 to 1259	Direct downward proration with 1260 constituting 96.5% (F) or 98.25% (S)
	Less than 720 hrs worked	Not eligible for coverage

19.01.1 The employee's premium contribution will be subject to Section 125 of the IRS rules and regulations. The Board of Education will insure that the appropriate filing with the IRS will be completed to insure that the employee's insurance premium contribution will be subject to Section 125.

19.01.3 The specific benefits and coverages as provided in WPS Policy #1252.4 plus the following amendments -- a. $25.00 per visit deductible to the emergency room to a maximum of $100.00/family and $50.00/single policy, b. $25,000 increased stop loss, c. co-pay drug card= $3.00 generic and $5.00 brand name, d. add Value Care Review, are hereby incorporated into this Agreement by reference and shall have the same force and effect as if set forth herein. The parties to this agreement stipulate that any change(s) in administration or carrier, will be mutually agreed to by the parties. Further, if the Board of Education wishes to review the insurance program for change(s), the Board of Education will notify the Association President at least two (2)

weeks in advance of any scheduled meeting to consider change(s). Also, the Association President will appoint Shawano-Gresham ESPA members to the negotiations team to serve as the Association's representatives on a committee with the Board of Education designees to review said change(s). If the Association does not participate in the "Committee" activity, the Board of Education will reserve the right to change administration or carrier as long as the coverage in place as provided for in this section does not change.

19.04 Implementation Procedures

19.04.1 Employees who were heretofore not eligible to receive any or all of the above-mentioned insurances, or who did not choose to participate in such insurances because of the availability of other coverages through their spouses or any other sources shall be eligible to participate in any and all such coverages on an open enrollment basis, effective for a thirty (30) day period commencing with the ratification of the Agreement or receipt of the Arbitrator's decision in the instant case.

19.04.2 Employees who, at the date of Agreement ratification or receipt of the Arbitrator's award, were receiving a greater percentage of premium paid shall remain at that payment level until the premium increases, at which time such employees shall assume up to six percent (6%) of the premium cost.

District Proposal

Section 19.01: Health, Dental and Vision Insurance. Effective thirty (30) days after the ratification of this Agreement or receipt of the Arbitrator's award the Board will pay the following portion of the annual single or family combined health, dental and vision insurance premium according to the following chart:

Section 19.01.1

Hours Worked Per Fiscal Year	Percent of Board Payment
1,260 and above	94% of family and single premium under Section 125 of the IRS code.

All other employees scheduled to work twenty (20) hours for thirty-six (36) weeks (720 hours) or more will be eligible for a prorated percentage payment based on 1,260 hours constituting

94%.

These specific benefits and coverages in effect on July 1, 1992 shall be considered the status quo with respect to benefits and coverages for all employees in the bargaining unit.

Section 19.02.1. Employees will contribute six percent (6%) of the anticipated funding level for participating in the medical, hospitalization, vision, and dental insurance programs, WPS Policy #1252.4, as provided by the Board. The employees' contribution will be subject to Section 125 of the IRS rule and regulations. The Board of Education will insure that the appropriate filing with the IRS will be completed to insure the employees' insurance premium contribution will be subject to Section 125. The specific benefits and coverages as provided in Policy 1252.4 as amended (there shall be a $25.00 per visit deductible to the emergency room to a maximum of $100.00/family and $50.00/single policy holder, $25,000 individual stop loss, and co-pay drug card - $3.00 for generic and $5.00 for brand name) are hereby incorporated into this agreement by reference and shall have the same force and effect as if set forth herein. The parties to this Agreement stipulate that any change(s) in administration or carrier, will be mutually agreed to by the parties. Further, if the Board of Education wishes to review the insurance program for change(s), the Board of Education will notify the ESPA President at least two (2) weeks in advance of any scheduled meeting to consider change(s). Also, the ESPA President will appoint Shawano-Gresham ESPA members to the negotiations team to serve as the Association's representatives on a committee with the Board of Education designees to review such change(s). If the Association does not participate in the "committee" activity, the Board of Education will reserve the right to change administration of the carrier as long as the coverage in place for the current school year does not change.

Section 19.02. Employees currently receiving a greater percentage of the premium shall remain at the current payment level until the premium increases, at which time the employees shall assume up to six percent (6%) of the premium cost.

9. **Term of Agreement**

Association Proposal

23.01 This agreement shall be in full force and effect from July 1, 1991 through June 30, 1994. Unless specifically noted herein, all provisions of this Agreement shall be retroactive to July 1, 1991.

District Proposal

Section 26.01: This agreement shall be in full force and

effect from July 1, 1991 through June 30, 1994. All wages shall be retroactive but benefits and language provisions shall not be retroactive unless specifically noted. Only wages and retirement shall be retroactive.

10. **Wage Categories**

Association Proposal

APPENDIX A: Wage Schedules and Categories

A1.1 Wage Categories are defined as follows:

A.1.2 Aide I- - - - Special Education Aides, Instructional Aides, Library Aides, Title V Tutors, Home/School Coordinators, Teachers' Secretaries*

Aide II- - - - Study Hall Aides, Noon Hour Supervisors, Playground Duty Aides, Lunchroom Monitors, In-Suspension Aides, Detention Aides

Maintenance - All maintenance personnel

Janitor - - - All full-time and part-time janitors

Cleaner - - - All full and part-time cleaning workers

Secy./Bkpr - - All school secretaries and all bookkeepers

Cook - - - - - All cooks

Asst. Cook/Servers - All full and part time servers and assistant cooks

* Employees who currently perform secretarial and/or clerical duties directly to teachers.

District Proposal

Janitor
Maintenance
Certified Aide
Aide
Secretary/Bookkeeper
Cook
Cook/Server Part-time
Cleaner PT

11. **Wage Schedule**

The Association and District final offers are attached to this award in Appendix A.

Statutory Criteria

As set forth in Wis. Stats. 111.70(4)(cm)7, the arbitrator is to consider the following criteria:

A. The lawful authority of the municipal employer.

B. Stipulations of the parties.

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.

D. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

E. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

F. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, 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.

The Positions of the Parties

The Issue of Comparability

The District's Position: The parties are in substantial disagreement over the application of the statutory comparability criteria. For reasons to be set out below, the District maintains that the contiguous unionized school districts of Bonduel, Bowler, Clintonville, Gillett and Menominee Indian are most relevant for comparison purposes with Shawano-Gresham.

In choosing contiguous school districts over athletic conferences for non-certified educational support personnel the District argues as follows. First, it cites a line of arbitral decisions. The central principle that the District draws from these decisions is that non-certified employees are to be treated differently from the certified employee bargaining units. Thus, according to the District,

> "Not only does arbitral opinion discourage the use of the athletic conference in non-certified support staff arbitrations, the athletic conference was deemed inappropriate in the Shawano-Gresham teacher arbitration. Clearly, the Bay Athletic Conference is not appropriate in this, a support staff arbitration."

Second, the District contends that the better criterion is the local labor market as defined by geographic proximity. On the one hand, says the District, Bay Conference schools are influenced by the Green Bay metropolitan area. Shawano-Gresham is a distant, rural district not affected by Green Bay. On the other, Shawano-Gresham recruits its support employees from the

contiguous communities which surround the District. This fact, asserts the District, proximity should be given greater weight when recruiting and hiring occurs in a more localized market.

The Association's Position: The Association maintains, first of all, that the District's professional employee group is an appropriate internal comparable. Thus, holds the Association, there is a substantial community of interest between the support staff and the teachers: (1), both groups are employed by the District; (2), both groups are unionized; (3), both groups have a common funding source; and (4), teachers and support staff work closely with students in a school building work setting.

Second, the Association disputes the District's proposed comparables as too restrictive in relying solely on contiguous school districts. Instead, the Association argues that the proper external comparison set is the unionized school districts of the Bay Athletic Conference: Ashwaubenon, Clintonville, De Pere, Howard-Suamico, Marinette, Pulaski, and West De Pere. With the exception of Marinette, all schools in the Bay Conference are in close geographic proximity to Shawano-Gresham. Further, says the Association, the District also resembles the other Conference schools "in all respects."

Third, the Association points out that the school districts comprising the District's comparables, with the exception of Clintonville, such as Bonduel, Gillett, Bowler and Menominee Indian are much smaller than Shawano-Gresham in enrollment, taxable property and equalized valuation per pupil.

Fourth, the Association contends that a school district need not be contiguous to be geographically proximate. In support of this point, it notes that the cities of Pulaski and Oconto Falls are as close to Shawano as is the village of Bowler or the Menominee Indian School District.

Finally, the Association offers its own list of arbitral awards concluding that, on the one hand,

> ". . . none of the above-referenced arbitrators selected comparability solely on the basis of geographical proximity without regard to size. Also, no arbitrator mentions that contiguous school districts should be selected solely on that basis."

On the other hand, it also contends that there is no agreement among arbitrators regarding the most appropriate group of external comparables in support staff cases.

Discussion

The Issue of the Comparables

The selection of an appropriate set of comparison school districts is complicated in the instant dispute by a number of factors. First, the parties are in conflict over their initial collective bargaining agreement for this bargaining unit. Thus, there is no bargaining history, no tradition and no set of previously agreed upon benchmarks by which arbitrators customarily apply the comparables criteria of the Municipal Employment Labor Relations Act.

Second, the parties also disagree almost completely over which set of comparables to apply. The only instance of agreement is that both sets of comparison lists contain the

Clintonville School District. Otherwise, there is no overlap.

Third, the arbitral authorities cited by the parties are also of mixed applicability. While most make reference to terms such as "geographic proximity", "similar economic conditions", "comparable size" and "the labor market" the terms are not defined precisely and, in fact, are often applied inconsistently. There is also disagreement among arbitrators over the weight to be applied when the criteria are in conflict.

While the process of selecting the comparables is difficult it is not impossible. In this regard, since both parties cite it with approval, it is useful to examine closely Arbitrator Vernon's award in Shawano-Gresham School District, Dec. No. 25099, (9/88) involving the Shawano-Gresham teachers bargaining unit. On the one hand, the District asserts categorically that Arbitrator Vernon rejected the use of the Bay Athletic Conference as a comparable group. However, this is a misstatement of Arbitrator Vernon's conclusion in that case. Vernon, in fact, states ". . . the standard (my emphasis) application of the Athletic Conference as the comparable group is inappropriate under these circumstances." (Op. cit. p. 18) In rejecting the District's argument that contiguous school districts should be adopted as benchmarks, Arbitrator Vernon added, "The problem with this approach is it includes schools that are much too small to be meaningfully comparable in spite of their geographic proximity."(op. cit., p.19)

Arbitrator Vernon enlarged the scope of the concept of

"geographically proximate" to include the following Bay Athletic Conference(BAC) school districts: Pulaski, Seymour, New London, Clintonville, and Marinette. And, because he chose to exclude the districts of the BAC contiguous to the Green Bay metro area - Ashwaubenon, Howard-Suamico, De Pere, and West De Pere - Vernon added the nonconference district of Wittenberg-Birnamwood. Thus, contrary to the District's assertion, Arbitrator Vernon essentially adopted the BAC as his comparables set.

The adoption of Vernon's benchmarks is problematical for the instant dispute. First, the Seymour educational staff are not unionized and, although unionized, the New London non-certified staff are bargaining their first contract. Second, the parties have not provided the undersigned with sufficient data by which to judge the suitability of other, non-conference districts such as Wittenburg-Birnamwood. Thus, for our purposes here, Vernon's comparison set is effectively reduced to three school districts.

In sum, while the District has argued that five contiguous school districts should govern herein the undersigned is persuaded that only Clintonville from that list should be included. While the other four certainly meet any definition of geographical proximity this, by itself, is not sufficient. Shawano-Gresham, with an enrollment of 2,481, dwarfs the remaining districts on the Employer's list. Thus, Bonduel's enrollment is 841, Bowler is 550, Gillett is 833 and Menominee Indian is 1,051. Excluding Clintonville, the average enrollment of these districts is 819. Further, as measured by aid and cost

per pupil there are also other significant differences between Shawano-Gresham and the districts in the Employer's comparison set. (Employer Exhibit #9).

The Employer also asserts that its position is further buttressed by the fact that the labor market for the District's support staff is comprised of the surrounding communities which include Bowler, Bonduel, Gillett and similar nearby areas. While this may be accurate when speaking of labor supply one can not thereby draw the conclusion that these communities are appropriate benchmarks for setting wages or other terms of employment in Shawano-Gresham. As Arbitrator David Johnson concluded in rejecting the possibility that custodians' wages in La Crosse could be affected by the school districts surrounding that city, this would be the proverbial tail wagging the dog. (School District of La Crosse, Dec. No. 16327-A, 9-13-78).

On the other hand, the Association proposes that the Bay Athletic Conference is the appropriate comparables grouping. The undersigned agrees, in part, with this contention. A review of the arbitral authorities cited by the parties suggests that, although the opinions are not unanimous, there is general endorsement that this athletic conference comparisons can be applied to support staff.(Cf. Monroe Association of Support Staff, Dec. No. 26896-A, (11/91) Arbitrator James Stern); and Blackhawk Educational Support Team, Dec. No. 27247-A, (11/92), Arbitrator Richard Bilder; among others.

However, the undersigned also concurs with Arbitrator Vernon

that "Shawano-Gresham is distinguished in many significant respects from the districts contiguous to Green Bay, enough so that wholesale adoption of the Athletic Conference can not be justified." Shawano-Gresham School District, Dec. No. 25099, p. 18 (9/88). Omitting those districts which are truly contiguous, namely Ashwaubenon and Howard-Suamico, the following districts would remain: Clintonville, De Pere, Marinette, Pulaski, and West De Pere.

The resulting comparables grouping is smaller than one might wish it. However, as indicated above, the parties did not provide sufficient information by which either a larger set could be constructed or to develop a second tier of schools.

Discussion of the Issues in Dispute

Definition of Employee Status

The parties' differences stem from the Association's proposal that regular full-time status is reached when an employee works 35 hours or more per week whereas for the District this status is achieved by working 1820 hours or more per year. The Association argues that the District's proposal not only would penalize those employees who work less than a calendar year - as many support staff do - but also is not in accord with either the District's treatment of its teachers or the external comparables provided by the Bay Athletic Conference.

The District disputes these points contending that, because they are hired by contract, the District's professional employees are different, and, indeed are treated differently. In this

respect, says the District, the support staff already receive superior benefits. The District also asserts that the Association fails to show how the staff employees would be hurt by the employee definition it proposes.

The undersigned finds himself in agreement with the District on this issue. The Association does not mount a compelling case that the District's definition treats the support staff unfairly or penalizes them in a significant and harsh manner. Moreover, an examination of the Arbitrator's modified BAC set of comparables also does not support the Association on this issue. Only Marinette School District adopts the Association's language. The De Pere and Pulaski contracts are silent on this issue, Clintonville uses a mixed calendar year and total hours to determine full-time status and West De Pere follows a work week of 40 hours or more per week.

Seniority

The respective proposals on this issue establish the job categories which in turn will control the manner in which progression and layoffs would occur. The Association would create two categories of aides, one category of janitor and cleaner and one category of food service. The District combines the aides into one category, separates janitor and cleaner into two categories and does the same for the food service positions of cook and cook\server.

The Association maintains that its position is supported by its external comparables. It also argues that since so many

levels of experience, skill and training characterize the different aide positions, it is unreasonable to place all aides in the same category. Further, by using two separate categories for janitors and cleaners the former would be denied bumping rights and potentially result in layoffs of more senior janitors.

The District contests the Association's position on the seniority categories contending that the layoff language has been misrepresented and, in fact, no employee will be disadvantaged. Here the District points to the language already accepted as providing that an employee may bump into other classifications as long as they are qualified and have more seniority than the employee they are bumping.

In examining the BAC comparables the undersigned finds a very mixed picture. Thus, Pulaski and Marinette have separate bargaining units for aides and for custodial employees. At West De Pere there is only a custodial unit. De Pere and Clintonville possess broader units but provide for four separate classifications for seniority purposes: food service; clerical; custodial; and aides. On the one hand, there seems to be no practice by which aides would be divided into separate classifications as the Association proposes herein. On the other, there is a practice of combining all food service in one classification and all custodial\cleaners in another classification.

The District contends that the layoff language tentatively agreed to by the parties in Article XI, Section 11.02 enables

employees to bump across classifications provided they are senior and qualified. The arbitrator, however, finds the cited language ambiguous on its face: " Employees . . . shall have the right to bump into a position equal to or closest in number of hours in their classification(s) for which they are qualified . . . " The key phrase is "in their classification(s)".

The evidence is not dispositive of this issue and therefore the arbitrator declines to rule on it.

Work Schedules and Overtime

The parties are in disagreement over a series of clauses which the Association proposes which would specify such matters as the normal work year for all employees, the work week for secretaries, cooks, janitors, maintenance workers and aides together with the basis by which over-time would be paid to each classification.

The District has made no proposal on the normal work year and the Association argues this would give the former total control over all the factors used to determine the employee's yearly salary. The Association argues that its proposal on these items is more reasonable, is consistent with existing District policy including the treatment of teachers, and is supported by its external comparables.

The District argues that the Association's demand is far more restrictive than either its proposal or what comparable districts provide. It notes that the Association requires the District to maintain an employee's benefits in the event of the

reduction in hours, that it includes specific hours of work for employees and that it apparently guarantees that custodians will work 45 hours per week. The District concludes, "It is inherently unfair for a District to be saddled with language which not only guarantees the hours an employee will work but also guarantees five hours of overtime per week for an employee classification."

The arbitrator's examination of the BAC comparables do not support the Association's position on the issues of hours of work and overtime. Only the school district of De Pere approximates the Association's proposal and even it is less restrictive in terms of the extent of notification required before the district can change employee work schedules. Thus, it is not the norm either to specify the normal work year, work week or work day in the collective bargaining agreement; or to require that the District provide two weeks notice for any modification in the length of work weeks, work days or work years.

Nor is the arbitrator persuaded that the voluntary past, or current practice of the District is binding on the parties. Had the language been previously negotiated and the District was now seeking to remove it the arbitrator would see the matter differently. That is not the case here, however. It would make no more sense to hold the Employer to this policy than it would to the accept the District's wage offer on the rationale that this is what it paid employees before unionization.

Holiday Pay

The Association's proposal provides for the payment of time

and one-half when an employee is required to work on a holiday. The District has no counterproposal and apparently indicated to the Association that it believed the issue was covered already in a clause on call-in pay (14.06) previously tentatively agreed to.

Under the circumstances the undersigned concludes that there no longer remains a dispute on this issue.

Emergency School Closings

The Association proposal for emergency school closings allows emergency leave when school is canceled before it begins or when school begins but is then closed and employees are sent home. The District proposes that emergency leave be used only in a situation when school is started and then closed early.

The Association argues that its proposal reflects the District's existing policy and is supported by the external comparables. The District offers no arguments in favor of its position on this issue.

Using the arbitrator's modified BAC comparables, the undersigned can find little to choose from between the offers. Thus, in two school districts the labor contracts are silent on the issue (De Pere and Marinette Custodians), in one the language supports the District's offer (Marinette Paraprofessionals), two districts support the Association's offer (Clintonville, Pulaski Clerical and Pulaski Custodial), and one district supports neither (West De Pere). The patterns are not clearcut and no conclusions can be drawn about this issue. Therefore, no decision will be made and the dispute will necessarily turn on

other issues.

Subbing Pay for Absent Employee

The language for this issue was proposed by the Association to require that if the pay of the absent employee is higher than that of the employee who subs the higher rate shall apply. The District has no counter proposal on this issue.

The Association calls this a "common-sense" clause which is required by equity. The Association offers no evidence from existing policy or comparables to support its position. Under the circumstances the arbitrator finds no basis to favor the Association offer.

Vacations

The parties' positions on vacations differ substantially. The District provides for a maximum of four weeks vacation, the first week would come after one year of service, accrual of vacation time would be on a July to July basis and the supervisor would retain the right to schedule vacations following a 15 day notice. The Association would have a maximum of 5 weeks, would start the first week after six months of service, would accrue vacation time based on the employee's date of hire and, following 15 days notice, would place the decision on scheduling essentially in the hands of the employee.

The Association argues that the District's offer is unreasonable since the existing policy provides for five weeks after 25 years of service. Thus, says the Association, the District is proposing to reduce the existing level of vacation

accumulation for employees. In addition, the Association also asserts that its offer is supported by the external comparables.

For its part, the District maintains that its vacation schedule is consistent with the comparables in terms of the time it takes to move through the schedule. It also argues that no comparable district allows an employee to take one week's vacation after only six months. Further, the District contends that the Association's proposal for an employee to become eligible for one week's vacation after only six months is in direct conflict with language already adopted in Section 17.01. This section requires that an employee be employed continuously for at least twelve months to become entitled to a vacation.

Finally, the District points out that the Association's proposal,

> "severely restricts the District's ability to adequately staff school district buildings. In every comparable school district, the district has the right to refuse a vacation request and/or limit the number of employees allowed vacation at one time."

In reviewing the parties' evidence and arguments concerning vacations the arbitrator finds first that the schedule proposed by the Association does parallel closely the existing policy. However, it also differs in several other important respects: the date of accrual in the existing policy is July 1; and the decision for vacation scheduling is at the discretion of the Superintendent. Both of these matters are contained in the proposal of the District.

In terms of the external comparables the Marinette Custodial

contract supports the Association offer while the De Pere and West De Pere contracts are consistent with the District's offer. In three districts the practice contains elements of both parties' offers (Cintonville and the two units at Pulaski) and one district contract makes no mention of vacations (Marinette Paraprofessional). Whether mixed or consistent with either party's offer, however, in each instance the ultimate approval for the scheduling of the vacation rests with the District.

Taken on balance, the external comparables favor to a slight degree the District's offer on vacations. Second, the Association also has proposed a major step when it would remove from the discretion of the District the authority to approve the timing of an employee's vacation. None of the comparable districts support such a move. Third, the arbitrator shares the District's concern that the Association's proposed schedule permitting one week vacation after six months would in fact be contrary to the language already accepted in Section 17.01. And finally, with regard to the Association's claim that the District's proposed reduction in the maximum allowable vacation time from five to four weeks is unreasonable it provides no evidence to support an alleged loss "for all eligible employees." How many are eligible? How much would be lost? And, to what extent are existing employees protected, if at all, by the District's proposed language in its offer that employees "receiving more vacation than the proposed schedule shall retain all vacation rights in effect during the 1990-91 School year"?

The Association provides no answers to these questions.

In sum, the undersigned finds the District's offer on vacations to be preferred to that of the Association.

Paid and Unpaid Leaves

The parties' offers on this issue focus on sick leave, funeral leave, family illness leave, emergency leave and jury-court leave. The parties essentially agree on the formula for determining the number of sick leave days to which an employee would be entitled. They disagree over the extent to which return to work would be left in the hands of the health care provider and what information on an employee's injury or illness the health care provider must submit to the District. There are also differences in the number of days of paid leave to be provided for each of the other types of leave. In addition, the Association would broaden the concept of paid jury leave to include court appearances.

Generally the Association contends that the District's offer is unreasonably narrow in coverage and provides too few paid days of leave. It also asserts that the external comparables support its position. From its perspective, the District maintains that its comparables indicate that the number of paid leave days vary from three to seven and therefore the ten days of paid leave demanded by the Association are excessive.

As the Association points out, there is a good deal of variance in policy concerning paid leaves across the arbitrator's comparables. The range varies from zero to nine. In a number of

districts (De Pere, Marinette Custodial/ Maintenance, Marinette Paraprofessionals and both Pulaski bargaining units) the paid leave is subtracted from the sick leave. In fact, the Marinette Paraprofessionals receive only two days of paid leave and that is deducted from their one day per month of accumulated sick leave. In the instant dispute, neither the District nor the Association offers would count other forms of paid leave against sick leave.

On the average of the seven contracts in the comparable school districts examined the average days of paid leave provided is closer to the District's offer than to the Associations's. This is especially true when one considers that in many of these districts the paid leave for emergencies, funerals and personal days is subtracted from the sick leave. Further, none of the comparable districts extends the paid jury leave to cover court appearances.

Given the above, the undersigned must conclude that the District's offer for paid leave days is to be preferred.

Insurance

The parties are in essential agreement on a number of points concerning insurance payments. The differences, therefore, are as follows: the Association would require the District to pay 98.25% and 96.5% of the single and family health and vision premiums while the District offers to pay 94% for both sets of premiums. The Association also requests an open enrollment period without a pre-existing conditions test for thirty days commencing with the receipt of the arbitrator's decision. The

District proposes no open enrollment period.

The Association states, and the District does not rebut this, that there is no significant cost difference between the parties' respective insurance offers. For example, the costs are identical until April 1, 1994 and thereafter only $744.18 separates the two offers. In addition, the difference in dental insurance cost would be $96.81. Obviously, the selection of the insurance proposal will not turn on the relative cost of the two offers.

Second, while there are slight differences in the amount of the family and single premium charge to be picked up by the District both offers contain language that would bring the employees' share of the premium cost to 6.0% following receipt of the arbitration award and an increase in premiums.

Third, the District justifies its position on insurance on the basis that its benefits are superior to the school districts it uses as benchmarks. The Association provides no equivalent information for its own comparables.

With regard to the Association's open enrollment request, the District argues that this would give employees just another "kick at the cat" and therefore is not appropriate. The District, however, does not say why this would be inappropriate especially in terms of cost, inconvenience or related factors.

On balance, while the undersigned is sympathetic to the Association's position on open enrollment this is not enough of a significant difference to choose its insurance offer over that of

the District. Otherwise, the offers are virtually indistinguishable. Under the circumstances, therefore, the arbitrator will not indicate a preference for either of the parties' offers.

Wage Categories

The parties are not only in disagreement over salaries but also in several of the wage categories to which the District's employees would be assigned. Thus, while there is agreement on the categories of janitor, maintenance, secretary/bookkeeper and cook there is a difference of opinion concerning the categorization of aides. The District would adopt two groupings identified as "Certified Aide" and "Aide". The Association's approach to these employees would embody categories of "Aide I" and "Aide II".

Apparently, only the special education aides would be in the District's higher wage category. The Association's higher wage Aide I classification would be more inclusive, encompassing special education aides, instructional aides, library aides, Title V tutors, home/school coordinators and teachers' secretaries.

The Association contends that the District's proposed aide categories is a departure from its existing classification system and results in the downgrading of instructional aides and library aides. Moreover, says the Association, the District presented no evidence to support such downgrading. According to the testimony of the Association's witnesses at the arbitration hearing these

are skilled positions that have not changed during the time frame in question. In support of its position on aides, the Association claims that a review of school districts in the BAC shows that the prevailing patterns by which aides are classified in the Conference is consistent with its proposal.

The Association's offer also places teachers' secretaries at the same wage as regular secretaries. The Association rationalizes this position, maintaining that it "sees no reason why these employees should be paid less because they serve teachers rather than administrators."

A final difference between the parties' wage categories is the Association's rejection of the District's treatment of cleaners and cook/servers as part-time workers. Arguing that the contract is silent on the possibility of raising these positions to full-time, the Association worries that the District could unilaterally set the wage for these two groups without bargaining first. Moreover, the Association contends that the District has already abandoned the practice of paying part-time workers lower wages in all other categories and so should do so now for cleaners and cook\servers.

The District contests the inclusion of non-certified aides in its higher wage category (Aide I) contending that the certified Special Education Aide position requirements and skills are much higher. Citing testimony at the arbitration hearing, the District points out that library aides, for example, do not have any significant amount of instructional contact with

students. In a similar fashion it argues that the clerical aide is more of a clerical assistant than an aide. Nor, says the District, is the clerical aide position the equivalent of a secretarial position.

In reviewing the four BAC comparables which contain aide positions in their bargaining units the arbitrator is hard pressed to find a clearcut pattern by which aides are categorized. For example, as the Association points out, the Clintonville contract provides two aides categories. However, there is no indication which aide positions are covered in each category much less why they were placed there. In De Pere most of the aides are placed in classification 4 - the middle of five job classes beginning with 2 as the lowest. However, the clerical aide was placed in class 3 while the office and administrative secretaries were placed in classes 4 and 5. Further, the Marinette Paraprofessionals' contract does not reveal the existence of position classifications. Finally, the Pulaski School District contains two categories - one for aides and another for clerical workers.

Moreover, the arbitrator is not persuaded by the arguments raised by either party in support of its position on this issue. The District contends that the proper line of demarcation for aides is certification. Yet it provides no evidence to support the conclusion that certified aides are more skilled or possess more responsibilities than other aides. And, If the District's assertion is valid on its face, it does not reflect the practice

of comparable districts.

The Association also asserts with reference to the cleaners and cook\servers that since the District apparently no longer pays part-time workers in other positions a lower wage it should extend this practice to these last two groups. As with the District's position on aides, the Association offers no supporting evidence. Why should the District do this? Apart from labeling the District's practice as "outdated" the Association is silent.

The arbitrator concludes that there is nothing in the record to provide a basis for preferring one offer over the other on the issue of wage categories.

Wages

The central difference between the parties on wages is their proposal for the rates to be paid to each of their respective classifications. However, as indicated above, the parties also are in dispute over certain of the wage categories, the treatment of cleaners and cook/servers as part-time employees, an alleged modification of the District's certified final offer and the methodology by which employees were placed in the wage schedule.

The District's Position: The Employer's wage only offer would result in an increase of 9.58% in 1992-92, 5.33% in 1992-93 and 4.28% in 1993-94. In addition, the positions of Cook/Manager and Bakers would receive an additional wage adjustment based on number of meals served.

First, the District maintains that its offer exceeds its

comparables in nearly every case. Its rankings would also improve while the Union's offer would catapult some employees to a leadership position.

Second, using the Consumer Price Index(CPI) as a standard, the District argues that its offer would cause employee wages to far outstrip increases in the CPI.

Third, the District also challenges the placement methodology adopted by the Association, including placing clerical, library and instructional aides in the same category. It characterizes the Union's placement of employees on the wage schedule as illogical, inequitable and misleading. With regard to the latter point, the District notes that no employees were placed by the Association at the top step of the schedule regardless of years of service. Further, certain employees with the same service were placed at step 1 while another was placed at step five and cooks are placed differently from secretaries or aides. The result, concludes the District, is that the Association's methodology "creates an inequitable pay system."

Fourth, the District contends that the Association's methodology is contrary to the tentative agreements. The District's reading of the clauses in question is that placement was intended to be based solely on years of experience. Moreover, it is the District's view that its costing miscalculations "pale in comparison to the Union's placement of employees on the salary schedule." It defends its costing errors as minor and easily rectified and whose impact on its final offer is minimal.

However, says the District, the impact of the Association's placement methodology has a "monumental, long term effect on the entire bargaining unit."

The Association's Position: The Association's wage offer for 1991-92 would establish specific rates keyed to a rate range topping out at six years for each of its wage categories. All rates and wages would be increased by 4.5% for 1992-93 and 4.0% in 1993-94. The Association's proposal would also provide for additional payments to Cook/Manager and Bakers on a per meal basis but at a slightly high scale than that of the District.

The Association justifies its wage position on the following criteria. First, it argues that its position is supported by its external comparables. Using a base year of 1990-91, the Association constructs a series of tables comparing the minimums and maximums for each of its wage categories. According to the tables presented in the Association's initial brief its wage offer would raise the District's ranking while the Employer's offer would hold or drop the position in the rankings over the three years.

Second, the Association also contends that its wage increases for the three year contract period are reasonable when judged by the comparables. The Association acknowledges that it is difficult to draw any valid conclusions about 1991-92 since both offers would establish totally different wage schedules from what existed in 1990-91.

Third, the Association dismisses the relevance of the cost

of living criterion with the statement that both offers exceed "in the aggregate" the increases in the cost of living. And, it also rejects the possibility that the District lacks the ability to pay, adding that this was never raised as an issue either in the negotiations or at the arbitration hearing.

Finally, in its reply brief, the Association takes issue with a number of points in the District's original brief. Summarizing these arguments, the Association contends the District's ranking efforts are misleading since by dropping the lower pay for part-time employees rankings would improve anyway; the omission of ranking for aides "masks" the downgrading of the instructional and library aide positions; District Exhibit #17 is unreliable hence there is no ranking for 1991-92 or 1993-94; the important point for the janitors and maintenance employee group is the fact that their annual income won't increase because their hours will drop as they move from a 45 to a 40 hour work week.

The Association also challenges the District on the matter "deliberately misread and misinterpreted" the Association's exhibits. Contrary to the District's argument, the Association says it did inform the District of its placement method before the hearing, it never claimed that it placed employees on the 1991-92 wage schedule by length of service in the District, nor did it violate the tentative agreements on placement. Rather, the dispute is a matter of differing placement strategies in which the District chose to use lower rates and place employees in top positions while the Association chose to user higher rates

and not place employees at the top. Further, says the Association, the District's methodology also doesn't conform to the "TAs".

Discussion

It is necessary at this point to resolve several of the issues raised by the parties in conjunction with their respective positions. First, the matter of the District's final offer has already been considered and needs no further discussion. Second, with regard to the dispute over employee placement methodology, the undersigned is persuaded that the crux of the argument is indeed a question of differing strategies including choices made for the wage categories. What is logical under one strategy may be illogical under an other. I can find no evidence that either party engaged in intentional deception or misrepresentation. As with nearly every other issue in this dispute they are at odds not only about wages but methodology as well.

Third, a review of the two clause tentatively agreed to - Section 24.01.4 and 24.01.5 - supports the Association's conclusion that only for placement of transfers does the criterion of years of service apply. The latter clause expressly states "Personnel will normally move one step for each year of service . . ." (emphasis added). The District argues that the intent was placement but if so there is no evidence in the record to confirm this assertion.

Fourth, the statutory criteria of ability to pay and cost of living have no bearing on the outcome of this dispute. The

former criterion was never raised while the latter was not addressed as a constraint by either party.

Both parties have centered their positions on wages within the framework of the criterion of external comparables. It is appropriate, therefore, to consider the parties' arguments as they relate to our benchmark school districts and their seven bargaining units: Clintonville, De Pere, Marinette (two units), Pulaski (two units) and West De Pere. It should also be noted at the outset that since the contracts covering aides at De Pere and Clintonville were unsettled the number of comparables would be too small for a meaningful ranking comparison in 1993-94. Further, Marinette had no aide contract until 1992-93.

Having raised our caveats above, the ranking data shows the following:

Aide: The District ranked 3rd on its minimum and maximums in 1990-91. The Association's offer would raise its minimum ranking to second place. The maximums would rise to second in 1991-92 and drop it back to third again in 1992-93. The District's offer would leave its position unchanged at the minimum wage and drop it to fourth in 1992-93.

Sec.\Bookkeeper: The Association's offer would raise this group one notch to second place by 1992-93 at the minimum and leave the maximum unchanged. The District would drop one place to third at the minimum and two places to fourth at the maximum by 1992-93.

Cooks\Server: The Association would drop one place at the

minimum and maintain its ranking at third place for the maximum. The District's offer maintains its second place ranking for minimums and drops by one position to fourth for the maximums.

Janitors: The Association would move these employees up one spot to 3rd at the minimums and two positions at the maximum. The District would maintain its position at the minimum and drop one position at the maximum.

What can we draw from the above analysis. Unfortunately precious little. With regard to the aides the parties' offers tend to wash out for the most part. However, it is also clear that the Association's arguments that the District's proposal to lump together all noncertified aides has a negative impact, at least as measured by the rankings, doesn't appear. The Secretary-Bookkeeper grouping suffers a bit more from the District's offer, the Cooks\servers are affected equally while the Janitors move up more radically (two places) under the Association's offer than they fall (one place) by the District's wage proposal.

If forced to draw a line, the undersigned would reluctantly conclude that the District's offer, by a very small margin, is preferred. There is no argument for "catch-up" to support any radical change in the District's ranking.

Moving from rankings to proposed rate increases, the Association contends that its wage offer is reasonable when compared to the external comparables. However, it also states, "The Association avers that it is difficult, if not impossible,

to make direct wage rate increase comparisons between Shawano-Gresham and the other external comparables for 1991-92." The impediment to the comparisons is that totally different wage schedules from those of 1990-91 are contained in both proposals. The placement of employees on these proposed wage schedules is also radically different. The result is that the Association provides no external comparability data for wage increases not only for 1991-92 but for the other years of the proposed new contract. It does, however, invite the arbitrator to undertake his own analysis using the data contained in Association Exhibits #50 through 64. A quick examination of these exhibits reveals that they are not suitable for such an undertaking and as such he refrains from such an attempt.

All things considered, while the arbitrator would lean toward the District's wage offer he does not find the evidence in support of either position compelling.

The Issue of Contract Retroactivity

The Association proposes that all provisions of the contract, unless specifically noted otherwise, would be retroactive. The District's position is that only wages and retirement would be retroactive and other benefits and language would not be unless specifically noted.

The District contends that the Association's proposal on this issue could result in grievances relative to layoff and will result in the payment of back pay for paid leave. In short, says the District, the Union's retroactive clause will place an

unreasonable financial burden on the Employer.

While the allegations of the District raise important issues the evidence to support this position is lacking. What would be the financial burden? How many grievances? The Association rejects this claim and the arbitrator is agrees.

Summary

With a list of twelve issues before the arbitrator the task was unusually long and complicated. Moreover, the evidence provided by the parties was often of limited use at best and confusing at worst. The matter of the wage proposals clearly exemplifies this conclusion.

The arbitrator found either the evidence was not conclusive or the parties' positions were of equal value for five of the issues and therefore did not rule on them one way or the other: seniority; holiday pay; emergency school closing; insurance and wage categories. The wage issue was not clearcut although by a small margin the District's proposal was preferred. With regard to the issues of employee status, work schedules, subbing pay, vacations, and paid/unpaid leave the arbitrator accepted the District's proposals.

AWARD

In light of the above discussion and after careful consideration of the statutory criteria enumerated in Section 111.70 (4)(cm)7 Wis. Stat. the undersigned concludes that the District's final offer is more reasonable. Therefore, the final offer of the District shall be incorporated into the Collective

Bargaining Agreement for the period beginning July 1, 1991 and extending through June 30, 1994.

Dated at Middleton, Wisconsin this 7th day of September, 1994.

Richard Ulric Miller, Arbitrator