

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

RECEIVED
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In the Matter of the Petition
from the
MERRILL EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION
and
THE MERRILL SCHOOL DISTRICT

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

CASE 27
NO. 49372 INT/ARB 6913

Decision No. 27831-A

I APPEARANCES

Merrill Education Support Personnel Association
Sandra Beaudry
Sylvia Lemon
Darlene Winter, MESPA President
Thomas Ivey, Exec. Dir. CWUC, Spokesperson

Merrill School District
John Ader, Director of Personnel
Ralph L. Neale, Supt. of Schools
Tim Sandholm, Board Member
Pat Weber, Board Member
Dean R. Dietrich, Ruder, Ware & Michler, Spokesperson

II BACKGROUND

On June 16, 1993 The Merrill School District, hereinafter called the District 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. The petition was filed for the purpose of resolving an impasse between the District and The Merrill Education Support Personnel Association, hereinafter called the Association. A finding of fact conducted by the Commission concluded that the Association was the exclusive collective bargaining agent for regular full time and part time personnel employed as clerical, secretarial, teachers aides, audio-visual technician, and food service employees, excluding professional, managerial, supervisory and confidential employees. The parties exchanged their initial proposals on September 22, 1992,

and thereafter met on five occasions in efforts to reach accord on a successor agreement. An investigation into the impasse was conducted by the Commission on August 11, 1993, reflecting a continuing deadlock. The parties submitted their final offers on September 28, 1993. The Commission's investigator notified the parties and the Commission the investigation was closed and the parties remained at impasse. Subsequently, the Commission rendered a FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF THE RESULTS OF INVESTIGATION, an ORDER requiring arbitration.

The parties selected Donald G. Chatman as Arbitrator for this matter on November 17, 1993. A mediation hearing was attempted on February 4, 1994, at the offices of the Merrill School District, Merrill, Wisconsin, at 10:00 A.M. The mediation efforts were unsuccessful and an arbitration hearing was immediately held at that time and place.

III PROCEDURE

An arbitration hearing was held in Merrill, Wisconsin on February 4, 1994. At this hearing all parties were given full opportunity to present their evidence, testimony and proofs, to present witnesses and to engage in their examination and cross-examination. After presentation of their evidence and documentation the parties elected to summarize their final arguments in the form of written briefs, and rebuttal briefs. The briefs were received on March 23, 1993, with rebuttal briefs received on April 3, 1994. The hearing was closed on April 5, 1994 at 5:00 P.M.. Based on the evidence, testimony, arguments and criteria set forth in Section 111.70(4)(cm) 6 through 7h, of the Municipal Employment Relations Act, the Arbitrator renders the following award.

The parties stipulate, no other issues besides those presented are at impasse. The issues in dispute are as follows:

1. WAGES: The parties are in agreement on the restructuring of the current salary schedule. The parties have agreed to drop steps on the schedule in a similar manner.

in 1992-93 the first two (2) steps of the 1991-1992 salary schedule are dropped;

in 1993-1994 the first step of the 1992-1993 schedule is dropped;

in 1994-1995 the first step of the 1993-1994 schedule is dropped.

- B. The parties agree there should be a 4.0% span between each of the cells within the salary schedule.

ASSOCIATION

In 1992-1993, the Association proposes a 2.0% increase to all rates. The Association then proposes that all applicable employees move one step on the salary schedule.

In 1993-1994, the Association proposes a 1.5% increase to all rates. The Association then proposes that all applicable employees move one step on the salary schedule.

In 1994-1995, the Association proposes a 1.0% increase to all rates. The Association then proposes that all applicable employees move one step on the salary schedule.

The Association proposes that the position of Computer/Audiovisual Technician be placed on the salary schedule, and that this position be started at step 3 for 1992-1993. In 1993-1994, the position would advance to step 15+. In 1994-1995, the position would be at step 15+ and, granted a 3.5% cost of living increase.

DISTRICT

In 1992-1993, the District proposes a 1.5% increase to all rates. The District then proposes that all applicable employees move one step on the salary schedule.

In 1993-1994, The District proposes a 3.5% increase to all rates. All applicable employees except for the Computer/Audiovisual Technician stay at the 1992-1993 placement. The Computer/Audiovisual technician position only, moves one step on the salary schedule.

In 1994-1995, The District proposes a 3.5% increase to all rates. All applicable employees except the Computer/Audiovisual Technician stay at the 1992-1993 placement. The Computer/Audiovisual Technician position only, moves one step on the salary schedule.

HOURS OF WORK AND OVERTIME PAY (ARTICLE 7)

Association Offer Add: "In lieu of overtime pay, the employee may choose compensatory time at the rate of time and one half for all overtime hours worked. Compensatory time must be taken within four (4) work weeks unless otherwise agreed upon by the employer and employee. In emergency situations, the District may pay the employee for time earned in lieu of providing compensatory time.

District Offer: The Status Quo should be maintained regarding compensatory time

SICK LEAVE (ARTICLE 10)

Association Offer: (Section, 4) All employees who actually retire from District service at the age allowable by the State's Retirement System or over, and apply (within sixty days of the last date paid) for a retirement annuity from the Wisconsin Retirement Fund, shall have their sick leave credits (at the time of retirement) converted

to a monetary value (days of accumulated sick leave times normal daily rate of pay received immediately prior to retirement). Which total shall be available to pay such group medical coverage premium costs then in effect and available to working dependents until the retiree reaches age 65 or the funds are depleted.

In the event the retired employee and/or spouse is age 65 at the time of retirement or becomes 65 thereafter, and there remains a credit to the retiree's account, such credit may be used to purchase Medicare supplemental insurance.

in the event the retiree reaches age 65 and the spouse is younger and not eligible for Medicare, the dollars generated by the accrued sick leave shall continue to pay for the spouse's continued coverage under the group plan until age 65, or the funds are depleted(Stipulated Agreement).

Except as provided herein, when the Employee and her/his spouse reaches the age of 65, or both the retiree and her/his spouse are deceased, or when the retiree takes a full-time employment where group insurance is available the boards' obligation shall cease. Retired employees and/or covered dependents who wish to maintain health and dental coverage, may continue to participate in the programs until age 65 provided they make the necessary payments to the district. (Stipulated agreement).

The Existing Agreement reads (Section 4): Early Retirement Incentive; (Accrued Sick Leave Credit). All employees who actually retire from board service at age fifty seven or over, and apply (within sixty days of the last date paid) for a retirement annuity from the Wisconsin Retirement Fund shall have their sick leave

credits (at the time of retirement) converted to a monetary value (days of accumulated sick leave times normal daily rate of pay received immediately prior to retirement) which total shall be available to pay such group medical coverage premium cost then in effect and available to working dependents, until the retiree reaches age 65.

in the event the retiree reaches age 65 and the spouse is younger and not eligible for medicare, the spouse shall continue to be covered under the group plan until age 65.

in the event the retired employee shall precede his/her spouse in death and there remains at that time to retiree's credit a balance, such balance shall be used to purchase such health insurance for the surviving spouse, so long as the spouse is alive and ineligible for medicare, and there remains a balance in the fund.

in the event the retired employee and or the spouse is age 65 at the time of retirement, or becomes age 65 thereafter and there remains a credit to the retiree's account, such credit may be used to purchase the supplement insurance to medicare.

when the employee and his/her spouse reach the age of 65, or both the retiree and his/her spouse are deceased, or when the retiree takes full-time employment where group insurance is available the board's obligation shall cease.

The District's Proposal Article 12, Sick Leave, Section 4 Early Retirement Incentive

All employees who actually retire from District service at age fifty seven or over, and apply (within sixty days of the last date paid) for a retirement annuity from the Wisconsin Retirement Fund shall have their sick leave credits (at the time of retirement) converted

to a monetary value (days of accumulated sick leave times normal daily rate of pay received immediately prior to retirement) which total shall be available to pay such group medical coverage premium cost then in effect and available to employee and dependents, until the retiree reaches age 65. or the funds are depleted.

in the event the retiree reaches age 65 and the spouse is younger and not eligible for medicare, the spouse shall continue to be covered under the group plan until age 65, or until the funds are depleted. (Stipulated Agreement)

in the event the retired employee and or the spouse is age 65 at the time of retirement, or becomes age 65 thereafter, and there remains a credit to the retiree's account, such credit may be used to purchase Medicare supplemental insurance. This paragraph shall only apply to employees hired prior to July 1, 1992.

in the event the retired employee shall precede his/her spouse in death and there remains at that time to retiree's credit a balance, such balance shall be used to purchase such health insurance for the surviving spouse, so long as the spouse is alive, under age 65 and ineligible for medicare, and there remains a balance in the fund. when the employee and her/his spouse reach the age of 65, or both the retiree and his/her spouse are deceased, or when the retiree takes full-time employment where group insurance is available the board's obligation shall cease.

Retired employees and/or covered dependents who wish to maintain health and dental coverage, may continue to participate in the programs until age 65 provided they make the necessary payments to the district. (Stipulated agreement).

EMPHASIS MINE

HOLIDAYS

The Association's final offer seeks to add the day after Thanksgiving as a paid holiday for ten month employees.

The District seeks no change in the existing status.

MILEAGE Article 18, Miscellaneous Provisions

Association Proposal; A mileage rate, equal to the current IRS rate shall be established by the district to reimburse employees for the voluntary use of personal vehicles in the performance of service to the District for pre-approved travel for training and other assignments.

Existing Agreement: Section 1: Para. 2; A mileage rate has been established by the District to reimburse employee for the voluntary use of personal vehicles in the performance of service to the District, for per-approved travel for training or other assignments.

District Proposal: No change in existing agreement
In addition the parties are in dispute about the construct of comparisons of comparable school districts.

IV CONTENTIONS OF THE PARTIES

Comparables

The Association contends the Wisconsin Valley Athletic Conference is the best choice of comparable comparison. They maintain this athletic conference meets the most basic element of comparability, i.e., employees performing similar services under similar conditions. The Association further contends that for similar employee groups some Arbitrators (Petrie, 5732, 1992; Rice, 6010, 1992) have concluded that athletic conferences constitute an

appropriate intraindustry comparison group. The Association maintains the Wisconsin Valley Athletic Conference is the most appropriate comparison group, because it provides the parties with a reasonable group of school districts whose size and status has been long recognized by the community and the District as similar.

The Association contends the District's selection of comparable districts is flawed by inconsistencies, in distances from Merrill, district size, and the selective use of some school districts' in geographic proximity but not all meeting geographic criteria. The Association contends that if geographic proximity is to be the determining factor for comparability, "then data from all geographically proximate school districts must be examined. The absence of such data makes the District's suggested comparability group inappropriate."

The Association proposes the school districts of Antigo, (Langlade); D.C. Everest, (Marathon); Marshfield, (Wood); Merrill, (Lincoln); Rhinelander, (Oneida); Stevens Point, (Portage); Wausau, (Marathon); Wisconsin Rapids, (Wood) as the comparable school districts.

The District contends it has selected the contiguous school districts of Antigo, D.C. Everest, Medford, Rhinelander, Tomahawk and Wausau as the primary compatible groupings. The maintain that these contiguous districts are the most appropriate as comparables because they share common boundaries and similar labor markets. The District contends that while certain of these districts are larger or smaller than the Merrill district, on average they are very comparable. Further, the District contends that the comparable grouping is extremely important in that this is the second labor

agreement for support staff employees. This employee bargaining group has never gone to arbitration before, thus an appropriate comparable pool of districts is determinative in setting the stage for future negotiations.

The District contends that comparability has historically been treated differently for non-certified employee groups. They maintain that arbitrators have establish precedents for non-certified employees utilizing appropriate labor markets, and geographic proximity over athletic conference comparability.

The District contends that use of the Athletic conference introduces economic factors from some districts within that conference that disproportionately influences the local economy. The District contends that appropriate rates of pay for clericals, aides and food service personnel have little bearing with some conference school districts because of differences in economics. The District argues that the contiguous districts selected by the District are best for comparison because they share the same labor market, they border each other, and experience similar economic conditions.

Wages

The Association and the District concur that the present salary schedule requires restructuring. Both parties are in agreement to dropping schedule steps in a similar manner. The parties agree that there shall be a 4.0% span between each of the cells within the Schedule (Association Exhibit 6, 7; attached as Appendix A).

The Association contends that bargaining unit employees should move a step on the schedule for each year of service to the District up to the schedule maximum. The Association argues that while

initially the District's wage proposal appears to offer a better schedule than the Association proposes, that offer is less when viewed in context with the District final offer of freezing the employees with one exception in the same step for the second and third years of the agreement. The Association argues that in the 1992-93 school year while there is very little difference between the final offers, the freezing of steps will cause a serious decline in the wage rates for the duration of the agreement. The Association contends that its final offer would slowly begin to reverse the decline in wage relationships within the comparable districts of the athletic conference. The Association maintains that its final offer on wages is necessary to keep bargaining unit employees wages in line with similar employees, doing similar work in comparable school districts.

The Association contends that while it and the District are in agreement that there shall be an increase in the value of the employment period cells of the new salary schedule. They are in disagreement about the amount. The Association proposes a 2.0% increase in 1992-93; a 1.5% increase in 1993-1994; and a 1.0% increase in 1994-95. The Association contends that the District's wage proposal, while appearing higher is actually regressive. The District's proposal would freeze employees in the second and third years of the agreement. The association argues this freeze would make the greater salaries unachievable for employees not already at the top. Further, because of the pendency of these hearings it would freeze them on the same step for three years. This would place them behind in earnings when compared to their counterparts in other

districts The Association argues its final offer more closely reflects the wage increases necessary to keep bargaining unit employees in line with other similarly occupied employees.

The Association contends the Audio Visual/Computer Technician requires a catchup salary adjustment to compensate for previous serious undervaluing of the position in prior years. The Association argues that this position requires an extraordinary approach to bring it into comparability with positions in Marshfield and Antigo.

The District contends its final wage offer is fair and equitable. The District maintains it has not only offered a fair wage but condensed the salary schedule to ensure salaries are competitive, and allow employees to reach the maximum rate in a shorter period of time. The District proposes that all employees move on the schedule in 1992-93. For the second and third year the district is proposing a 3.5% increase to each of the employment period cells for years two and three of the agreement. Further, the District proposes that with the exception of the Audio Visual Technician, bargaining unit employees would not advance on the schedule. The district maintains its wage proposal addresses the need to condense the salary schedule and give a fair wage increase to all employees. They maintain that this methodology is a more cost effective manner than the Association's final offer. The District contends that its final offer on wages places employees in a more competitive position with its comparables than the Association's offer.

The District contends its final offer on wages places employees in the bargaining group at a comparable level with all other

clerical positions in the County, City, and other public and private sector positions. The district argues that this level is best maintained by raising the value of the salary cells, thus making hiring of new employees more competitive.

Wages; Audio Visual Computer Technician

The Association contends that this important position is underpaid. They propose to seek some equity for this position by raising the probationer wage and providing a five step schedule.

The District proposes that this position be advanced in step during the length of the agreement to reach a competitive salary level.

Early Retirement

The Association contends that its proposal for early retirement is within the boundaries of the Wisconsin retirement system. They maintain the proposal is reasonable and will not harm the District. The Association contends the District already has existing language for other organized support personnel allowing early retirement. The Association contends that its proposal is to incorporate a past practice that was selectively available prior to a change in administration. The Association further, contends that this proposal is not unique to support personnel in its selection of comparables. The Association argues that if the District had problems with early retirement it had opportunity to raise such problems. They maintain the District has not.

The District maintains it should maintain status quo because none of the school districts it uses as comparables has this provision. The District argues it already has an early retirement

provision at age 57. The District contends there is no compelling need or reasons for the alteration of the current provision. The District argues the Association has the burden of proof that there is a legitimate reason to alter the status quo, and the Association has not provided such proof.

Compensatory Time

The Association contends that there is already comparability within the Wisconsin Valley Athletic Conference for compensatory time. The Association maintains its proposal would protect the District from worker shortages, because of the time limitations in the proposal. The Association argues that in fairness to its' members, if the employee's day can be unilaterally extended by managerial decree then some offsetting consideration for disruption of their lives ought to be given.

The District contends the current language entitles the employees to time and one-half for all overtime hours worked. The District maintains that this provision continue unchanged. The District argues that the Association proposal is froth with potential problems for the District. First, the District maintains the proposal places control of the provision in the hands of the employees, limiting the districts ability to schedule work. Second, the District cannot have several people away from work because the support staff is located in several buildings in several locations. Finally, the District contends that the language of "emergency situations" is ill defined allowing for variance of interpretation. The District argues that this provision should not be incorporated into the agreement.

School Year Holidays

The Association contends That members of the Bargaining unit should be allowed an additional paid holiday. They propose the day after Thanksgiving. The Association contends that the comparability of the other districts in the Wisconsin Valley conference supports this contention. The Association in support of their contention submits documentation (Association Exhibit, 44) which demonstrates that members of the Merrill Educational Support staff receive less paid vacation time than other organized proposed comparable educational support staffs. The Association maintains the District's documentation on this issue (District Exhibit, 41) demonstrates that this bargaining unit receives less paid holidays than any other educational support staff in the District's comparable school districts. The Association maintains that the evidence of non-comparability is sufficiently compelling to sustain their final offer. The Association further maintains that this deficiency is to the extent that no exchange is necessary.

The District contends the Association's membership currently enjoys generous benefits, and an addition of another paid holiday is unwarranted. The District argues that it provides other benefits such as employee health insurance participation at a level of 600 hours per year. The District contends that twelve month employees have extensive sick leave benefits. They are allowed to collect up to 120 days before losing the excess. The District maintains that most of its comparable districts allow the collection of far fewer sick leave days. The District maintains this is a great benefit. The District contends that its employees enjoy liberal vacation benefits. They further contend that full-time employees have better

holiday benefits then the district's comparable group. The District argues that while attempting to obtain an additional holiday for school year employees the association is not considering the other proported superior benefits received compared to their comparables. The District maintains that an additional holiday should not be granted.

Mileage Reimbursement

The Association contends that the District's final offer which, unilaterally allows the District to set the mileage allowance results in Association members being reimbursed at a lower rate then their counterparts in comparable districts. The Association maintains that its final offer on mileage allowance enfolds it into the agreement between the parties. They argue this action is appropriate in that it is part of the wages, hours and working conditions of the Agreement. Finally, the Association contends that the failure of the District to voluntarily maintain comparability makes the inclusion of this issue necessary.

The District contends that no change is necessary in the manner in which mileage allowances are paid.

IV DISCUSSION AND CONCLUSIONS

COMPARABILITY

It would appear that the fundamental resolution of the issues in dispute between the parties is rooted in the selection of the comparable employee related school districts. The preponderance of documentation, proofs and argument, relies very strongly on which comparable school support employee groups are used. The Association contended that Wisconsin Valley Athletic Conference schools are the

most comparable grouping. They cite as supportive evidence the decisions of some Wisconsin interest arbitrators. While the District proposes to utilize the contiguous school districts. The District had contended that since this is the second contract for this employee group there is no history of precedence and the employee comparable grouping is a critical part of the decision making. They cite Wisconsin interest arbitrators who have find labor markets to be equally or more appropriate in the selection of comparables for non-teaching employees.

An initial review of the respective comparability selections by the parties seems prone to enhance their positions, rather than provide clarity for comparison. The review of the Association's comparables would seem to demonstrate more transportation comparability then economic comparability. While a review of the District's comparables shows an absence of the contiguous districts of Athens and Rib Lake, While including the non-contiguous district of D.C. Everest.

COUNTY ECONOMIC DATA, 1993 NO.1

County	Pop.	Per Cap. 1992	%Emp.	Tot. Occup	%White Collar	%Blue Collar	%Serv. Work	%Loc. Govt.
Langlade	20,352	7,630	27.2	6,950	50.2	30.6	19.2	13.5
Lincoln *	27,142	9,230	31.0	11,573	45.3	37.2	17.5	12.7
Marathon	114,171	11,274	39.7	58,284	51.7	31.6	16.7	10.8
Oneida	32,781	8,750	29.3	12,657	53.5	26.2	21.3	17.1
Portage	62,454	9,760	35.3	22,044	55.3	25.0	19.7	15.2
Price	16,279	8,100	32.4	7,035	41.1	39.1	14.8	8.6
Taylor	19,450	8,701	28.6	7,211	40.7	39.4	19.9	9.3
Wood	76,545	11,270	42.7	43,737	49.9	32.3	17.8	9.7
Cty. Avg.	46,200	9,339	33.3	21,186	48.5	32.7	18.4	12.1

COUNTY ECONOMIC DATA 1993, NO.II
EMPLOYMENT GROUPS%

COUNTY	Agr.	Mine	Const	Manuf	Pub. Ut	Whsle	Retail	Fincl	Service
Langlade	0.4	0.0	3.5	27.8	7.4	8.3	29.8	3.8	18.8
Lincoln *	0.3	0.1	3.3	40.1	6.0	3.8	22.6	6.5	17.2
Marathon	0.4	0.4	3.9	29.6	7.2	7.6	19.7	8.1	23.0
Oneida	*	*	6.5	20.7	5.8	3.6	31.8	4.3	26.6
Portage	0.5	0.1	3.0	22.9	5.0	6.4	25.1	16.2	20.6
Price	0.7	*	1.3	51.6	4.3	3.1	17.6	2.7	18.4
Taylor	0.3	0.1	3.0	42.2	7.0	8.4	17.1	4.9	17.1
Wood	0.2	0.2	4.1	30.8	7.2	4.0	20.3	2.7	30.6
Cty. Avg.	0.4	0.1	3.6	33.2	6.2	5.6	23.0	6.1	21.5

A review of the economic data of the counties that contains all the suggested comparables would provide a wider perspective as well comply with Section 111.70(4)(cm)(7c, d, e, f, g,. The data demonstrates that there are wide demographic disparities between the suggested comparable counties. (County Economic Data I, 1993). The populations range from 20,000 to 114,000, while adult employment ranges from 27.1% in Langlade site of the Antigo School district,

to 42.7% in Wood County site of Marshfield and the Wisconsin Rapids School districts. The per-capita income also varies widely with the highest per-capita county income exceeding the lowest by forty eight percent.

When the composition of the work force is examined the data shows that over three-fourths of the jobs are in manufacturing, retail trade, and service industries. The highest proportion of manufacturing jobs being in Lincoln (40.1%), Price (51.6%), and Taylor (42.2%). The highest percentage of service jobs being in Oneida (26.6%), Portage (20.6%), Wood (30.6%). These data would appear to indicate that market for educational support personnel are in limited in Lincoln county by occupational alternatives, rather than travel restrictions.

When the county data is examined from the District's selection of comparables using the Counties of Langlade, Lincoln, Marathon, Oneida, Price, and Taylor counties the same occupational patterns are demonstrated. The most significant factor using the smaller number of counties is the wider variance between counties, in occupational groups. The data suggests that utilization of the larger sample of the Wisconsin Valley Athletic Association provides a more useful basis for future comparison, because of regression toward a stable mean. Under these circumstances the Association's comparables are preferred because of economic similarity, rather than athletic comparability.

Wages

The presumption of this arbitrator was that the critical issue for resolution this impasse was which parties comparables should be utilized. The parties have stipulated and agreed that the wages and

wage schedules are agreed to in general, and the differences should not be dispositive of the impasse. The District is not claiming any economic emergency or crisis. Thus, there appears to be one wage issue in dispute, that of the position of the Computer Audio/visual Technician. In this instance the decision is moot. The positions' salary schedule will be set by which ever final offer is selected.

The result of this case would appear to rest with the premise that, while the Association's comparables are the preferred ones. The final decision will reside in whether the other issues presented by the parties either singularly or collectively, have greater creditability than the comparables.

Hours of Work and Overtime Pay

The Association's final offer on hours of work and overtime pay was that it need to be included in the agreement because the District had made a unilateral change in the terms and conditions on this issue. The District's argument that such language interferes with its ability to manage is not given much validity. The District can set its human resource needs without conferral. A review of the existing agreement between the parties shows that there is a grievance procedure for the resolution of disputes, and the district employees in this bargaining group are covered by the Federal Wage and Hours Act. The District's position of non-inclusion would be the preferred decision on this issue.

Sick Leave

The Association's proposal on Sick Leave and Early Retirement is one in which the parties have agreed upon in part. The disputed portions are: the Association's proposal to allow employees to utilize their sick leave credit at any State allowable retirement age. The District wishes to maintain the current age of 57. The

District also proposes the credit usage to apply only to those bargaining unit members hired before July 1, 1992. The Association wishes to exclude this clause from the agreement.

The utilization of unused sick leave to purchase medical coverage is and of itself a benefit. The parties have to an extent agreed upon any additions. The Associations attempt to remove any initiating age requirement would appear to be overreach. Similarly, the District's proposal to limit the coverage to those hired before July, 1, 1992 appear equally onerous. Neither proposal other than the agreed upon matters in this dispute is deemed preferential.

Holidays

The Association proposes to add the day after Thanksgiving as a paid holiday for ten month employees. The Association provided ample evidence that this proposal was within the bounds of comparability for educational support staff. The District factually did not address this issue, fully knowing that it was a part of the Association's final offer. Instead the District argued that full year employees received generous benefits in vacation time. The employees are allowed participation in health benefits after 600 hours of work. In summary the District did not coherently address the specific issue. The preference is for the Association's proposal. The proposal provides comparability with other ten month employees.

Mileage Rate

The Association proposes the inclusion in the agreement of a mileage rate equal to the rate approved by the Internal Revenue Service. The Association maintains it had this rate through school board action, and it was subsequently recinded by school board

action. Thus, it needs to be in agreement to be maintained. The Association maintains that this is not an addition, and no exchange is necessary. The essence of this situation is the word voluntary. There is no mandate as a term and condition of employment to utilize a personal vehicle. Should the District require an employee to move to other locations they are required to provide transportation. If a party does not consider the mileage compensation adequate they do not have to provide a personal vehicle. The Association's position on this matter is not meritorious.

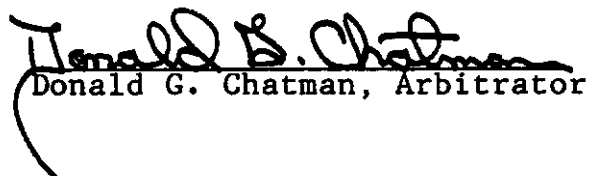
VI CONCLUSIONS

The consideration of the evidence testimony and arguments of the parties and the Statutory requirements of Section 111.70(4)(cm) 7a-h, weighs only slightly in favor of the Association. It is only with the preponderance of evidence that the Association's comparables provide a more stable economic future, that caused the absolute final offer to favor the Association.

VII AWARD

The successor agreement between the Merrill Area Public School District and the Merrill Educational Support Personnel Association for the period July 1, 1992 to June 30, 1995, shall contain the final offer in its entirety of the Merrill Educational Support Personnel Association.

Dated this 18th day of June, 1994 at Menomonie, Wisconsin.


Donald G. Chatman, Arbitrator