STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition	)	
	)	
of	)	Case 27
	)	
Germantown School District Employees Local 2423, AFSCME	)	No. 49265 INT/ARB-6888 Decision No. 27892-A
	)	
	)	
For Final and Binding Arbitration Involving Education Personnel in the Employ of Germantown School District	)	

APPEARANCES

For the Union:

Michael J. Wilson, Representative at Large
Dale Kruger, President Local 2423

For the Board:

David B. Kern, Attorney
Tia Tartaglione, Attorney

PROCEEDINGS

On January 12, 1994 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6 of the Municipal Employment Relations Act, to resolve an impasse existing between Germantown School District Employees, Local 2423, hereinafter referred to as

the Union, and the Germantown School District, hereinafter referred to as the Employer.

The hearing was held on April 21, 1994 in Germantown, Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on June 30, 1994 subsequent to receiving the final briefs.

ISSUES

Except for the tentative agreements of the Parties and all other provisions of the Contract as currently constituted, the following issues are in dispute in this matter:

District Offer:

(1) Changes in Section 10.02 regarding layoff and bumping language;

(2) Amend Section 11.01(c) to include a third shift;

(3) Amend Section 13.04 to add a third shift differential $.30 per hour;

(4) A two-year contract adding $.37 per hour effective July 1, 1993 to the two-year step of each job classification with $.10 less at preceding steps; effective July 1, 1994, $.28 to the two-year step of each job classification with $.10 per hour less at each preceding step.

Union Offer:

(1) Changes in the job bidding procedure Article 9.05 giving preference to the bargaining unit employees and making changes in the qualifications and trial period sections.

(2) Section 13.05 - delete split shift and split shift differential.

(3) Section 13.04 - increase the current $.20 per hour night shift differential to $.25 per hour.

(4) Increase the vacation entitlement to five weeks vacation after 25 years of service.

(5) Section 17.01 - changes in the definition of a year of employment and in pro rata of vacation earnings.

(6) Increase maximum accumulation in part-time benefit from 25 days to 35 days for sick leave.

(7) Section 28.03 - increase mileage allowance from $.12 to $.25 per mile.

(8) Section 31.01 - two-year contract duration.

(9) Wage increases - 4% across the board, 7/1/93; 4% across the board, 7/1/94.

(10) Range adjustments for the clerical and secretarial employees in ranges III, IV and V both years of the Contract.

DISTRICT POSITION

The following represents the arguments and contentions made on behalf of the District in its brief and reply brief:

The comparable districts identified by the Board best meet the accepted tests for selection of comparables. Arbitrators have found that comparable means equivalent of being compared with. It does not necessary mean identical. Arbitrators have found such criteria as population, geographic proximity, income of employed persons, overall municipal budget, numbers of relevant departmental personnel, average daily people membership, full value of taxable property and state aid. Under these criteria it is the District's comparables that should be chosen. The District stated that the comparable pool should consist of Cedarburg, Grafton, Hamilton, Menomonee Falls, Mequon-Thiensville,

Slinger, West Bend and, as secondary comparables, Brown Deer, Hartford and Port Washington. Seven of the ten comparable districts are directly contiguous to Germantown. Only Grafton, Brown Deer and Port Washington are one district removed. The mean incomes of the districts are sufficiently similar as are the property value taxes and mill rates.

The Union has submitted 18 comparables including the ten proposed by the District. Those comparables not in common are Elmbrook, Glendale-River Hills, Kewaskum, Mapledale-Indian Hills, Nicolet UHS, Northern Ozaukee, Shorewood and Whitefish Bay. Since there is agreement on a pool of comparables sufficiently large for the Arbitrator to form an opinion of the issues, there is no reason for him to consider such districts as are included in those comparables that are not in common. These districts fail to satisfy the comparability tests of geographic proximity, mean income, property value or mill rate.

With respect to the Union's final offer, it is the District's position that it is unreasonable since the Union's proposals are overreaching and the Union is not offering any quid pro quos for its desired changes in the Contract. When one side or another wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need or show that

there was a quid pro quo or that other groups were able to achieve this provision without the quid pro quo.

The Union's proposal to change the vacancy language is unnecessary since an arbitration decision by Arbitrator Stern states that "the comparison of skill and ability of candidates for a position is limited for employees in the bargaining unit, and only when bargaining candidates do not qualify is it proper to select a non-bargaining unit employee." In addition, parts of the Union's proposal extend the above award as the Union is attempting to eliminate the District's discretion in filling job vacancies by imposing a much higher threshold than the existing contractual language requires. This proposed modification would force the District to base hiring decisions on seniority in all cases except where the junior employee possesses significantly superior qualifications. The status quo should be maintained regarding the filling of posted vacancies since the Union cannot provide strong reasons and a proven need for the change. There is no comparability support for the Union's proposed change and the Union has not provided a quid pro quo for this change.

The Union further argued that the split shift differential language is unimportant and should be omitted from the new contract because currently there are no

employees who work a split shift. The District argues that this proposal should be rejected because the District is losing a bargain for right and not getting anything in return. This provision was bargained for in the event that a split shift becomes necessary. If a split shift would be needed, the District would then have to bargain for this right. The fact that it is not currently used is not sufficient justification for the change and the Union cannot establish a proven need for this change.

The Union also argued that the night shift differential should be increased from $.20 to $.25. There is no support in the comparable school districts, and the Union has also failed to give the District the necessary quid pro quo. The Union is asking the District to spend additional money but it is offering nothing in return. All but one of the comparable school districts have shift differential payments of less than $.25. Two of the comparables do not have shift differential payments at all and most of the Union's comparables pay less than $.25 not including the North Shore districts.

The Union's vacation time proposals are not supported by the comparable school districts and not economically feasible when analyzed in light of the quid pro quo document. The Union has proposed three changes adding a fifth week of

vacation after 25 years as a regular full-time employee, pro ration of vacation for regular part-time employees in accordance with the number of hours paid, and crediting less than regular full-time employees who become regular full-time employees with vacation time that equals regular full-time years of employment. The District noted that seven of the ten comparables have a maximum of four weeks of vacation for secretarial, clerical and regular full-time custodial workers. The majority of the comparable districts that have regular full-time service workers and aides have a maximum of four weeks of vacation. The District testified that this benefit would cost several hundred dollars per year and this cost would obviously increase as staff seniority increases. The Union asked the District to bear this cost and gives nothing in return. The Union's proposal to pro rate vacation for regular part-time employees would be an entirely new benefit that would be a substantial cost to the District. There is no quid pro quo or comparability support for this proposal. In eight of the ten comparable school districts both custodial and secretarial, clerical, regular part-time employees do not receive pro rata vacation at all. In Port Washington the secretarial, clerical part-time employees do receive some vacation pay, but it is not based on the number of hours paid. Among the Union's comparables, the majority of the "yes" answers in the pro rata vacation come from North Shore districts which are larger, wealthier and not

contiguous to this District and, therefore, should not be considered. The District would also note that this proposal conflicts with an existing vacation benefit for regular part-time employees which the Union has not proposed to modify or eliminate. Regarding vacation credits for transferees, again the Union lacks comparability support and is ignoring the quid pro quo standard by asking for an additional costly benefit without offering the District anything in return. In addition, the Union is attempting to overturn a recent grievance arbitration decision by Arbitrator Petrie.

The Union also proposed that the maximum part-time sick leave accumulation should be increased from 25 to 35 days. However, the Union is once again overreaching in asking for an additional benefit without offering the District anything in return. The Union has failed to compensate the District or a costly and unreasonable proposal.

The Union has also proposed to alter the status quo in the mileage allowance section. The current benefit is $.12 per mile while the Union proposed $.25 per mile. While the Union offered exhibits that show that administrators in Germantown receive $.28 per mile, they offer no arguments or explanation for why the bargaining unit employees should receive an increase. The Union's proposal is excessive and unreasonable and should be rejected by this Arbitrator.

3.6% increase in CPI between 1992 and 1993. The Union's final offer on the other hand nets a total package increase of 4.71% far exceeding the increase in CPI.

The District also provided arguments in support of its proposed changes in the Contract. The District proposes the addition of a third shift for maintenance and custodial employees due to the fact that the District is rapidly growing and schools are confronted with space constraints. If the building referendum does not pass and enrollment continues to grow, the District may have to conduct school at different times of the day in the same building. This staggered scheduling would require night time cleaning and custodial work which means the addition of a third shift. Although the need for a third shift is not imminent, the District must be prepared to act if and when space needs dictate the necessity of a third shift. The shift would be filled on the basis of seniority. The Union's argument that creating this new shift would create confusion is unfounded. The District has fully justified its position providing strong reasons and a proven need for this change.

Likewise, the District's proposal to simplify the layoff and bumping language is appropriate since the District has been faced with repeated problems and employee grievances regarding the existing layoff and bumping language. the

District has engaged in prior negotiations with the Union to change the existing layoff and bumping language. The Union's own proposals recognize a need for the change, and there is comparability support for this change.

The District contended that its final offer is the plainly more reasonable. Its wage proposal is reasonable in keeping with internal units and retains the District's position among comparable districts and exceeds the cost of living increase. The District's proposals to add a third shift and to simplify the layoff and bumping language are justifiable and necessary in light of the District's rapid growth, past layoff disputes and comparability support. Therefore, the District asked the Arbitrator to accept its final offer.

The District also responded to the Union's brief in this matter and made the following additional arguments:

The Union has failed to establish that its offer is more reasonable than the District's final offer. The Union's brief does not offer sufficient evidence to establish that the Arbitrator should consider data from those comparables not in common with the District's comparables and to show such a strong need for its proposals that it does not have to

offer the District the necessary quid pro quo. Therefore, the Arbitrator should accept the District's final offer.

The Arbitrator should find that the Union's proposal to change the vacancy language goes far beyond mere clarification of the existing contract language contrary to the Union's argument. This language proposed by the Union makes it nearly impossible for the District to fill a vacancy with the most qualified candidate unless that candidate is significantly superior to the senior candidate.

Likewise, the Arbitrator should reject the Union's proposal to delete the split shift differential because the District is losing a bargain for right and not getting a quid pro quo in return. While the Union argued there is no need for a split shift because currently no employees work a split shift at any of the Germantown schools and because many of the comparable districts do not have split shifts, the Union is missing the point because the Union is asking for the District to lose a bargain for right without getting anything in return. The District bargained for this right in the event that a split shift would become necessary.

The Arbitrator should reject the Union's vacation proposals because there is little comparable support among those comparables that are common to both the District and

the Union and because the Union is giving nothing to the District in return. There is agreement on a pool of comparables sufficiently large for the Arbitrator to form an opinion regarding these vacation proposals. There is no reason for him to consider districts which fail to satisfy the comparability of geographic proximity and other criteria.

The Arbitrator should also reject the Union's wage proposal because the Union offers no support for its proposal. It is unreasonable in light of the levy limits. It is not in line with the District's internal comparables and it far exceeds the consumer price index.

Based on the District's initial brief and this reply, the Arbitrator should find that the Union's proposals are unnecessary, overreaching, lacking in comparability support, and lacking the necessary quid pro quo. Therefore, this Arbitrator should accept the District's final offer.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Union's wage offer is the more reasonable for the two-year period covered by the new contract. This is based on a comparison of pattern of settlement for amount of increase and percentage increase with comparable school districts in the labor market and athletic conference. The comparisons as utilized by the Union are sufficient in number (18) and also satisfy concerns regarding location by competent comparisons for equalized value per student enrollment and income per return. The Union has included both organized and unorganized units for the purposes of comparing economic issues but does not utilize unorganized units for comparison of contract language. The District's wage offer is distributed in a form which caused dissention and dissatisfaction among the employees and is contrary to custom. The offer is inferior for both years when each year is considered independently and when the two-year package is analyzed as to overall impact. No comparable employer has a similar low offer of $.28 per hour increase for 1994-95.

The Union's proposed increase in the mileage allowance is reasonable based on the IRS standard and the settlement

between the District and its own teachers. The teachers are governed by the Collective Bargaining Law. This bargaining unit is not.

The District's proposal modifies the layoff procedure in a profound manner. Full-time employees may for the first time be laid off while part-time employees are maintained. The District has also not demonstrated a need for a third shift as either an additional shift for custodial personnel or for the dissolution of the existing shift hours for maintenance employees. Both proposals are primary issues with significant economic impact.

The Union seeks to restore meaning to Section 8.02 of the Collective Bargaining Agreement in the manner in which length of service computations are made in other articles of the Agreement, for example, vacations. The Union also seeks improvements in the night shift differential, sick leave and vacation accumulation which are reasonable based on comparison with benefits offered by comparable school district employers. The Union also wishes to revise the job posting provisions in accordance with arbitral precedent within the District. The language revisions for relative ability, employee qualification determinations and appeals of same are supported by authorities on the subject. Changing the title of probationary period to trial period is made in

an effort to convey the difference between a trial period following the promotion of a permanent employee and the probation period served by new hires. Qualified bargaining unit employees are entitled to job posting preference over non-bargaining employees (see A/P M-90-389 Germantown School District and Local 2423). The Union noted that it has adopted the Employer proposals regarding the Employer's rights and responsibility to judge qualifications. The Union has further clarified qualifications which are flexible as is needed in a wall-to-wall bargaining unit.

The Employer's proposed revisions to Section 10.02 are a fundamental change in the layoff procedure. Currently, regular part-time and school year part-time employers would be laid off first before regular full-time and school year full-time employees. There is a huge difference to those affected--some working and some not. Employers expressed concern over past grievances is not germane. Those grievances were resolved.

There is no need for a third shift or to eliminate the maintenance shift during the term of this agreement. The District has no plans to revise the work shifts prior to June 30, 1995 nor is construction initiated or is the basic school day being revamped. If any revisions are needed, they can be addressed in negotiations for the July 1, 1995

contract which would occur during the spring of 1995. The Union noted that the District has not proposed corresponding changes for secretarial, clerical and foodservice employees who would also be profoundly affected by the revised school day.

Split shifts are obsolete. There are no split shifts at any district school. There is no need to split employee shifts. The majority of comparable school districts do not have split shifts. If split shifts become necessary, the Parties are free to enter into them upon mutual agreement. The Union's proposed increased in the shift differential is fully justified by the comparables.

The majority of resolved contracts provide for a night shift premium of $.25 or more per hour for some or all of the employees. Six of the comparable districts have not negotiated a night shift premium to be effective on or after July 1, 1994. The total cost to the Germantown School District would be merely $1,400 per year.

With respect to vacation, more than half of the comparable school districts provide more than 20 days of paid vacation at and after 25 years of service. The only bargaining unit employee to be eligible for this would be Eileen Higgins. The next employee to qualify would be Betty

Berendt on September 30, 1995 with minimal impact on the District.

The Union has also asked that continuous employment be utilized as the criteria for entitlements under the contract. This would be any year of employment regardless of status. The Union contended that it already has this provision in the Contract but enforcement by employees has been lax over the years, certainly not to the extent to forfeit this provision. This was a dispute that was lost during the term of the previous agreement. The Union proposal restores the clear and obvious meaning of the prior provision. The majority of comparable school district employers provide vacation benefits for one or bargaining units of regular part-time employees as does the majority allow accumulation of sick days to 35 or more.

The Union noted that across-the-board increases have always been based on a percentage increase in the past. Not all bargaining units for school district support staff have similar jurisdiction. The Germantown School District is a wall-to-wall bargaining unit which includes all of the district's support staff. Other districts have fragmented to multiple bargaining units for various departments. The District's proposal is a major departure from the Parties' customs and practices and is contrary to the prevailing

practices in other comparable school districts. The prevalence of a percentage increase is not mere happenstance. It is a plain and simple fact of life that custodial maintenance, secretarial, clerical, foodservice and teacher aide wage increases are not computed on the basis of an overall average of all of the support staff. The District's proposal alienates all of the higher paid classification in the bargaining unit because it is arbitrarily lumped into an imaginary average. While employees in this unit share sufficient community of interest, the differences in wage adjudication should be taken into account. The Union's wage proposal for both years is more reasonable for custodial and maintenance employees. Likewise, the District's offer of $.28 per hour for 1994-95 is the lowest increase among teacher aides in comparable school districts with settlements while the 1993-94 offer difference is not appreciable. The Union noted that the cost of living criteria favors the Union proposal since the overall cost of living increase July 1, 1992 through June, 1993 rose 3.5%. The Milwaukee index by definition includes all of Washington County. The Union's comparison pool captures both the labor market and the athletic conference. It is also substantially similar in equalized value, income per return and pupil enrollment, therefore, it is the Union's comparability pool that should be utilized by the Arbitrator.

In conclusion, the Union has evaluated and discussed each issue in negotiations. The Union is mindful that the arbitration decision is not made on an issue-by-issue basis but rather as a package. Over the two-year period the Union offer is more reasonable. Full-time custodial maintenance employees not only deserve better hours of work and more job security, but also receive wage increases more in line with the going rate. The $.28 per hour increase offered all employees is low by comparison for all categories of employees. The District claimed that the new Collective Bargaining and Levy Law made them put forth such an offer. This is not true. When one looks at other comparable school districts in the labor market and athletic conference, the going rate is not as depressed as the District's proposal.

The Union also responded to the District's initial brief in this matter and provided the following additional arguments:

The Union has justified its comparables on the basis of athletic conference proximity and relevant labor market and equalized value per pupil. Germantown is part of the Milwaukee metropolitan area. It is reasonable to believe that the relevant labor market would include approximately a 25 mile radius. Any and all of the public school districts within such radius should be included as a comparable

employer regardless of enrollment size or income levels because employers within the relevant labor market are competing for the same workers. There is nothing wrong with utilizing numerous comparable districts. The information is available. This is one of the advantages of arbitrating in the Milwaukee metropolitan area. The fact of the matter is the Union did not attempt to cherry pick the comparables. The Union is not the Party who is sifting through the labor market and discarding comparable school districts. Germantown is a relatively wealthy district which is experiencing rapid growth. It is the Union's contention that the District is in effect asking its support staff to subsidize the school system. The employees are entitled to make their case on the basis of other support staffs who are not being forced to make similar sacrifices. The fact is that the support staff is not governed by the same Collective Bargaining Law as are professionals and administers. The legislature surely considered this situation and intentionally distinguished the groups. Whether it is fair or unfair is unimportant. It is the reality of the current situation.

If the District clearly believes that there is an inequity among teacher aides versus custodial maintenance employees, they are attacking the situation by holding down custodial maintenance employee increases. It is one thing to

bring a group up but altogether a different story to do so at the expense of another group. The District has asked for a quid pro quo for everything even in the mileage area which it clearly pays to other people within the district. There is no reason for this bargaining unit to reciprocate with an equivalent benefit under those circumstances. Likewise, the employees request an additional ten days sick leave accumulation. The District ignores the comparison with other districts.

The District has ignored and otherwise misinterpreted the meaning of "significantly changed the collective bargaining relationship". The status quo quid pro quo doctrine does not apply to any and all changes proposed in the Collective Bargaining Agreement. The District discusses the quid pro quo argument application to all of the Union's twelve proposals. When does this doctrine apply? There is a legitimate question of application in the instant case. The District contends status quo applies to all changes, the Union does not. If the District did not propose a wage increase, then if the employees did propose a wage increase, the employees would have a status quo burden. The status quo burden of proof is placed on those who wish to significantly change the collective bargaining relationship. This only applies where exceptional or unusual benefits are required or where an employer seeks concessions from its employees in the

form of take backs. This has been echoed by many other arbitrators in other cases. Unions are in existence to improve the employees' wages, hours and working conditions. The extra burden of status quo under any and all circumstances when so grossly misapplied intimidates the pursuit of otherwise reasonable goals in collective bargaining. The Employer under this theory sit back, stand pat and demand quid pro quo whenever the Union seeks improvements regardless of what is happening in the comparable world with cost of living, etc.

Regarding the Union's promotional proposal, the District portrays the change as imposing a much higher threshold. This is not the case. The District also claimed the Union has not offered a quid pro quo and this is also not the case. The District initially requested and did receive contract language regarding its right to be the sole judge of employee qualifications and to judge those qualifications in conjunction with an expanded definition of what qualifications entail. The District is merely crying "wolf." The Union has proposed several changes, however, none of these changes individually or in concert significantly change the bargaining relationship.

Likewise, the elimination of split shifts does not constitute a significant change in the relationship. This

provision was bargained in the event that a split shift became necessary. Split shifts were negotiated at the time to meet specific problems at Rockfield and MacArthur Schools and were not a mere matter of conjecture over future operations of these two schools. Shifts are no longer in existence because management decided they were no longer needed. These split shifts were unusual by comparison in that they are a hardship to the employees involved. A $.20 per hour premium does not begin to compensate for an additional trip to and from work. Bringing the group up to the pattern does not require a quid pro quo.

Arbitrators generally adopt the final offer which preserves that which has been previously agreed to by the Parties absent special and compelling circumstances. To do otherwise is contrary to the objective of interest arbitration to encourage parties to resolve their disputes voluntarily. Arbitrators have identified a three-prong test in determining whether to adopt a change in the status quo. Has the party proposing the change demonstrated a need for the change? If there has been a demonstration of need, has the party proposing the change provided a quid pro quo? Arbitrators require clear and convincing evidence to establish that the first two requirements have been met. There is no demonstrated need for the changes sought by the District. There is no urgency in establishing a third shift

and the proposal to go to staggered scheduling is not imminent. With respect to certain layoff grievances which in and of themselves do not necessarily prove a need, the District has not shown a need to revise the layoff language. The key provision is included in the current contract provided, however, that the remaining employees are capable of carrying out the usual functions of that department provides protection for the District. Their main concern should be to have qualified workers available for the work performed. The District has also failed to provide an adequate quid pro quo for the creation of a third shift and/or the revised layoff procedure. The Union would note its proposal is not flawed in Section 17.05 as it notes normally a specific contract provision would govern general language such as the Union has proposed.

The District has attempted to support its proposal by claiming that the package cost is comparable to the cost of living. Many arbitrators have considered this concept and have rejected this notion. Likewise, arbitrators have rejected internal comparisons between support staff and teachers. A number of authorities were provided in support of this position.

The District accuses the Union of using skewed comparables. The Union would note that Arbitrator Krinsky in

the Whitefish Bay School District case utilized Germantown as a comparable. Arbitrator Petrie endorses the use of athletic conferences for comparative purposes among support personnel. Other arbitrators have utilized equalized value per student and relevant labor market as comparable concepts.

Based on the record as a whole and the arguments made above, the Union respectfully requests that the Arbitrator to endorse the final offer of the Germantown School District employees Local 2423 as the award in this proceeding.

DISCUSSION AND OPINION

In this Arbitrator's 13 year experience in interest arbitrations, he has rarely seen a Union and Employer heading in more divergent directions. While we normally see a mere handful of issues which separate the parties, here we have some 16 different issues on which the Parties have significant divergent opinions. The purpose of the Collective Bargaining process is to bring Parties together, not further separate them. This result makes it extremely difficult for this Arbitrator to fashion an award.

With respect to the comparables, the Parties have agreed on ten districts as comparable to Germantown. This provides a significant pool of information on which to judge the appropriateness of each side's proposals. The Union has proposed eight additional districts, all of which are roughly proximate to the Germantown district based largely on the fact that Germantown draws from this general area for recruiting purposes and conference affiliation. While it is true that these districts in addition to the ten agreed upon do constitute a recruiting area, utilizing the criteria of size of district, equalized evaluation and levy rate, all of the Union's comparables can be eliminated. The enrollments are all each much smaller or much larger than Germantown or have significantly lower mill rates, lower or higher valuations. There are considerable differences among the three North Shore districts and the Germantown district even though some may share conference affiliation. These North Shore Milwaukee County districts are unique in terms of property values and property values per student and, therefore, are not directly comparable to Germantown. The Arbitrator notes that if a recruiting area were the criteria for choosing comparables, many other districts could reasonably be included based on that criteria. Therefore, the Arbitrator finds that the comparables that the Parties have chosen in common provide a significant base of

information on which to base this interest arbitration decision and will all be considered primary.

Both sides argued extensively regarding the changing of the status quo and the justification for such changes. The District in particular made much of the lack of quid pro quo regarding the Union's proposals. Quid pro quo is only one of the justifications for deviation from the status quo, the others being the proponent of that change must fully justify its position, provide strong reasons and proven need or must show significant support among the comparables without a quid pro quo. If any of these three concepts is in place, then the change in the status quo would be justified. In addition, as the Union notes in its brief, if the change proposed is not significant and would not significantly change the collective bargaining relationship, then the extra burden of proof would not be required. Both sides have proposed some changes in the status quo in their final offers. It is then left to the Arbitrator to determine whether or not these changes constitute a significant change in the collective bargaining relationship and, if they do, do they meet any of the three criteria noted above.

The District proposed language changes that would add a third shift with a shift differential of $.30 per hour and make changes in the layoff/reduction in force language

located in Section 10 of the Contract. Regarding the third shift the District argued that it provided strong reasons and a proven need for this change. The Arbitrator finds little support in the record for this contention. All of the District's arguments are based on supposition, none of which has occurred currently and is likely not to occur during the term of this agreement.

Regarding the District's proposal to "simplify" the layoff and bumping language, the District argued that they have been faced with repeated employee grievances regarding the existing language. The Union itself proposed some changes in this area. The District also noted that there is comparability support for this change. While there is some justification for the change, this is a significant departure from the current bargaining relationship in that under the District's language it is possible that part-time employees would be retained and full-time employees would be laid off, the Arbitrator does not find that the record shows that the District has provided sufficient evidence to fully justify this change nor was a quid pro quo offered.

The Union also offered extensive language changes as part of its final offer. The Union proposed that changes to Article 9.05, part of which merely restates an arbitration decision received during the current Contract be included.

However, other changes in the qualifications and trial period sections go beyond that arbitration decision. The Union also proposed deletion of the split shift language. The remainder of the Union's proposals can be classified as economic. As noted above, part of the Union's proposal for Article 9.05 is already part of the bargaining relationship by virtue of the arbitration decision. The other elements do not meet any of the criteria noted above for changes in the status quo.

Regarding the economic proposals, the District has offered a deviation from the historical pattern between the Parties in that they have offered two across-the-board cents per hour increases of $.37 and $.28, respectively. The District's justification for that is based on the differential between the lower paid employees and the highest paid employees in this wall-to-wall bargaining unit . The Arbitrator notes that part of the District's argument is based on percentage increases for the next five years. There is no showing in the record that this would occur. In evaluating the District's wage offer based on the comparables, the Arbitrator finds that the external comparables, particularly in the second year of the Contract, do not favor the District's offer. Whereas, on a percentage basis, due to the recent Collective Bargaining legislation, the percentage equivalence for internal comparables do somewhat favor the District's position.

Regarding the Union's economic offer, in addition to a 4% across-the-board increase in each year of the Contract, the Union has asked for a $.05 per hour increase in the night shift differential, increases in vacation entitlements and vacation earnings, an increase in the part-time sick leave benefit accumulation, an increase in the mileage allowance from $.12 to $.25 per mile, and range adjustments for the clerical and secretarial employees. While some of the Union proposals such as the increase in mileage allowance, vacation accrual for part-time employment, and vacation entitlement are either fully justified or have some support in the external comparables, the overall impact of the Union's economic offer is beyond what would be justified by the external comparables and the other statutory criteria.

This leaves the Arbitrator with a very difficult decision. Neither side has fully justified its language changes, nor has it provided a quid pro quo or significant comparability on which to make a decision. The District's economic offer is on the whole below the external comparables, although as the District notes, its ranking would not be affected. The Union's total economic offer including wages is somewhat above the external comparables.

Since neither side has fully justified its final offer or offered sufficiently persuasive comparability, the Arbitrator is left with applying other statutory criteria. The criteria that seems to be the tie breaker in this interest arbitration is the interest and welfare of the public and the financial ability of the unit of government to meet the costs of a proposed settlement. The Arbitrator notes that the residents of Germantown have the second highest equalized tax levy of any community in the area. In addition, they are spending a significantly greater portion of their income on property taxes than other comparable communities. Therefore, on that basis the Arbitrator finds that on a very close call it is the Employer's proposals that most nearly meet the statutory requirements and criteria and he will so award in this case.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Germantown School District is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining and the prior agreement as amended, constitutes the July 1, 1993 through June 30, 1995 agreement between the Parties.

Dated at Oconomowoc, Wisconsin this 4th day of August, 1994.

Raymond E. McAlpin, Arbitrator