

RECEIVED
SEP 06 1994
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

HARTLAND ARROWHEAD SCHOOL
DISTRICT EMPLOYEES LOCAL,
AFFILIATED WITH DISTRICT COUNCIL
#40, WCCME, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner and

Case 12
No. 48217 INT/ARB-6640
Decision No. 27823-A

ARROWHEAD UNION HIGH SCHOOL DISTRICT

APPEARANCES:

Robert Butler on behalf of the District
Michael Wilson on behalf of the Union

On February 2, 1994 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on May 11, 1994. Briefs were exchanged by the parties and the record was closed by July 20, 1994. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats. the undersigned renders the following arbitration award.

ISSUES:

This dispute is over the parties' initial collective bargaining agreement covering three school years, commencing in the 1992-93 school year and terminating after the 1994-95 school year. The unit is a support staff unit covering custodial/maintenance, secretarial/clerical, food service, aides, and bus drivers. A summary of the issues in dispute follows:

Hours of Work--

The District proposes that a full-time custodial/maintenance employee's work week be defined as forty (40) hours per week while the Union proposes that it be 37.5 hours per week.

The Board proposes that employees who work a third shift shall be paid a shift premium of twenty five (25) cents per hour.

The Union proposes that the normal work week for regular full-time maintenance/custodial employees would be forty (40) hours, Monday through Friday, and that employees who work a third shift be paid a shift premium of thirty (30) cents per hour.

The Union also proposes that if unit work becomes available during periods when school year employees are not scheduled to work such work shall be offered to school year employees on a seniority basis before non-unit members are offered such work, provided that the school term employees are qualified and capable of performing the available work.

Emergency School Closings--

The District proposes that all twelve (12) month employees report to work on days when school is closed if at all possible. It also proposes that school year employees not report to work when school is closed, and that any employee not at school when school is closed shall not be paid for that day.

The Union proposes that full year employees report to work on days when school is closed unless informed not to by the District Administrator. It also proposes that all other employees not report to work when school is closed, and that they be paid for such days if they are not made up. It further proposes that no employee shall suffer any loss in pay in the event that school is closed early.

Overtime Compensation--

The Board proposes that employees not scheduled to work on Sundays be paid time and one half for such work, while the Union proposes that all Sunday work be paid double-time. The Union also

proposes that employees who work on holidays be paid double-time in addition to holiday pay. The Board proposes that work performed on holidays will be paid at straight time in addition to holiday pay, unless the hours worked qualify the employee for overtime compensation at the rate of time and one-half.

The Union also proposes that overtime be divided as equally as practical.

Vacancies--

The Board proposes that if a vacancy occurs during a school recess period exceeding six (6) days a notice of the vacancy will be sent to the Union President. The Board also proposes that in the instance where two (2) or more applicants' qualifications are equal, the most senior applicant will be selected. Lastly, in this regard, the Board proposes that the District retains the right to select the most qualified applicant for any vacant position.

The Union proposes that in cases where a vacancy occurs during a school recess period, a notice of the vacancy will be mailed to all school year employees. It also proposes that in the instance where two (2) or more qualified employees apply for a position, the most senior qualified applicant will be selected unless a junior employee significantly exceeds the senior employee's qualifications.

Work Stoppages and Lockouts--

The District proposes that if an employee engages in a prohibited work stoppage the District may take whatever disciplinary action it deems appropriate up to and including discharge.

The Union proposes that the District shall not lockout its employees during the term of the Agreement.

Holidays--

The District proposes that full year employees shall be granted nine (9) paid holidays and that school year employees be granted four (4) paid holidays.

The Union proposes that full year employees be granted ten and one-half (10.5) paid holidays and that school year employees be granted five (5) paid holidays.

Vacations--

The Board proposes that twelve (12) month employees receive one (1) week of vacation after (1) year of service, two (2) weeks after two (2) years, three (3) weeks after six (6) years, and four (4) weeks after fourteen (14) years.

The Union proposes that full year employees receive two (2) weeks after one (1) year, three (3) weeks after five (5) years, and four (4) weeks after fourteen (14) years.

The Union also proposes that employees may take additional unpaid vacation by providing written notice to the District by June 1 of the year in which the unpaid vacation is to be used.

Sick Leave--

The Board proposes that school year and calendar year employees earn sick leave at the rate of one (1) day per month of employment. It also proposes that employees be allowed to accrue up to sixty (60) sick leave days.

The Union proposes that employees earn sick leave at the rate of ten (10) days per year during the employee's first and second year of employment. Thereafter the employee would earn sick leave at the rate of one (1) day per month of employment. The Union also proposes that custodial/maintenance employees earn fifteen (15) sick leave days per year; that all employees be allowed to accrue up to one hundred (100) sick leave days; and that maintenance/custodial employees receive one-quarter (.25) of a day of vacation for each earned sick leave day not used.

Prorated Fringe Benefits--

The Union proposes that all regular part-time employees shall be eligible for all fringe benefits on a prorata basis, unless expressly provided otherwise.

Emergency Leave--

The Board proposes that up to three (3) days of emergency leave may be used if there is a death in the immediate family.

The Union proposes that up to (3) emergency leave days may be used for an illness in the immediate family. It also proposes that an employee may take up to three (3) days of bereavement leave with pay in the case of death in the immediate family.

Building Checks--

The Board proposes that employees called in for a building check be accorded at least one (1) hour for each building at time and one-half their regularly hourly wage, providing the employee did not work five (5) hours of overtime prior. The Union proposes that all building checks be accorded at least one hour for each building at the appropriate pay rate.

The Union proposes that the District make every attempt to schedule building checks two to three months in advance.

Management Rights--

The Union proposes that management rights include subjects which do not require discussion or concurrence by the Union and/or which are not subject to collective bargaining. The Union also proposes that the District has the right to subcontract as long as work historically performed by unit employees and the hours of unit employees are not affected.

Health Insurance--

The Board proposes that employees will be eligible to receive health insurance from the carrier selected by the Board, if the employee works at least 1365 hours in a fiscal year. It further proposes that if the employee works at least 1365 hours the District will pay the full cost of the single plan or a prorated amount toward the cost of the family plan, based upon the percentage of a full-time calendar year employment the employee works. Employees who work 2080 hours will be eligible for full premium coverage of either the family or

single plan. The Board also proposes a ten dollar deductible prescription drug card.

The Union proposes that the District may change carriers but the level of benefits shall not be reduced.

The Union proposes that the District pay the full health insurance family or single premium cost for all full time calendar year and school year employees. Part time employees would be provided pro-rated premium coverage, provided they work at least 1000 hours per year. The basis for the proration would be a 37.5 hour work week. The Union also proposes a five dollar drug card, and that the level of benefits be no less than the WEAIT plan available to teachers as of July 1, 1991.

Dental Insurance--

The Board proposes that employees will be eligible for dental insurance from a carrier selected by the Board, if the employee works at least 1365 hours in a fiscal year. If an employee works at least 1365 hours, the District will pay the full cost of the single plan, or a prorated amount toward the cost of the family plan based upon the percentage of full-time calendar year employment the employee works. If an employee works 2080 hours, the District will pay the full premium cost of the family or single plan.

The Union proposes that the District pay the full premium cost for either single or family coverage fall all regular and school year full-time employees. Regular and school year part-time employees shall be eligible for coverage, with the employee paying a pro rated amount of the premium provided the employee works at least 1000 hours per year. The basis of the proration would be a 37.5 hour work week. The Union also proposes that the level of benefits be no less than the WEAIT plan available to teachers as of 7/1/91.

Early Retirement--

The Union proposes that employees who retire prior to the age of 65 may continue to carry coverage under the group health insurance plan by paying the premiums for such insurance.

Maintenance of Standards--

The Union proposes that all past practices which are mandatory subjects of bargaining and which are not specifically referred to in the Agreement shall continue for the duration of the Agreement. Either party may repudiate any past practice at the Agreement's expiration by written notice.

Progressive Discipline--

The Union proposes that discipline shall be progressive and corrective except where the offenses warrant more severe discipline.

Bus Drive Route Assignments--

The Union proposes that routes be assigned annually on the basis of seniority. It also proposes that extra routes be divided as equally as possible amongst all drivers.

Workers Compensation--

The Union proposes that any employee who is absent due to illness or injury caused during the course of his or her duties will receive a maximum of thirteen (13) weeks full pay on the condition that the compensation checks be endorsed and turned over to the District, and any compensation insurance received after the thirteen weeks will be retained by the employee until he or she returns to work. The Union also proposes that such absences shall not be charged against the employee's accumulated sick leave if the employee received Worker's Compensation payment for that day. Lastly, the Union proposes that any employee who, as a result of injury or illness in the line of duty, is absent three or less days shall receive full pay for such absence and such pay will not be subject to sick leave.

Wages--

The Board asserts that it is proposing an average wage increase of 4.1 percent in 1992-93, a 3 percent increase in 1993-94, and a 3 percent increase in 1994-95. It asserts that the Union is proposing an average wage increase of 8.8 percent in 1992-93, an 8.7 percent increase in 1993-94, and a 6.6 percent increase in 1994-95.

Total Package--

The District asserts that it is proposing a total package increase of 5.2 percent in 1992-93, a 3.5 percent increase in 1993-94, and a 18.6 percent increase in 1994-95. It asserts that the Union is proposing a total package increase of 9.4 percent in 1992-93, an 8.7 percent increase in 1993-94, and a 31.2 percent increase in 1994-95.

Comparables--

Both parties accept the following districts as comparable: Elmbrook School District, Germantown School District, Hamilton School District, Hartford Union High School District, Hartland/Lakeside School District, Kettle Moraine School District, Menomonee Falls School District, Merton Joint No. 9 School District, Mukwonago School District, Muskego-Norway School District, New Berlin School District, Oconomowoc School District, Pewaukee School District, and the Waukesha School District and the Slinger School District.

The Board also proposes using the Stone Bank School District, and the Swallow School District as comparables.

The Union has proposed, as secondary comparables, additional districts in the Southeast Athletic Conference, which the District recently joined, including Kenosha, Oak Creek-Franklin, Racine, and West Allis-West Milwaukee.

The relative merit of the parties' positions on each of the foregoing issues will be discussed individually, after which I will discuss the relative merit of the parties' total package final offers.

COMPARABLES:

Board Position:

The Board's comparables are geographically proximate and compete for the same prospective employees. It has selected comparables on

the basis of the athletic conference which existed at the time of the organization of the bargaining unit.

The Board has distinguished between comparables on the basis of organizational status. Non-organized units are only included for economic issue comparisons. Organized units are included in all comparisons.

The non represented comparables proposed by the Board only represent thirty percent of the comparables. It is also noteworthy that the average total compensation increases are relatively constant, regardless of organizational status.

There is no geographic or organizational pattern to the Union's proposed list of comparables. On the other hand, the District's proposed comparables are all geographically proximate -- either contiguous or within ten miles of the District's boundary line--, and most arbitrators have found that in school district support staff cases, geographic proximity is one of the most important indications of comparability, even where the size of districts varies considerably. (Citations omitted) This is so because of the geographically restrictive labor market for employees in such units. (Citations omitted)

Arbitral authority also supports the use of non-organized units for economic comparisons. (Citations omitted)

The Union's objection to the use of small districts as comparables is contradicted by their own usage of at least one small district, Merton Joint No. 9 which employs less than 12 full time equivalent employees.

Union Position:

Little weight should be given to non-represented employee groups, even from districts both parties otherwise find comparable. Such groups include Hamilton secretaries, aides (who were only recently organized and who do not yet have a collective bargaining agreement, Kettle Moraine secretaries, New Berlin custodial and food, Oconomowoc secretaries and aides, and Pewaukee aides.

Arbitral authority supports the non consideration of such groups as comparables. (Citations omitted)

In addition, meaningful comparisons to non-represented groups are frequently very difficult. For instance, some groups do not have a formal wage schedule, but rather individual wage rates (Hamilton secretaries), and others have only minimum and maximum wage rates with individual salaries set by the Employer (Oconomowoc secretaries and aides).

The Union strongly objects to the Board's use of support staff employees, all non-represented, from the small K-8 feeder districts--Lake County, Lisbon-Pewaukee (Richmond), North Lake (Merton Jt. 7), Stone Bank and Swallow. In addition to their non-union status, these districts are substantially smaller than the District's support staff in terms of full time equivalents--80 in the District vs. approximately half a dozen in each of these districts.

The Milwaukee metropolitan labor market is different than anywhere else in Wisconsin. The influence of Milwaukee and Waukesha is inescapable. There are a wealth of organized school districts with which to compare which share the same labor market, athletic conference, etc.

Discussion:

Though the undersigned has been willing to consider non represented groups as comparables for the purpose of comparing economic terms and conditions of employment in the past, this has occurred primarily in situations where labor market and extent of organization considerations mandated such comparisons. Here however the undersigned has been able to identify 28 represented and agreed upon comparable bargaining units in 13 agreed upon comparable school districts with agreements in effect which, at least to some degree, coincide with the period of time covered by the instant collective bargaining agreement. In view of the fact that this sizable number of represented units have been agreed upon as comparables, and in view of their geographic proximity, relative uniformity in size, and the availability of objective comparability data and evidence pertaining to said units the undersigned can find no persuasive reason to go beyond that population in considering comparability evidence in this proceeding.

It should be noted however that because of the nature of the unit in question (a wall to wall unit with a diverse group of employees),

much of the comparability evidence, which pertains only to more homogeneous groups of employees, is of somewhat limited value. In addition, particularly when wages are compared, because the evidence makes it difficult to determine how comparable job classifications and titles really are, the undersigned is again concerned about the validity of the comparisons which can be made in this regard. Lastly, because a good number of comparables do not have current collective bargaining agreements, comparisons of timely/current data are not uniformly available.

For the foregoing reasons the undersigned wishes to note that though comparability evidence will be given weight and consideration in this proceeding, the merit of the parties' proposals, and the merit of the reasons given therefor will also be given considerable attention.

In the above regard, as best as the undersigned can ascertain from the record evidence, there are four comparable support staff units with agreements that cover at least 1992-93 in the Elmbrook School District, one in the Hamilton School District, one in the Hartland Lakeside School District, three in the Kettle Moraine School District, four in the Menomonee Falls School District, one in the Mukwonago Area School District, three in the Muskego-Norway School District, one in the New Berlin School District, two in the Pewaukee School District, five in the Waukesha School District, one in the Oconomowoc School District, one in the Hartford Union High School District, and one in the Germantown School District.

HOLIDAYS:

Board Position:

Comparability data clearly supports the District's position on this issue. In fact, several comparable units do not offer holidays to their school year employees.

Union Position:

Comparability data supports the Union's proposal regarding calendar year employees. Ten comparables provide five or more paid holidays to one or more groups of school year employees.

The Board's proposal also would result in a reduction of holidays for custodial/maintenance employees, who currently receive 10.5

holidays a year, and also a reduction in their pay for holiday work since they currently receive double time for such work.

Discussion:

A clear majority of the comparables grant ten holidays a year for calendar year employees, and there is no discernible pattern pertaining to holiday entitlement for school year employees. Thus, neither party's holiday proposal is supported by the comparables. Nor have other persuasive arguments been made by either party supporting the merit of their proposal. In this regard though the Board's proposal constitutes a reduction of benefits for custodial/maintenance employee, the undersigned does not deem past practice to be binding on either party in this proceeding. In that regard, neither party has any burden to demonstrate in this proceeding why such practices should or should not be changed. Thus, on this issue, neither party's proposal is deemed preferable.

VACATIONS:

Board Position:

Although the Union's proposal regarding vacation eligibility after one year of service is favored by the comparables, the Board's position is present in a significant number of comparables. On the other hand, the Board's position regarding eligibility for three weeks of vacation is clearly supported by the comparables.

In addition, not one comparable supports the Union's proposal regarding unpaid vacations. In fact, only one comparable has a similar benefit, and that applies only to part time employees. It also caps the amount of time an employee may take at two weeks.

The Union proposal does not limit the amount of unpaid vacation an employee may take, a clearly unreasonable and burdensome problem for the District.

Union Position:

Sixteen comparables grant two weeks of vacation after one year of service to one or more bargaining units. Several comparables grant three or more weeks after five years of service.

The Board's proposal would result in a reduction of benefits for custodial/maintenance employees who now receive two weeks after one year and three weeks after five years.

The Union's position regarding the right to take additional unpaid vacation simply reflects existing policy.

Discussion:

Comparability evidence supports the Union's proposal regarding vacation eligibility after one year of service.

Comparability evidence does not support the Union's proposal regarding unlimited unpaid vacation, nor is there support in a majority of the comparables for the Union's proposal regarding vacation eligibility after five years of service.

Neither party's arguments in support of their respective positions on this issue persuasive demonstrates that either proposal is significantly more meritorious than the other.

Therefore, again, neither party's proposal on this issue is deemed preferable for purposes of this proceeding.

SICK LEAVE:

Board Position:

The Board's proposal is superior to that of the Union for calendar year employees during the first two years of employment. The Board's proposal also provides a greater benefit than the Union's since it allows employees to take sick leave for immediate family illness.

Only one comparable unit affords employees fifteen days of sick leave a year. Furthermore, the past practice of affording custodial employees more sick leave than others in the unit (fifteen days) is improper.

Regarding the accumulation of unused sick leave, though comparable practice is not uniform in this regard, there exists a significant amount of comparable support for the Board's proposal.

Not one comparable has an attendance incentive similar to that proposed by the Union. Furthermore, the Union's proposal in this regard--which is limited to custodial employees--is also improperly discriminatory. The Union's proposals regarding vacation entitlement for custodial employees would also result in staffing problems for the District.

Union Position:

The comparables support the Union's sick leave accumulation proposal.

The Union's proposal for an attendance incentive for maintenance/custodial employees simply reflects existing benefits. The Union seeks to continue this benefit in consideration of the fact that custodial/maintenance employees will make only moderate gains under the initial agreement while others are pursuing catch up.

Discussion:

The Union's sick leave accumulation proposal is more consistent with the comparables than is the Board's proposal in this regard.

The Board's proposal is more comparable than the Union's regarding the amount of sick leave that employees will earn. In addition, the comparables do not support the Union's proposal for an attendance incentive for custodial and maintenance employee.

In addition, the Board's proposal is more advantageous to employee's than the Union's proposal to the extent that it specifically allows employees to take sick leave for immediate family illness.

The Board's argument regarding the impropriety of continuing different benefits for custodial employees is also persuasive. The Union's contention in this regard that other employee benefits should be improved rather than diminishing custodial/maintenance staff benefits is best addressed by comparability evidence which will indicate which set of benefits is most comparable. If indeed such evidence indicates that custodial employees in comparable districts do enjoy different benefits than other support staff personnel, that fact will be taken into consideration and balanced against other relevant considerations.

In view of all of these considerations, in the instant case the undersigned deems the Board's proposal to be more supportable than the Union's.

PRORATED FRINGE BENEFITS:

Union Position:

Many of the fringe benefits proposed have expressly provided for the extent of part-time entitlement. The impact of the Union's proposal is not substantial, but, if a question were to arise on benefit entitlement, the contract would provide the answer.

Discussion:

Though the consequences of this proposal have not been litigated, the undersigned has some concern about the clarity of some of the terms in the proposal, including who constitutes a regular part time employee, and more importantly, prorated based upon what criteria. Because the undersigned is not persuaded that the proviso will clarify the parties' agreement in this regard, the proposal is not deemed to be preferable to the Board's silence in this regard.

EMERGENCY LEAVE:

Board Position:

The Board's proposal provides employees with between ten and twelve days of leave per year for family illness. The Union's proposal would only provide two or three days for such use. In addition, sick leave accumulates whereas emergency leave does not. Thus, for such use, the Board's offer is far superior than the Union's.

The record indicates that eleven comparables include bereavement leave within the definition of emergency leave. It also indicates that eight comparables provide emergency leave of less than three days, and eight comparables do not provide any type of emergency leave.

Union Position:

Thirteen comparable districts grant paid funeral leave similar to the Union's proposal in one or more bargaining units. Such leave is not apportioned as part of an annual allowance of emergency leave.

The Union's emergency leave proposal is also consistent with the comparables.

Discussion:

To the extent that the Union's proposal limits leave for illness in the immediate family to three days a year, it is less desirable from the employees' point of view than the Board's proposal.

The real issue in dispute however is whether employees should be entitled to three days of bereavement leave in addition to emergency leave. Though a good number of the comparables appear to provide for some type of bereavement leave, there appears to be no clear comparable pattern as to whether or not such leave is in addition to other available personal or emergency leave.

In the undersigned's opinion neither comparability nor the merits of either party's position on this issue justifies the selection of either proposal as being significantly more preferable than the other.

HOURS OF WORK:**Board Position:**

The Board's position, that the normal work week for custodial/maintenance employees is forty hours per week, is found in twelve of fourteen comparables. The Union's proposal (37.5 hours per week) is found in only two comparables.

Eleven organized comparables do not have any contract language on the issue of hours of work. Only seven of 28 comparables have delineated a Monday through Friday work week for custodial/maintenance employees.

The Union's offer places an unjustifiable burden on District operations—including extracurricular activities, community meetings, and recreational activities-- conducted on Saturdays. The Board has thus proposed contract language which would allow the assignment of custodial employees to work on a Tuesday through Saturday shift. The Union's position unduly increases the cost to the community and District for such activities.

Only four organized comparables have contract language requiring that additional work must first be offered to qualified school term employees on the basis of seniority. Twenty four represented units have no such provision. In addition, such work is temporary and can therefore be performed by temporary workers who are excluded from the unit. Secondly, the Board should be able to select the most qualified worker to perform such work. Only where relative abilities are equal should seniority be taken into account.

Only eight comparables have any contract language on the issue of shift premium pay. Of those eight, five provide for a third shift premium of twenty five cents per hour or less. Only two provide for a thirty cents per hour premium.

Union Position:

The majority of comparables provide for a Monday through Friday work week for maintenance and custodial employees.

Five comparables have a third shift premium of thirty cents per hour or more.

The Union is trying to close what it sees as a loop-hole for custodial/maintenance employees. There is not an issue regarding the 37.5 hour threshold for any other group of employees covered by the Agreement.

The Union's proposal regarding the assignment of additional work is similar to language found in several comparable agreements.

Discussion:

Comparability evidence does not support the Union's extra work proposal. Furthermore, the Union has provided no arguments why an exception to the settlement pattern in this regard is necessary in this District.

While external comparables appear to support a forty hour work week for custodial and maintenance employees, the District has not explained why it has been willing to agree to a 37.5 hour workweek for other unit employees and not custodial/maintenance employees.

While a majority of custodial units appear to provide for a Monday through Friday workweek, the Board's contention that it needs more flexibility in this regard is somewhat persuasive; however, it would be more so if it had demonstrated that it has so scheduled custodial/maintenance employees in the past.

The comparables do not support a third shift premium of more than twenty five cents.

Because, in the undersigned's opinion, both parties' proposals on this issue contain provisos which are either unjustified, unexplained, or problematic, neither is deemed to be significantly preferable over the other.

EMERGENCY SCHOOL CLOSINGS:**Board Position:**

Fifteen of twenty nine comparables support the Board's proposal on this issue. Seven do not pay non twelve month full time employees for emergency school closing days which are not made up with students. Eight do not have an emergency school closing provision. Only one provides that employees will be paid premium pay for emergency school closing days which are made up on a day which would typically have premium pay.

Union Position:

Both parties' proposals require make up days if needed. The Union's proposal simply requires pay if the day is made up on a Saturday, Sunday or holiday.

If an employee reports for work and is subsequently sent home, under both proposals the employee will be paid. The Union asks for regular wages, the Board would cap the payment at two hours.

Discussion:

There is no discernible comparable pattern on this issue. Neither party has presented arguments on the merit of their respective proposals. Accordingly, the undersigned cannot make an informed choice regarding the relative merit of the proposals, and accordingly, neither is deemed to be preferable over the other.

OVERTIME:**Board Position:**

Twenty two out of thirty comparables provide that work on Sundays be paid at time and one-half. Seventeen comparables do not have a provision which requires overtime to be distributed as equally as possible. Fourteen comparables provide for the same form of holiday compensation as that found in the Board's offer. Seven comparables support the Union's position on holiday work.

Comparability and the need for managerial flexibility clearly support the Board's proposal on overtime.

Union Position:

A majority of the comparables pay double time for work performed on Sundays and holidays.

Ten comparables provide for the equal distribution of overtime with one or more bargaining units.

Because clericals, teacher aides and food service employees do not normally work on Sundays and holidays, pay for such work is not a major issue or matter of concern. The only group to whom the issue is important is custodial/maintenance employees, because such work is a reality for them. Comparable units regarding such employees clearly supports the Union's proposal.

Discussion:

The Union's contention that this issue primarily expresses the concerns and interests of custodial/maintenance personnel who are the most likely to be affected is persuasive. In comparable custodial/maintenance units, though the practice is mixed, it would appear that a majority pay double time for Sunday and holiday work, which supports the reasonableness of the Union's proposal in that regard.

With respect to the distribution of overtime issue, again, while the comparable practice is mixed, a substantial number of comparable custodial/maintenance units have similar contractual provisos. In addition, in the undersigned's opinion the issue addressed by this proposal is a legitimate one, and the Board has not presented persuasive arguments why it should not be preferred. It seems to the undersigned that if the District makes a good faith effort in this regard, it will not lose the flexibility it contends it must have in the assignment process.

The Union's overtime proposal is thus deemed to be preferable to the Board's.

BUILDING CHECKS:

Board Position:

Twelve of fifteen comparables provide that building checks will be compensated at time and one-half if the work is performed on a holiday or Sunday. Three comparables have language similar to that proposed by the Union. Only six comparables have posting and scheduling language similar to that proposed by the Union. Nine do not have such language.

Union Position:

The dispute over the applicable premium is the same as the dispute over holiday and Sunday work.

Several comparables have language similar to the Union's proposal to attempt to schedule building checks beforehand.

The Union's proposal in this regard is also consistent with current Board policy.

Discussion:

In view of the undersigned conclusions regarding the relative merit of the parties' premium pay proposals, the Union's proposal on this issue--regarding the appropriate rate of pay for building checks--is deemed to be preferable to the Board's proposal.

Though the comparable policy regarding the scheduling of such checks is, at best, mixed, again, no persuasive argument has been presented why such advance planning would cause the District any problems. Absent evidence of any difficulties that might arise therefrom, the undersigned deems the Union's proposal in this regard to be a reasonable approach to a legitimate employee concern.

WORKERS COMPENSATION:**Board Position:**

Eight comparables have no contract language on workers compensation.

As workers compensation benefits are usually equal to two thirds of an employee's regular wage rate, there is no need for an additional benefit.

Since the District has had relatively minor experience with workers compensation over the last five years, this issue does not appear to be significant.

Union Position:

The Union's proposal is supported by the comparables.

Discussion:

Comparability evidence somewhat supports the reasonableness of the Union's proposal on this issue (though the practices in this regard are not uniform). In view of the foregoing, the undersigned deems the Union's proposal to be preferable to the Board's on this issue.

EARLY RETIREMENT:**Board Position:**

Eight of twenty seven comparables do not have an early retirement provision.

Ex-employees who stay on a health insurance plan can also have an adverse impact on the experience rating of a district.

Union Position:

Twelve comparables permit early retirees to continue their health insurance at their own expense.

Discussion:

Though the District raises a legitimate concern regarding the consequence of the Union's proposal on the District's experience rating, equity and comparability considerations support the reasonableness of the Union's proposal on this issue.

HEALTH INSURANCE:**Board Position:**

An average custodial/maintenance employee in the District's comparables would have to work 1652 hours a year in order to receive full Board contributions to a single health insurance plan. Comparable custodial/maintenance employees would have to work

an average of at least 1681 hours in order to qualify for full family health insurance premium contributions. Though the Board's offer on this issue has a higher qualification standard than the average comparable, nine of the twenty one comparables have a 2080 hour requirement for such coverage.

A custodial/maintenance employee in the comparable districts has to work an average minimum of 1488 hours a year in order to qualify for any Board contribution to single health insurance premiums. The same hourly figure is applicable for any contribution toward a family health insurance plan. This comparability data clearly supports the reasonableness of the District's offer.

The Board selected the 1365 hour requirement since that is the number of hours normally worked by a school year employee.

Only seven of twenty one comparable districts contribute toward health insurance for employees who work 1000 hours per year.

For custodial/maintenance employees who work 1365 hours per year, the Board's offer significantly exceeds the average comparable district contribution toward both single and family health insurance.

Clerical employees in the comparables would have to work an average 1479 hours a year in order to receive full district contributions toward the cost of a single health insurance premium. Comparable clerical employees would have to work at least an average of 1510 hours in order to qualify for full family health insurance coverage. Though the Board's offer on this qualification standard is higher than the comparable average, five of twenty comparables have such a requirement.

A comparable clerical employee has to work an average minimum of 1340 hours in order to qualify for any Board contribution to single health insurance, a figure which is much closer to the Board proposal than the Union's. The same figure and comparisons occur when eligibility for family health insurance coverage is considered.

For comparable clerical employees working an average minimum of 1365 hours, the Board's proposal exceeds the comparable average with respect to both single and family health insurance premium contributions.

The Board's proposed health insurance benefit eligibility standard for single plan coverage for food service employees is more comparable than the Union's. It should also be noted that six of twenty-one comparables either do not have food service employees or do not provide health insurance to those employees.

Though the Board's proposed qualification for full family health insurance coverage is higher than the comparable average, seven comparables have the same standard or do not provide health insurance to food service employees.

The Board's offer, as it affects employees who work 1000 hours a year, is comparable to the benefits afforded such employees in eleven of seventeen districts.

For employees who work 1365 hours, the Board's offer is in excess of the average comparable districts' percentage contribution toward the cost of single health insurance premium, and it is closer to the comparable average percentage contribution toward the cost of family health insurance premiums than is the Union's offer.

Though the Board's hours worked eligibility requirements for health insurance coverage are more stringent than some of the comparables, once employees qualify for health insurance, the Board's offer regarding the level of Board contribution to the cost of the health insurance is preferred amongst the comparables.

With respect to the eligibility of teaching aides for single plan coverage, the Board's proposal is more in line with the comparable average than is the Union's. Furthermore, four of twenty one comparables do not provide health insurance to teaching aides.

With respect to teacher aide eligibility for full family coverage, though the Board's proposed qualification standard is higher than the comparable average, it should be noted that five comparables have the same standard or do not provide health insurance to aides.

For aides who work 1000 hours a year, the Board's offer on this issue can be found in twelve of twenty comparable districts. For aides who work 1365 hours a year, the Boards' offer exceeds the average comparable districts' percentage contribution toward the cost of both single and family health insurance premiums.

Again, though the Boards eligibility requirements for aides are more stringent than some of the comparables, once aides qualify for health insurance, the Board's level of contribution is preferred amongst the comparables.

It should also be noted that four comparable districts do not provide any health insurance benefits to aides.

Union Position:

There is arbitral precedent for the premise that full time school year employees should not be treated like part time employees for purposes of health insurance entitlement. (Citation omitted) This principle should be applied in this case. School year employees who work 40 hours a week comprise the great majority of secretarial employees. In addition six of twenty aides work a forty hour work week, and nine work a 37.5 hour work week.

Under the Board's proposal the premium contribution for full time school year employees would range from approximately 66 to 74%, depending on whether the employee works 37.5 or 40 hours a week.

The Board's proposal in this regard has little comparable support.

A good number of school year employees work 35 hours a week and would not be eligible for any coverage under the Board's proposal.

The Board's 2080 hour proration threshold is further disfavored by the fact that a significant number of full time school year employees from comparable districts have full year coverage identical to that of full-time calendar year employees. In other comparable districts employee contribution is required of full-time school year employees during the summer months, but the total family premium contribution is, in every case, higher than what the Board is proposing.

In addition, under the Board's proposal of an eligibility threshold of 1365 hours, the entire food service staff is denied any coverage. In nine comparable districts full-time school year food service employees would not only be eligible for health insurance, but they would also be entitled to at least 90% premium contributions.

The Board's health insurance comparability data also contains a number of errors, making it unreliable, particularly where the Board converts hours per week language into annual hours. When the Board converted such data it mistakenly assumed that school year employees from comparable districts do not qualify for insurance coverage. A majority of the comparables do not offer differing contribution rates for calendar year and school year employees. When actual hours per week as specified in agreements are utilized, and not converted into annual hours, the pro ration language proposed by the Union has overwhelming comparable support.

The Union's proposal grants the Board the right to change carriers as long as benefits are not reduced. The level of benefits is a mandatory subject of bargaining, and the employees logically want to guarantee the level of benefits. The District refuses to even specify any level of benefit levels.

Discussion:

Comparability evidence supports a conclusion that the Board's proposed eligibility standards for health insurance coverage, particularly for school year employees, is less reasonable than the Union's. It also demonstrates that there is not a uniform comparability pattern regarding the percentage that districts contribute toward health insurance premiums which is clearly supportive of either party's position on this issue. In addition, the record does not contain evidence or arguments supportive of either party's position regarding prescription drug cards. Lastly, in the undersigned's opinion, the Union's position regarding the protection of health insurance benefit levels is more consistent with comparable practice than is the Board's proposal, though it must be conceded that said practice is not uniform, with some districts only assuring that the level of benefits shall be similar or substantially equivalent.

Though the comparability evidence on this issue is not uniform, with both parties' proposals being supported by some comparables, it would appear that the Union's proposal is somewhat more comparable than the Board's on this issue, and therefore it is deemed to be the more preferable of the two.

DENTAL INSURANCE:**Board Position:**

Based upon eligibility for single coverage for custodial/maintenance employees, the Board's proposal is superior, from the employee's perspective, to the comparable average. Though the Board's proposed qualification standard is higher than the comparable average, eleven of twenty comparables have the same standard proposed by the Board. Only five comparables have an hour requirement as low as or lower than that proposed by the Union.

The Board's proposal is also closer to the comparable average than the Union's with respect to the hours worked requirement for any Board contribution to single and family dental health insurance for custodial and maintenance employees.

Sixteen of twenty comparables do not provide dental insurance benefits for employees who work 1000 hours a year.

The Board's offer for custodial/maintenance employees who work 1365 hours a year exceeds the comparable average in terms of district contributions toward the cost of single and family dental insurance premiums.

The Board's proposal also is superior to the comparable average for clerical employees with respect to eligibility for full district contribution toward the cost of a premium for a single dental insurance plan.

Though the Boards' proposed eligibility for full family dental insurance coverage for clerical employees is higher than the comparable average, four of twenty comparables have the same minimum hour requirement.

The Board's proposal is also closer to the comparable average than the Union's with respect to clerical employees' entitlement to any Board contribution toward single or family dental insurance.

For clerical employees who work 1000 hours per year, the Board's proposal is found in thirteen of nineteen comparables.

For clerical employees who work 1365 hours per year, the Boards' proposal is superior to the comparable average with respect to the percent districts contribute toward the cost of single and family dental insurance premiums.

The Board's dental insurance proposal for teaching aides is in line with similarly situated employees in terms of their qualification for full single dental insurance coverage. It should be noted that seven of twenty one comparables do not provide dental insurance to teaching aide employees.

Though the Board proposes a higher qualification standard for aides for full family dental insurance coverage than the comparable pool, it is noteworthy that seven comparables do not provide dental insurance to aides.

For employees who work 1000 hours per year, the Board's proposal may be found in fifteen of twenty comparables.

For employees who work 1365 hours per year, the Board's proposal is superior to the comparable average in terms of percentage contributions toward the cost of single and family dental insurance premiums.

Though the Board's dental insurance eligibility requirements for aides are more stringent than some comparables, it is important to note that one third of the comparables do not provide dental insurance to their teaching aide personnel. In addition, once aides qualify for dental insurance, under the Board's offer, the level of Board contributions are superior to the comparable averages.

The Board's proposal as it affects the eligibility of food service employees for full District contribution toward the cost of a single dental insurance plan is in line with the comparable average. In addition, four of twenty one comparables do not provide dental insurance to food service employees, and another two do not employ food service employees.

The Board's offer, as it affects food service employees working 1000 hours per year, can be found in thirteen of nineteen comparables. For employees who work 1365 hours a year, the Board's offer is superior to the comparable average.

Again, though the Board's proposed eligibility requirements are more stringent than some of the comparables, it should be remembered that one fifth of the comparables do not provide dental insurance to their food service employees. In addition, once a food service employees becomes eligible, the Board's contribution toward dental insurance is more than the comparable average.

Union Position:

Among the comparables the threshold language with respect to eligibility and premium contribution is identical for health and dental insurance in the vast majority of support staff units. Thus, the parties' dental insurance proposals should rise or fall, depending on which parties' health insurance offer is selected.

The Board made the same faulty assumptions in compiling comparability evidence on this issue that it made on the health insurance issue.

Discussion:

The comparability evidence on this issue with respect to coverage eligibility and the percentage that districts contribute toward premiums appears to be similar to the health insurance comparability evidence. On this issue however the record does not contain evidence supporting the Union's proposal guaranteeing a specified level of benefits. Therefore, on this issue though the record supports a conclusion that the Union's proposal is slightly more comparable than the Board's, the Union's dental insurance proposal is not as preferable as its health insurance proposal is based upon such evidence.

VACANCIES:

Board Position:

Thirty-one of thirty-four comparables do not have any notice of vacancy provision in addition to the posting of a vacancy.

Under the Board's proposal, if employees wish to know about vacancies occurring during a recess period, the Union President may

notify them, or the employees could contact the Union President to obtain such information.

The Union's proposal would result in separate mailing to more than ninety unit members each time a vacancy occurred--which would be an unreasonable burden and expense.

Fourteen of twenty nine comparables have policies wherein if two applicants have equal qualifications, the most senior will be awarded the position. Eight of twenty-nine comparables leave the selection of the employee to fill a vacancy completely to the discretion of the district's administration.

The Union's proposal would force the District to hire people with minimal qualifications.

There is also vagueness in the Union's proposed language. What does "significantly exceeds" mean?

Union Position:

Notice to individual employees is for a different reason than notice to the Union. It should not be the Union's responsibility to notify individuals of vacancies. It is an unreasonable hardship for employees to check every week regarding available vacancies which arise during the summer.

The Board's proposal to retain the right to select the most qualified applicant for any position is not supported by a majority of the comparables.

The Board's proposal to retain the right to transfer employees within job categories is unnecessary since the Union has already agreed to the Board's right to transfer in the agreed upon portions of the Management Rights language.

In addition, the Board's reference to job categories is not defined or used elsewhere in the Agreement.

Discussion:

The Board's position regarding notification of job vacancies is supported by the comparables as well as the merits of the Board's arguments in that regard.

Comparability evidence does not strongly support either party's proposal regarding the weight which should be given to seniority and ability by the District when selecting applicants for vacant positions. Though both criteria are legitimate considerations which should be given weight in such situations, absent a clear pattern of agreements in this regard, the undersigned is unwilling to conclude that either party's proposal is preferable in this regard, particularly since the parties have primarily relied upon comparability evidence to support the merits of their respective positions on this issue.

In view of the foregoing conclusions, the undersigned deems the Board's proposal on this issue to be the more preferable of the two.

WORK STOPPAGES:**Board Position:**

The District's proposal simply provides a disincentive for an employee or the Union to engage in a concerted work stoppage.

Union Position:

The Union rejected the Board's proposal since at best it is redundant and the wording implies that the discipline administered by the Board is not subject to the grievance procedure.

The Union, in exchange for the no strike clause, has a reasonable expectation of receiving a no lock out pledge.

Discussion:

Neither party's proposal on this issue clarifies or adds to the rights the parties already have under law and their prospective collective bargaining agreement. Therefore, neither party's proposal is deemed to be preferable on this issue.

MANAGEMENT RIGHTS:**Board Position:**

Only one of twenty-nine comparables have language similar to that proposed by the Union on subcontracting.

The Union proposed language--"normally within the scope of bargaining unit employees work" is so vague that it would be subject to different interpretations.

The Union's proposed language could also prohibit the District from providing essential services to its students unless unit employees are used.

Not one comparable restricts management rights to items which are not mandatory subjects of bargaining.

Union Position:

Robert's Dictionary of Industrial Relations is the source of the Union's definition of management rights.

Eleven comparables provide job security/subcontracting language protection in one or more bargaining units. (U 27 and p 48 U reply brief)

The Union's proposed language in this regard was also at one time part of a tentative agreement.

Discussion:

Comparability evidence clearly does not support the Union's proposal for a management rights clause limited to non mandatory subjects of bargaining.

On the other hand, though the practice among comparables is mixed regarding the Union's subcontracting proposal, there is a substantial amount of comparable support for a contractual proviso providing at least some protection from layoffs resulting from subcontracting, particularly in custodial/maintenance bargaining units, which lends support to the reasonableness of the Union's proposal in this regard--

though the Union proposal appears to be somewhat broader than the protection found in comparable provisos.

Based upon the foregoing the undersigned deems the Board's proposal on this issue to be preferable to the Union's proposal.

MAINTENANCE OF STANDARDS:

Board Position:

Twenty-six of twenty-nine comparables do not have a maintenance of standards provision.

The Union's proposal in this regard would greatly impinge on the District's ability to exercise its management rights.

If the Union desired to maintain certain past practices it could have introduced contract language on those items.

Union Position:

This proposal simply protects the status quo--it does not prevent the parties from negotiating changes in the status quo. This is important since interest arbitration is not available to resolve such disagreements during the life of a collective bargaining agreement.

A similar clause may be found in the Merton agreement.

Discussion:

Comparability evidence does not support the Union's proposal on this issue. Though said proposal addresses a legitimate employee and Union concern, absent evidence that comparable unions and employees have been successful in this regard, the undersigned cannot fairly conclude that such a proviso should be incorporated into this initial collective bargaining agreement. Another reason supporting the same result is the fact that the undersigned believes that practices which existed prior to an initial collective bargaining agreement should not be as binding on parties as practices which arise during the course of a collective bargaining relationship which are presumably more mutual in nature.

PROGRESSIVE DISCIPLINE:**Board Position:**

Only six of thirty comparables have progressive discipline contract language.

The parties have agreed that non probationary employees will only be disciplined or discharged for just cause. This level of job security is sufficient and is supported by the comparables.

Union Position:

This is not a substantive issue.

Discussion:

Because just cause protected incorporates the progressive discipline concept proposed by the Union, and because the Union's proposal is not supported by a majority of the comparables, the undersigned does not believe there is justification for the adoption of the Union's proposal.

BUS DRIVER ASSIGNMENTS:**Board Position:**

Not one comparable contract addresses the assignment of bus drivers to routes.

The Union's proposal might also generate disputes over the impact overtime might have on the assignment of routes.

Part of the reasons the scheduling of bus drivers is different than other positions is that the District subcontracts some of its services and the drivers' routes are contingent upon the student count and placement which fluctuates during the contract year.

Union Position:

Bus routes are changed annually. No reason exists for not allowing drivers to select such routes based upon their seniority.

Similarly, no harm would come to the District by requiring it to distribute additional routes as is practical.

Discussion:

Again, comparability evidence does not support the Union's proposal, though it appears to establish a reasonable way to address legitimate employee concerns, and the District has not presented persuasive reasons why implementation of the proposal would cause problems. Accordingly, the undersigned does not deem either party's position on this issue to be preferable over the other's.

WAGES:

Board Position:

The maximum benchmark is the important wage rate criterion because that is where a significant portion of the District staff will be at the conclusion of the 1992-93 contract year. Forty one of ninety unit members will be paid at the maximum step for 1992-93. Forty eight will be at the maximum in 1993-94, and sixty one will be at the maximum in 1994-95.

There is arbitral precedent for the use of maximum pay for comparison purposes in such cases. (Citation omitted)

The Board's wage offer places employees above the comparable average in four out of ten positions titles at the maximum benchmark for 1992-93. This is noteworthy in an initial collective bargaining agreement.

For 1993-94 the Board's proposal is above the comparable average at five of ten position titles.

The Board's proposal gets employees to the maximum in less time (based on comparable averages) than is provided for in five out of ten comparable job titles.

The Board's proposed total compensation increase, in percentage terms is almost two times greater than the comparables, whereas the Union's proposal is more than three times greater.

Both parties' wage proposals exceed the relevant percent increase in the cost of living by a significant amount.

There is no legitimate claim of a need for catch-up when a historical perspective of wages and CPI are compared. (Bd 12 and 13) Since 1990-91 support staff have received wage increases consistently and significantly above cost of living increases.

Though the District concedes that there were some errors in comparable wage data originally presented by the District in this proceeding, said mistakes had a minuscule impact on the comparable average data presented, and they should have no impact on which offer is preferred on a benchmark comparison basis.

There are 30 organized comparable units which have been agreed to by the parties. Of that group at least twenty utilize the cast forward method of costing and the total package approach in the reporting of settlements.

Union Position:

Based upon comparisons with unionized comparables, the Board's wage proposals for 1993-94 and 1994-95 fall completely outside the range of comparable settlements, while the three and one-half percent rate adjustment proposed by the Union is on the moderate side of the settlement pattern. With a single exception, the Board's proposed wages are the lowest among the comparables for every classification.

Arbitrators have found benchmark comparisons to be the primary consideration in wage disputes because giving weight to step increases discriminates against low-wage, relatively less senior units.

A considerable proportion of the Board's wage comparability data come from very small non-unionized K-8 districts.

In addition, the final year reflected in the Board's data is 1993-94. The Board presents no evidence regarding the 1994-95 wage pattern.

Importantly, the Board's wage data contains numerous errors, of such magnitude that it renders the information meaningless. Though

such errors at times exaggerate the amount of increases, more frequently, the Board understates the value of settlements.

In view of these problems, the Union's comparable wage data should be utilized, since it can be verified by the contracts entered into the record.

Until 1994-94, under the Union's wage proposal, the great majority of unit employees will not be on the wage schedule. Employees not on the schedule will, for the most part, remain on the low side of the comparable range until 1994-95.

The Board's cast forward costing method distorts the impact of the Union's wage proposal (9.38% in 1992-93 and 8.66% in 1993-94), particularly when one notes that the Union's wage proposal would result in a wage schedule at the low end of the comparables.

The Board's assertion that schedule maximums demonstrate the reasonableness of its wage offers, and that starting rates are not particularly important for comparison purposes flies in the face of cast forward package statistics in which step increases constitute a significant portion of the increase.

Discussion:

The Union asserts that its wage proposals can be justified on the basis of a need for catch up among unit employees.

As indicated above, wage comparisons in a unit of this nature are extremely difficult and somewhat unreliable. With that in mind, the undersigned has attempted to compare the maximum rates of the lowest paid classifications in representative job categories to ascertain whether the record indicates that a demonstrable need for catch up exists, and if so, how the parties' proposals address that need.

To that end, the record indicates the following:

Among custodians, in 1992-93, the Board's proposal ranks last among the comparables, while the Union's proposal approximates the comparable average. In 1993-94, based upon only five settlements, the Board's proposal again ranks last, and the Union's again approximates the average. In 1994-95, based upon only three

settlements, the Board's proposal again ranks last, while the Union's proposal is closer to the low end of the range.

When wages for kitchen aides are compared, in 1992-93 the Board's proposal is slightly above, but close to the bottom of the range, and the Union's proposal approximates the comparable average. In 1993-94, based upon four settlements, the Board's proposal ranks last, while the Union's proposal approximates the comparable norm. In 1994-95, based upon three settlements, the proposals produce the same comparable results.

When clerical wages are compared, in 1992-93 the Board's proposal is significantly below the comparable range, while the Union's proposal again approximates the comparable average. In 1993-94 and 1994-95 the same general results occur, but with less reliability because of the smaller size of the comparable population.

A comparison of proposed wages for instructional aides generally resulted in the Board's proposal producing the lowest wage among the comparables, or close to it, whereas the Union's proposal also in this case resulted in a wage rate that placed the District last amongst its comparables, but with a wage rate that is much closer to the comparable range than is the case with the Board's proposal.

To the extent that the foregoing is representative and reliable, one can conclude that a legitimate need for wage catch up has been demonstrated, that the Board's wage proposal has failed to address that need in an adequate manner, and that the Union's wage proposal better addresses the problem, though in a majority of the cases examined, rather than addressing the problem incrementally, the Union has sought to mainstream the District's wages rather than to bring the District at least up to, and perhaps into the comparable range of wages--as it proposes to do in the teaching aide classification.

The next issue which must be addressed with respect to the wage dispute is the cost of the parties' wage proposals, after which, the affordability of the proposals will be considered (in the discussion of the relative merit of the parties' total package offers).

While there is a dispute over how the parties' wage proposals (as well as total package proposals) should be costed, it appears relatively undisputed that the cost of the Union's wage proposal is

greater than support staff settlements in comparable districts. In this regard the Union contends that such costs are necessary and reasonable in view of the disparity which exists between the District's wages and comparable district wages, while the Board asserts that the Union's wage proposal is simply not affordable when viewed in the context of the Union's proposed total package.

The costing dispute essentially boils down to a couple of questions. One, whether the cast forward method is an appropriate basis for costing the parties' proposals in this proceeding, and two, whether, in light of the disparity in wages which exists between the District and its comparables, the dispute should be resolved on the basis of comparable settlement costs, or whether instead, it should be based upon comparable wages and fringe benefits.

With respect to the first question, where, as is the case here, the District's ability to pay is at issue, and where the employee population which the Board has utilized to cost the proposals goes back to the 1991-92 school year, and where there is evidence that there has been a significant amount of turnover among unit employees since said time, the undersigned does not believe that the cast forward costing method reliably portrays the impact of the parties' wage proposals on the District. On the other hand, the Union's assertion that the cost of the proposals should not be determinative of the outcome of this dispute significantly undervalues the importance of this consideration in the circumstances present herein.

The problem the undersigned faces in this regard is that the actual cost of the parties' proposals which is contained in this record reflects an increase in the size of the bargaining unit workforce over the period of time covered by the proposed collective bargaining agreement, thereby likely exaggerating the cost impact of the parties' proposals as well.

What might have been done to fairly estimate the cost impact of the parties' proposals would have been for the parties' to have agreed upon a representative population of employees who remained in the bargaining unit during the period in question, and to have applied their proposals to said population—which would have at least provided a relatively objective estimate of the percentage impact of the parties' proposals when applied to a constant group of bargaining unit employees.

The lack of reliable record evidence in this regard leads the undersigned to the following conclusions: The Board's costing of the parties' wage (as well as total package) proposals is in all likelihood exaggerated, but the extent to which such exaggeration exists cannot be ascertained.

The Union's assertion that the costs of the parties' proposals should not be determinative of the outcome of this dispute is not persuasive to the undersigned under the circumstances present in this dispute.

Though the actual costs of the Union's wage proposal are in all likelihood not as high as the Board's estimates, they are higher than settlements in comparable districts over the same period of time, though concededly, there are not a sufficient number of settlements for the 1994-95 school year for the undersigned to make reliable comparisons in that regard.

All of these considerations will be factored into the undersigned's determination regarding the affordability and reasonableness of the parties' total package final offers, which will be discussed in the following section of this arbitration award.

TOTAL PACKAGE:

Board Position:

The wage and benefit increase limitations which the Legislature enacted in sec. 118.245, Wis. Stats. for school district administrators and in sec. 111.70 (1)(nc), Wis. Stats. for school district professional employees covered by a collective bargaining agreement should serve as a guideline in ascertaining the percent wage and benefit increase which can be afforded to any school district employee.

The Board has proposed a 10.2 percent increase in wage compensation and a 27.3 percent increase in total compensation for support staff employees in the three years covered by this proposed agreement. The Board's proposal significantly exceeds the cost of living, the settlement pattern among comparables and in the private sector. The Board's offer places the District's budget within the confines of the State imposed revenue limit in 1993-94 and 1994-95.

The Union's offer in 1994-95 places the District \$206,702 over the State imposed revenue limit, which would force the District to make \$206,702 worth of budget cuts in 1994-95.

Section 121.91 Wis. Stats. sets forth revenue limits applicable to school districts beginning with the 1993-94 school year. Basically, the revenue limits provide that no school district may increase its revenues for 1993-94 by more than \$190 per pupil, or the percent increase in the CPI between May 1992 and May 1993 (3.2%), whichever produces the higher amount. In 1994-95 through 1997-98 the new per pupil amount will be adjusted annually by the percentage change in the CPI. A district can, with voter approval, exceed the revenue limit by holding a referendum. If the district does not receive voter approval and still exceeds the revenue limit, the state will withhold from the district state aid payments equal to the amount the district exceeded the revenue limit.

Under the current rate of inflation the District will be limited to setting its 1994-95 budget at a level which represents an increase in its 1993-94 budget by 2.5% per pupil.

The District also faces a much more uncertain budgetary future. Assembly Bill 1126 (the 1994-95 budget adjustment bill) requires that the school tax levy be frozen at its current amount through 1995-96. Thereafter, beginning in 1996-97, state school aid payments will constitute two thirds of school district revenues. Thus, school districts will have less discretion in the future in setting the level of school district budgets.

Revenue limits in the District have an even greater impact due to the fact that the District is growing at a significant rate. The District has already made significant cuts in its 1994-95 budget in order to fit under the revenue limits. The District has already cut \$40,000 in its proposed athletic department budget, \$100,000 in the proposed building and grounds budget, and \$55,000 in the proposed library budget. It has also levied greater extracurricular and supplies fees against students.

If the Union's offer is selected, the cuts will be deeper.

The District did not dip into the fund balance to fund these items. The District has set its budget and fund balance at such a level so as to minimize its short term borrowing costs and to maintain its present

bond rating. When the District needs to borrow money, a dwindling fund balance may adversely affect the District's credit rating.

Under the Union' offer the district will have to borrow \$168,187 more than would be necessary under the Board's 1994-95 offer. Selection of the Union' offer will result in the District having to borrow more in the future as well. This is due to the fact that the District cannot replenish the fund balance through taxation as was allowable prior to the enactment of the revenue limits set forth in 121.91 Wis. Stats. The only option the District will have to cut the increased short-term borrowing costs is to cut expenses.

The arguments that the Union makes regarding the District's ability to pay are currently of no persuasive value. The District's levy rate no longer has a bearing on the dispute--the District cannot raise the levy rate to a point which would place the District's revenues above the revenue limit. The levy rate has already been so set.

The Union also argues that the District's cost per pupil is the same or less than the cost per pupil in comparable districts. It is worthy of note however that revenue limits are based upon the cost per pupil, and that the costs per pupil cannot increase by more than the annual percentage change in the CPI. Thus, the District's ability to pay for increases similar to those found in the comparables is restricted by the fact that it was a low cost per pupil district.

The fact that the District has a relatively high equalized value per member is also of no probative value.

In an era which has seen settlement increases decrease in magnitude, the Union proposes an economic package which is almost eight times the size of total compensation increases received by comparable employee in 1994-95.

The Union's total compensation proposal is over three times greater than the cost of living in 1992-93 and 1993-94, whereas the Board's offer in this regard also exceeds the cost of living. CPI comparisons should be given more weight due to the precarious economic environment and the recent enactment of revenue limits on school districts.

Under the Board's proposal support staff will receive larger total compensation increases than the typical state or local government employee.

The same conclusions may be drawn from comparisons with private sector settlement patterns.

The level of turnover that an employer experiences is generally a good measure of the employer's competitiveness, and in this regard the District has had an exceptionally low turnover rate among the employees in question.

The use of the cast forward costing method utilized by the District is only one of many arguments the District has made demonstrating that the Union's proposal is excessive. Arbitrators have held that absent agreement to another costing method, the cast forward method is appropriate. (Citations omitted)

Because the District has raised an ability to pay argument, it has presented actual cost data as well. That data indicates that the Union's offer places the District \$206,702 above the District's revenue limits in 1994-95. It further represents an increase of 62.2 costs over the three years of the agreement, while the District's proposal amounts to a 37.7 percent increase over three years.

The District does not contend that there exists a status quo, nor does it contend that the Union should provide a quid pro quo for the benefits it seeks. The District has solely relied upon comparability and the District's ability to pay.

Union Position:

Though the Board faces more fiscal restrictions than in the past, such restrictions do not demonstrate an inability to pay situation.

In this regard, the District has a lower levy rate than any comparable district. Secondly, the District's costs per pupil is approximately the same or less than the cost per pupil at comparable districts. Thirdly, the District's equalized value per member is second among the comparables.

The Union seeks catch-up to the standards which exist in comparable districts. The groups of employees in the unit are not at the same

starting point--their benefit levels are not the same. The Union has approached this situation by proposing to provide all employees with the benefits which were formerly afforded to only some. Where the benefit is not supported by external comparisons, the Union does not propose expanding or deleting the benefit. There are also some policies which the Union simply proposed continuing and providing for in the agreement.

The Board's cast forward costing method completely breaks down when it projects for 1994-95 which is the year the majority of the unit becomes eligible for retirement and insurance benefits for the first time.

Cast forward costing also fails to account for turnover, which in this case is substantial. The turnover rate for the entire unit was 23.75% in 1992-93 and 16.88% for 1993-94. The turnover in particular was high during these two years for the teacher assistant classification (61.54%), secretarial positions (20%), and food service (33.33%).

The Board's cast forward statistics are based on unit wide averages which completely fail to account for the fact that seniority and the fringe benefits among the comparables vary significantly.

The Board's cast forward costing method results in 1994-95 increases of 18.58% resulting from the Board proposal and 31.15% resulting from the Union proposal, with only a 3.5% wage schedule adjustment. Not only is this estimate unreasonable, but the Board fails to note that significant portions of the 1994-95 increase result from long overdue pension coverage for unit members which has long been provided to members of comparable represented bargaining units.

Another major component of the cost of the 1994-95 total package is the expansion of health insurance among school year employees, which, at best, does no more than bring said employees into the comparable mid stream.

The Board's cast forward costing method simply attempts to camouflage the fact that the wages for the majority of the unit are less than the comparables and will become increasingly so under its proposal. It also disguises the fact that the Board has been depriving a substantial number of unit employees of fundamental fringe benefits too long.

Readily verifiable information (wage level comparisons, wage rate adjustments, provisions relating to individual fringe benefits) has traditionally been the standard by which parties bargain support staff agreements.

For years the Board has failed to provide these employees with basic pension and health insurance benefits. Now it seeks not only to have the employees pay for these benefits with a substandard wage offer, but it also claims that its proposal should be favored because the cost of providing comparable benefits is too high. This is not the first time this argument has been presented in an interest arbitration proceeding and found wanting. (Citations omitted)

Package percent cost comparisons are problematic in this case because of variance in wage schedule structures, and because the unit--in contrast to self-standing units which abound in the comparables--is a wall-to-wall unit with a significant number of junior employees in the lower paid classifications. Package percent comparisons are far less onerous to units that consist of primarily senior employees, or when there are relatively few steps in the wage structure because the base used for calculating percent increases is relatively high, and the cost of advancement through the wage schedule is minimal.

Arbitrators have also concluded that cost of living comparisons should be based upon wage adjustments, not employer costs, (Citations omitted) as the Board proposes herein.

Relatedly, in interest arbitration cases involving support staff employees, arbitrators have not considered the cost of step increases as part of the value of negotiated wage adjustments since, unlike teacher salary grids, such steps simply reflect payment increments to allow individuals to work up to the journeyman rate for a job. (Citations omitted)

Generally arbitrators do not apply a status quo burden on the proponents of change in an initial collective bargaining agreement. (Citations omitted) Instead, the parties should expect to have the merits of their respective positions considered in the formulation of an initial contract. (Citation omitted)

The Board has taken no position or made no proposal on a good number of non economic items. It also has refused to agree to

maintenance of standards clause. The Board's position on such issues is contrary to the intent of the collective bargaining mandate contained in Wisconsin statutes. Once the contract has been established, the District may continue its strategy of making no proposal on issues and demanding a quid pro quo for every change the Union seeks. The initial agreement will become the status quo and changes will be tougher to accomplish.

Catch-up costs in an initial contract, even though more than normally might be expected under successor agreements, can be justified by comparisons. (Citations omitted) There is no compelling reason not to provide these employees with catch-up, the District's reserve fund balance and cash flow notwithstanding.

The District has a fund balance of \$2.6 million. The worst scenario the Board can project would be a slight increase in short term borrowing before property tax payments are received and a relatively slight decrease in the fund balance at the end of the fiscal year. This hardly constitutes an inability to pay.

Furthermore, the Board's claim that the Union offer would exceed the revenue cap by \$206,712 is not credible. The Board's data are based on the assumption that all 1993-94 employees will return in 1994-95--hardly a valid assumption given the massive turnover rates in 1992-93 (23.75%) and 1993-94 (16.88%)

The Board's projections with respect to health insurance costs under the Union offer are also grossly inflated. Not only has the Board assumed that all of the 39 employees eligible for health and dental insurance benefits for the first time will return to employment, it has also assumed that all of these employees will opt for insurance coverage and arbitrarily assigned the cost of either single or family coverage to each of these employees. The Board's costing also totally ignores the results of a survey it made in February 1994, which strongly implied significantly less cost under either final offer.

The lowest paid employees should be brought up to the benefit levels established by the District for other employees--internal comparisons. The whole bargaining unit should be paid wages and benefits competitive to others performing similar services--external comparisons.

Discussion:

What the totality of the record in this proceeding indicates is that because of the disparity that exists between many of the bargaining unit employees and similarly situated employees in comparable districts, the value or costs of the improvements incorporated into the parties' first collective bargaining agreement can justifiably exceed the value/costs of comparable settlements, cost of living increases, and the limitations which have been legislatively established for school district administrators and professional employees—which explicitly exclude school district support staff personnel.

The record also demonstrates that the District is confronting legitimate, serious budgetary problems, growing out of recently enacted Wisconsin statutes, and that said problems will be exacerbated in the form of increased borrowing, reductions in expenditures, or a permanently reduced fund balance, if the Union's final offer is adopted. While it is not clear to the undersigned that adoption of the Union's total package final offer will result in the \$200,000 plus revenue limit overage suggested by the Board, it does seem clear that an overage amounting to a significant portion of said amount would occur unless the District were to further cut expenditures elsewhere. While it has not been demonstrated that such cuts would be harmful to the District's educational programs, or that the District is unable to afford the Union's final offer, it is clear to the undersigned that there is legitimate reason for the District's concerns in this regard.

Furthermore, it would appear that for the foreseeable future, these problems will probably be exacerbated in the District because of its growth and the legislative restraints on spending which have been recently imposed on all Wisconsin school districts.

In view of this situation, the undersigned is of the opinion that on the economic front, the Board's proposals are insufficient to bring the District into the economic mainstream, while the Union's proposals, by attempting to mainstream the District, i.e., by trying to achieve comparable norms, has attempted to achieve too much too soon under the economic circumstances present herein. While greater wage increases and lower insurance eligibility requirements than

those proposed by the Board are needed, for at least some employees, to address comparability concerns, a more reasonable settlement, at least with respect to these issues, would have ranked the District among, but at the lower end of the comparables on such issues. Unfortunately, neither party's proposals achieve that end.

When the parties' proposals on these major economic issues are viewed in the context of their total package final offers, it becomes evident that neither party's total package final offer merits selection and adoption in its entirety, and that the problems generated by both final offers will need to be addressed in the party's next round of negotiations. What the undersigned really needs to decide is which of the two final offers is least unreasonable--the Board's, which fails to adequately address comparable disparity issues on wages and insurance, or the Union's, which does not give sufficient recognition to the District's legitimate budgetary concerns.

Because both final offers contain significant unsupported and/or unreasonable provisos, the undersigned strongly urges the parties to address the problems arising from this agreement in their next round of negotiations without relying on status quo considerations. If the parties in the next round of negotiations are not successful in addressing such problems, the undersigned would also urge that status quo considerations not be utilized in any interest arbitration proceeding that may be necessitated.

The bottom line is that the undersigned is of the opinion that the Board's total package proposal, though seriously flawed, will do less harm to the parties under present circumstances than will the Union's total package final offer. Though concededly some employees will suffer unreasonably disparate terms and conditions of employment--when compared to their comparables--under the Board's proposal, those problems can be more readily corrected in the next round of negotiation than would be the case if the Union's final offer were selected at this time. If the latter were the case, in the undersigned's opinion, the adverse consequences affecting the District would be less amenable to correction in the next round of negotiations than will be the case herein.

In selecting the Board's offer, the undersigned believes that a number of specific problems arising therefrom, generally referred to above, need to be addressed in the parties' successor collective bargaining agreement, the most important of which follow:

Holiday entitlement for calendar year employees needs to be made more comparable.

Vacation entitlement after one year of service needs to be addressed.

Sick leave accumulation needs to be made more comparable.

Overtime benefits need to be made more comparable.

Early retirement benefits need to be made more comparable.

Eligibility standards for health and dental benefits need to be lowered, and some attention needs to be given to protecting the level of health insurance benefits afforded employees.

Catch up needs to be provided to groups of employees whose wages are not in the comparable range.

Based upon all of the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The Board's final offer shall be incorporated into the parties 1992-1995 collective bargaining agreement.

Dated this 26th day of August, 1994 in Madison, WI.


Byron Yaffe
Arbitrator