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STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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 In the Matter of the Petition of :  
 :  
 NEKOOSA SCHOOL DISTRICT, :  
 : Case 42  
 To Initiate Arbitration Between : No. 49064 INT/ARB-6853  
 Said Petitioner and : Decision No. 28111-A  
 :  
 NEKOOSA EDUCATIONAL SUPPORT :  
 PERSONNEL ASSOCIATION :  
 ----- :

Appearances:

Nekoosa School District by Ruder, Ware & Michler, S.C. by Dean R. Dietrich, Esq.  
 Nekoosa Educational Support Personnel Association by Central Wisconsin UniServ Council - S/W-Unit #2, by Thomas S. Ivey, Jr., Executive Director

ARBITRATION AWARD

Nekoosa Educational Support Personnel Association (Union or Association) is the collective bargaining representative for all regular full-time and regular part-time employees of the District employed as maintenance /custodial, cleaner, secretarial, assistant and food service staff. This bargaining unit, which represents 49 full-time and part-time employees, was certified in 1988. The parties were unable to agree to the terms of an initial collective bargaining agreement for the 3 year period between July 1, 1988 and June 30, 1991. Those terms were established by Arbitrator Zel

Rice's award dated May 28, 1991. The parties did agree to terms for the following 2 years. That agreement which was entered into on December 8, 1992, expired on June 30, 1993. Initial proposals for a 1993-95 contract were exchanged on March 2, 1993; after 3 bargaining sessions, the instant the petition for arbitration was filed on April 8, 1993. After a representative of the Commission investigated the matter on July 22 and November 1, 1993, it appeared that the parties were deadlocked in their negotiations. Final offers were submitted to the investigator on June 9, 1994; the investigator advised the Commission that an impasse had been reached. On August 30, 1994, the undersigned was appointed to act as the arbitrator in this proceeding. The arbitration hearing was conducted at the District's office in Nekoosa on October 31, 1994, and the record was closed at the conclusion of the hearing. The parties exchanged their initial briefs on December 5, and exchanged reply briefs on December 19, 1994.

#### ISSUES IN DISPUTE

In this proceeding, the parties have agreed that the pool of comparables previously adopted by Arbitrator Rice are appropriate. That pool consists of educational support staff bargaining units in the Pittsville, Port Edwards, Tri County and Wisconsin Rapids school districts and in Mid-State Technical College. The tentative agreements include some employee designation reclassifications, increased mileage reimbursement, the continuation of previously negotiated life insurance, retirement and disability benefits and the extension of life and disability insurance benefits to

employees who work 17 1/2 hours or more per week. In addition, both of the offers would expand health coverage to include vision coverage for secretaries and increase employer contributions toward group health coverage from 82.5% in 1992-93 to 85% in 1993-94 and to 87.5% in 1994-95.

The principal issues in dispute are the size of wage increases and the Association's request for improved fringe benefits. According to the District's cost analysis, the Union's wage offer would result in average wage only increases of 4.89% in 1993-94 and 4.39% in 1994-95 compared to the District's 3% across the board wage offer for each of those years. That difference would result in greater increased wage costs of \$9,380 during the first year and higher wage costs of \$16,936 during the second year under the Union's offer. The Union's offer, would improve benefits selectively for cleaner and secretarial classifications and improve sick leave accumulations. These improvements would increase costs by \$2,347 during the first year and by \$5,535 during the second year of the agreement.

#### THE DISTRICT'S POSITION

The District argued that it had made a responsible offer "while considering the legislatively mandated cost controls, the bargaining history of the parties and the statutory criteria." It said that three comparables followed cost control mandates affecting teachers when the comparables achieved settlements within 3.8% increased package costs with their support staffs. The Board's offer meets this criteria more closely than the

Association's offer. The Arbitrator must understand "that the District has made numerous improvements in wages and benefits over the last two contract periods." This offer must be viewed in totality with "the many improvements made over a relatively short period of time."

The District reviewed the increased costs of those benefits it had agreed to provide during this contract period. These included increasing the Employer's health insurance contribution from 82.5% of cost to 85% in 1993-94 "and to again increase the contribution from 85% to 87.5% in 1994-95 for all eligible employees at an additional cost of \$2,802.60." The addition of a personal day for aides and cleaners will cost the District \$1,472. It has also agreed to provide life and disability insurance to all employees who work 17.5 hours or more per week.

The District reviewed the additional benefits that the Association has included in its offer. It said that "[s]tanding alone, these new benefits may not seem totally unreasonable. However, this Arbitrator must view the Association's final offer, together with the benefit improvements and associated costs absorbed by the District during the 1988-91 contract period." The District reviewed a list of benefits it had "granted to the District employees along with their associated costs" during 1988-89. It argued that those benefits had been given at a substantial cost to the District. It referred to a new retirement benefit for cleaners, cooks and aides which cost nearly \$43,000 over a three year contract period. It argued that those costs, coupled with

health and dental costs absorbed by the District, placed a huge financial burden on the District. "In fact, in 1990-91, the total package increase for District employees was in excess of 10%-an increase of over \$52,000 in just one year. Most of the major improvements were attributable solely to the cleaner, cook and aide positions." The District argued that "this Arbitrator must recognize that the District has made significant improvements in wages and benefits for its employees." The District has offered additional benefits during the current rounds of negotiations "to the extent with which it feels comfortable doing so. In a period when the District is bound by budgets and legislatively mandated cost controls, the District has done its very best to improve the wages and benefits of its employees while staying within its budgetary constraints." The Arbitrator should recognize the District's efforts and acknowledge that the "Association's numerous benefit improvements and random wage increases at this time are excessive."

The Board argued that the Association's request for improved benefits and proposed wage increases required it to offer a quid pro quo. It cited two recent decisions in which arbitrators noted that a party proposing to change the status quo must "justify its position and provide strong reasons and a proven need" as well as providing a quid pro quo for the change. It said that the Association had not offered a quid pro quo. It said that the Association had succeeded in obtaining benefits through arbitration, in the case of 1988-91 contract, that it could not

achieve in bargaining. It argued that the Union was attempting to do so again. The Board argued that this is an abuse of the arbitration process. "[T]herefore, this Arbitrator should reject the Association's final offer on this basis alone."

The District said that many of its wage rates for various classifications are competitive or in excess of comparable wages elsewhere. It compared its offer of \$9.64 and \$9.93 for secretaries at schedule maximum in 1993-94 and 1994-95 with comparable average salaries of \$9.09 and \$9.36, and with the Union's offer of \$9.78 and \$10.17. It concluded that its offer for 3% increases would result in wages that exceed the average by .55¢ and .57¢. The Union's 4.4% and 4% offer would result in "an even larger variance at .69¢ and .81¢ in 1993-94 and 1994-95 respectively. It said that the average comparable custodian wages in 1993-94 and 1994-95 were \$10.18 and \$10.45 compared to \$12.29 and \$12.66 under the Board's offer or compared to \$12.47 and \$12.97 under the Association's offer. It argued that the Union's offer of 4.5% in 1993-94 and 4% in 1994-95 "is clearly excessive."

The Board argued that the Association's wage offer which varies from 3.7% to 6.9% and yields average increases of 4.95% in 1993-94 and 4.39% in 1994-95 is irresponsible. It said that its 3% wage offer is supported by comparables. The Board reviewed evidence that three of five comparables settled for 3.8% package costs. It argued that "these particular settlements should receive more weight because they were obviously reached during the same time frame within which the budget bill was enacted." The District

said that the length of time it takes to get to the top of the pay schedules in Nekoosa compared to the times in comparable districts is vitally important. It cited precedent for this argument. The Board said that the aide position is a prime example, and it compared maximum rates and the time required to reach top aide levels in comparable districts. It concluded that "it is difficult to determine what a fair and comparable wage rate may be due to the varying length of time it takes to reach the maximum rate." It noted that in Wisconsin Rapids, where it takes aides ten years to reach the top of the scale, the \$10.28 hourly rate is the highest. It argued that when one considers that Nekoosa employees reach schedule maximums after three months, and all of its employees are at that level, the District has competitive wages.

The Board said that it had not had any difficulty retaining its employees. "The average seniority of the 47 individuals employed...in the 1992-93 base year was 8.3 years." It noted that positions with lower wage rates, aides and food service employees, have average seniority of 8.9 and 8.8 years respectively compared to 7.5 years for secretaries and 7.2 years for custodians. It cited two prior decisions where arbitrators had discussed retention rates in relation to wage increase requests and concluded that "an obvious lack of employee turnover proves the District is keeping pace with the comparables and the community at large."

The District noted that the statute requires consideration of private sector comparisons. It cited authority for its position that "[s]ettlements achieved in private industry are a strong

indicator of what is affordable taken into consideration market conditions and the economy, in general." It reviewed evidence that major manufacturing employers in Nekoosa and nearby Wisconsin Rapids will receive increases in the 2.5% - 3% range through 1995 and between 2% and 3% in 1996 and 1997. It argued that Georgia Pacific's contract settlements are particularly significant since it is the sole primary manufacturing employer in the City of Nekoosa. The District said that 3% is about all the community can justify at this time. The District had considered local conditions when it made its two 3% increase offers. It is not asking for a 3, 4 or 5 year commitment "such as private sector industries have achieved."

The Board argued that its offer is in the best interest of the public. Its offer considered the "District's ability (or inability) to finance its final offer as well as the concerns of its taxpaying public..." It is responsive to employee needs. The District's offer exceeds the 2.82% average increase on the consumer price index during 1993; it also exceeds the 2.78% average increase for 1994.

The Board said that recently implemented state cost controls impact the arbitration process and the employer. The District must take steps to control its costs. The law provides for a ceiling on costs and limits spending by school districts. It cited a recent arbitration award in which the Arbitrator had reviewed two competing offers in the light of state cost controls. In that case, the Arbitrator found that the employer's offer, which was in



excess of the limits, was much closer to the limits than the Union's offer. It concluded that the Association "has not met its burden of establishing a need for the excesses it is requesting of the Arbitrator."

THE DISTRICT'S REPLY

In its Reply Brief, the District said that the Union had failed to address local economic conditions, private sector comparisons and CPI comparisons. It also argued that the interest of the public cannot be served by an offer that "gives no consideration to the financial constraints...via cost controls and revenue caps."

The Board said that the Association had misrepresented the District's position with regard to wage comparisons. It said that it had requested information from the Port Edwards District and had assumed that the data it received was correct. It did not intentionally misrepresent wage rates in Port Edwards. The Board responded to criticism of the data it had presented for Pittsville. It said that since Pittsville revised its custodian salary schedule in 1993-94, all employees have a starting rate of \$6.00 and have two steps to reach maximum salary in two years. When it adopted the new salary schedule, Pittsville grandfathered those employees who received higher rates. The District said that it had presented salary schedule data for those employees who were not grandfathered. It isn't fair to include "grandfathered employees in this analysis because none of the comparables have a similar situation." It further responded to criticism of the data it had

presented for custodians in Pittsville by saying that, the Union had utilized the maximum rate for the head custodian position. The Board said it did not have a head custodian position in its bargaining unit. Finally, the Board rejected criticism of its comparisons in the Tri-County School District. "The Association has relied on data provided by the Wisconsin Association of School Boards,... . The District obtained a copy of the Tri-County District's actual 1994-95 salary schedule and believes this data to be the most accurate source."

The Board said that it is not appropriate to include longevity in wages when comparing wage rates. Those are separate benefits which should be treated as such. It is not appropriate to compare wages and longevity in the two districts that have longevity with wages only in the three districts that do not provide longevity. The Board made similar arguments about including shift differentials in wage comparisons. It added that only one comparable provided any shift differential, "this benefit is not supported by the comparables."

In response to the criticism that the Board neglected to compare wages at all classifications, it responded that "[m]any of the wage comparisons for the varying positions result in similar variances." It said that the cleaner rate is lower than comparable rates because none of the comparables have that position. "Therefore, a detailed wage comparison for every single position in the district would be redundant."

The Board noted the Association's assertion that the District's private sector data had provided only "an incomplete picture of the wage rates and benefits available in the area." It said statutes dictate consideration of private employment. "Therefore, the District is providing this Arbitrator with a flavor of what Nekoosa and surrounding communities are providing their employees by way of wage increases." It said private sector data is particularly important in a one employer community. It also noted that two prior arbitrators had found Nekoosa to be a "one employer community." The Board argued that it is important to recognize that private sector wage increases were between 2 and 3 percent. It emphasized that Georgia Pacific's "clerical employees received a \$1,000 flat payment in 1993, 1994 and 1995 as did the finisher employees in the Port Edwards facility. "These \$1,000 payments were not applied to wage rates but were merely given as bonuses which resulted in no increase to the salary schedule for these positions for three years."

The District said that the Association's argument that a catch-up is required in this case is "very much debatable." It distinguished an arbitration case cited by the Union as being a case where a new group of employees were being accreted into the Union. It noted that is not the situation in the present case.

The Board admitted that not all positions in Nekoosa compare favorably with the comparables. It said that some of the requested increases are not justified. The secretary and custodian positions are not only competitive with the comparables, but, appear to be

substantially higher than the average. It argued that "[i]f the Association had clearly intended to 'fix' an inequity situation in the District, it should have 'taken from Peter to pay Paul'." It said "wage adjustments for the more competitive positions should have been lower to allow more latitude for the less comparable positions." It reviewed the Union's proposed increases and argued that, the increases ranging between 4% and 4.5% for other than cleaner positions are not supported by comparables. It argued that job duty requirements are different for comparable custodians and cleaners in Nekoosa. "Therefore, the wage comparisons for the cleaner position are not necessarily accurate and wages similar to custodian positions are not justified."

The Board said that "in the previous arbitration involving the 1988-91 contract, the Union gave up wage increases for cleaners, aides and cooks in exchange for over \$43,000 worth of new retirement benefits." It noted that Arbitrator Rice had said that "The Union seems to have reached a little bit too far with its proposal for holidays and it does have a substantial cost." It said the Association had received those benefits, and now they are asking "give us now what we didn't get before."

The District said that "support staff historically have seldom received identical benefit packages. This is due, in part, to the number of hours various classifications work per year." It explained that aides, cooks and cleaners may work only a few hours a day, nine months a year. "The Association, in its Final Offer,

appears to be attempting to obtain similar benefit levels for all employees regardless of their status with the District."

The Board reviewed the increased percentage of health insurance contributions it has agreed to make. It said these were important because Nekoosa has experienced higher insurance rate increases than comparable districts. It said that Nekoosa's secretaries receive vision coverage, "a benefit not enjoyed by many of the employees in the comparable districts." It reviewed various fringe benefit improvements that the Union is seeking for cleaners, and commented that, it is peculiar that only cleaners would receive the benefits when in the past, the Association has strived to obtain similar or equal benefits for all job classifications. It concluded these arguments by saying that "the Association's attempt to make numerous improvements in benefits is just too much too soon."

In response to the Union's cost control arguments, the Board re-emphasized the effect of cost controls upon the Nekoosa District. "Various building principals were required to maintain a zero percent increase in their 1994-95 budgets in order to function under the revenue caps. No increases were allowed." It said that the \$400,000 cash flow, referred to by the Association, is money borrowed from throughout the year in order to make its payroll.

#### THE ASSOCIATION'S POSITION

The Association said that its "proposed wages more closely reflect the wages of educational support employees doing similar

work in comparable school districts." It said that maximum rates are particularly significant in Nekoosa because all of the employees in this case are at schedule maximum and they do not receive longevity payments. It compared the parties' proposed minimum and maximum wage schedules for nine employee categories in 1993-94 and 1994-95 with comparable group average wages for those categories at minimum, maximum and maximum plus longevity benchmarks. The Union said that these comparisons showed that the Board's proposed increases failed to keep pace with similar employees in comparable districts and would result in a continuing decline in Nekoosa wages in relation to comparables. It said that the Union's offer would begin to slowly reverse the decline "although there is still need for 'catch-up' in wage rates." It cited a prior decision in which the arbitrator had "concentrated on wage rates themselves rather than the amount of wage increases."

The Association said that the District exhibits "misinterprets the maximum wage rates in at least three of the school districts within the Comparability Group." In two instances, the District mistakenly identified a \$7.50 beginning wage for Port Edwards custodians as the maximum wage, when in fact, the maximums should have been listed as \$14.57 and \$15.15. It said that the District did not reflect the 5.4% and 5% increases that were granted to custodians who had been employed prior to 1993 in Pittsville. The Union argued that if the District had followed the "accepted procedure for cast forward costing...the wage rates would have been \$10.88 and \$11.42 rather than \$7.30 and \$7.46 as reported

by the District. It said that the District had also erroneously understated 1994-95 maximum wage rates for secretary, non-certified aide and cook positions by 60¢, \$1.16 and \$1.93 respectively in the Tri-County District. The Association said that "no correct nor reasonable conclusions can be drawn from the erroneous data."

The Association argued that larger wage increases were required for "cleaners" in Nekoosa in order to "begin to correct the great disparity" between their wages and counterpart wages in comparable districts. It reviewed data that indicated under the Association's offer, cleaners in Nekoosa would earn from \$2.05 to \$2.73 less than their counterparts in 1993-94, and between \$1.85 and \$2.63 less in 1994-95. Under the District's offer, they would earn between \$2.27 and \$3.00 less in 1993-94, and between \$2.31 and \$3.45 less in 1994-95. The Association argued that a comparison of job descriptions for cleaners in Nekoosa "support the commonality between the regular duties of Nekoosa cleaners and 'custodians' of comparables school districts." It said that its offer would bring Nekoosa cleaners closer to comparability though it "makes no 'giant leap' to comparability."

The Association said that its offer, which would cost \$22,733 more than the District's offer over two years, does not pose a financial hardship on the District. It argued that the District would have fund balances in excess of 1.9 million dollars for both years of this contract. It argued that there would be \$400,000 cash available and that "the difference in costs between the Final Offers in de minimus and should not override the gap in wages and

benefit comparability suffered by the Nekoosa support staff." It argued that all of the comparable school districts have to deal with legislative funding restrictions. "To say that Nekoosa support personnel should not be provided comparable salaries because of Senate Bill 44 is ludicrous and ultimately unfair." The Union said that the District had failed to provide any testimony of "harm which would befall the District if the Association's proposal were to be adopted." It said that the District is quite capable of absorbing the cost of the Union's offer.

The Union criticized District exhibits relating to public employee settlements in Nekoosa and nearby areas. It said that there was insufficient information about wage rates, benefits and job descriptions to enable the arbitrator to determine what the wage increases mean. It leveled similar criticism at the District's evidence of private sector increases for Consolidated Papers and Georgia Pacific. It cited the prior arbitration decision in which Arbitrator Rice noted that the evidence of a 2.5% increase did not mention the level of wages or fringe benefits the employees received. The Association criticized other evidence presented by the Board because the exhibits did not include all of the employment categories covered by the contract, used selective data which provide an incomplete picture of wage rates and benefits and failed to take shift differential and longevity into account.

The Association said that both parties' exhibits demonstrate that support personnel in Nekoosa have a lower percentage of their health insurance premium paid by the employer than similar



employees in comparable districts do. It said that Nekoosa's total premium cost is in line with premium costs in other districts. It argued that, "the District has unjustly enriched itself by failing to provide a comparable wage and benefit package to the support employees."

The Union said that its dental insurance proposal which would increase the District's contribution toward premium costs to reflect increased costs is the most reasonable. It said that the District's offer to maintain the same dollar contribution as 1990-91 fails to maintain a percentage of contribution and results in a penalty to employees.

The Association said that in other districts employees who perform the same work as Nekoosa's cleaners receive dental insurance benefits. The Association's offer would provide dental benefits to cleaners. Its offer should be selected because it would provide internal equity and comparability.

The Association said that its proposal to extend vacation benefits to regular full time calendar year cleaners would provide cleaners in Nekoosa with vacation benefits close to those that comparable employees receive elsewhere. It said that its "proposal represents a compromise which allows employees to regain some vacation benefits."

It said that in comparable districts, the average sick accumulation permitted was 108 days. The Union has proposed to increase sick leave accumulation from the present 50 day limit to

60 days. It argued that this proposal is a small step towards comparability.

The Union said that its proposal to pay two high school "maintenance/custodians" who work rotating shifts, an additional shift differential for work on the second shift is not unique. It noted that Wisconsin Rapids began paying shift-differential increments in 1987. "The total cost of this proposal - \$312 per year is de minimus and has no negative effect upon the District.

The Association reviewed the factors to be considered by arbitrators under Wis. Stat. sec. 111.70(4)(cm)7. It argued that "it is in the public interest and welfare to adopt the Association's final offer." It argued that the adoption of a salary and fringe benefit package in line with comparable districts creates a stable working environment and reflects the overall quality of the educational program offered in the community. The Union cited a series of prior arbitration decisions in which arbitrators found that comparisons of wages and benefits of the employees in arbitration proceedings with wages and benefits of other employees performing similar services, were found to be the most comparable comparisons. It argued that the Association's offer meets this test for comparability. It said that the Board attempted comparisons with other employees generally in public employment and its private sector comparisons failed because job comparability was not established.

The Association argued that it would be inappropriate to find cost of living comparisons to be determinative in this case. It

argued that the cost of living data was general in nature while evidence indicated that comparable settlements have exceeded cost of living increases. The Association cited a series of prior decisions in which arbitrators had found cost of living comparisons to be less important than intra-industry comparisons. It concluded that based upon the most relevant comparisons, "Nekoosa support staff are severely undercompensated...[t]he Association has shown a need for a catch-up with respect to cleaners."

THE ASSOCIATION'S REPLY

In response to the District's argument that it has made substantial improvements in the wages and benefits provided for these employees over the last two contract periods, the Association said that many of those improvements "came about, not by the generosity of the District, but through an arbitration award which the District lost." It said that because the District failed to provide data for comparable districts for the referenced years, it is impossible to conclude that the Nekoosa District has been unfairly burdened. The Union argued that comparable data "proves how poorly Nekoosa compensates its support personnel." It reviewed comparative data and argued that cleaners, licensed special education and clerical assistants, teacher assistants and food service personnel are all poorly compensated by the District.

The Association argued that the 1991 arbitration case and this proceeding have proven necessary to make the District face its financial responsibilities to employees. It said that the District has enriched itself at the expense of its employees. "Their

failure is even more pronounced when, even after the improvements cited, the District's support personnel are still compensated substantially below their counterparts in other districts." The Union said that its proposal does not remedy all of the inequities. It attempts to bring cleaners more in line with comparables, that is why it proposed a wage "lift of 6.9% for cleaners instead of the 4% range for the other categories."

The Union said that no quid pro quo is necessary "when a district's wage and benefit levels are so far below comparable." It argued that the District had received more than a quid pro quo for the \$312 cost of the maintenance shift differential when it unilaterally transferred building check responsibilities to supervisory personnel.

The Association argued that salary caps do not apply to support personnel and, there is no evidence in the record that the District cannot fund an arbitrator's award. It said that Nekoosa has committed fewer dollars to wages and benefits for its support staff than comparable districts. "It would be unjust to refuse 'catch-up' for Nekoosa employees on the basis of the District's budget arguments."

#### DISCUSSION

The differences of between the District and the Association, which are outlined above, appear to exceed the \$22,733 difference that separates their offers. It is noted above that these parties have spent most of the time since this Association was formed, arguing the merit of their respective positions. That tenacity was

not demonstrated during the cordial hearing in this case, but, it is reflected in both parties' arguments and briefs. When he fashioned the parties first three year contract on May 28, 1991, Arbitrator Zel Rice observed that:

The Employer argues that the Union's proposal ask for "too much too soon." The arbitrator can only say - that the Employer has paid too little for too long and allowed the wages and fringe benefits of the members of the bargaining unit except the secretaries and custodians to fall well behind the levels in the comparable groups. Internal inequities have developed among the Employer's own employees that should not stand and must be addressed.

Toward the end of that decision, Arbitrator Rice also observed that Nekoosa's food service employees, cleaners and aides "have been receiving substandard wages for some time and the proposal of the Union will still leave them with substandard wages although it will equalize some of the fringe benefits." In selecting the Union's offer in that case, Mr. Rice also observed that the total cost of the offer was \$26,646.66 a year. "This is an average total package increase per employee of \$526 per year which is a substantial amount..."

Unfortunately, there is very little direct evidence in the record about the cost of the agreement these parties reached for the period between July 1, 1991, and June 30, 1993. Though that contract is in evidence, the preceding agreement is not. It has not been possible to make reliable conclusions about how much that most recent voluntary settlement cost.

In the present case, the District's offer would have an average annual cost of \$22,024 or \$449 per employee. The Association's offer would have an average annual cost of \$33,390 or \$681 per employee. The Association's offer would bear greater costs of approximately \$34,000 over the two year contract period. Of this amount, \$26,318 or 77%, is in wages. The remaining \$7,862 or 23% is the cost of the additional fringe benefits. The preceding and other financial analysis is based upon the numbers contained in the parties' exhibits. The parties stated that they had agreed that both parties' numbers were accurate, but, that there were some minor variations as a result of rounding. Those variations, which have been noted, have also resulted in some minor inconsistencies in the numbers discussed herein.

WAGES - Both of the parties took issue with the other's comparable wage data and its application of the resulting numbers. The Board did erroneously report maximum custodian wages in Port Edwards at \$7.50 an hour rather than \$14.20 an hour as indicated in AX 11. The explanation of why the Board reported maximum custodian wages in Pittsville at \$7.30 and \$7.46 in 1993-94 and 1994-95 is noted. It does appear that Pittsville in fact is paying its head custodian \$10.88 and \$11.42 and it is paying its other custodian \$10.16 and \$10.67 during the two year period of this contract. Both parties have called the accuracy of the data presented for the Tri County School District by the other party into question. The Association's exhibit 12-12C supports its position. The Board attached Appendix B (a copy of Tri County's 1994-95 Support Staff

Schedule) to its reply brief. Since this document was not included among the items that the parties agreed could be admitted after the close of the record, District Appendix B can not be received into evidence.

Both of the parties have utilized cast foreword method in arriving at their cost analysis. In view of the fact that much of Nekoosa's support staff reaches schedule maximum within 3 months and the remainder reach the maximum after either 6 or 12 months, it appears reasonable to base the cost analysis in this case on maximum wage rates. The Union has suggested that the maximum rates in Nekoosa should be compared to maximum rates including longevity in other districts. The Board's objection to including longevity payments in wage comparisons has merit under the circumstances of this case. Those circumstances include Nekoosa's salary structure in which 8 positions reach the top of the schedule in 3 months, 2 positions reach the top in 6 months and one position tops out after 12 months. Some other districts have multi-step wage schedules for clerical employees. One comparable has a graduated 10 step schedule for some employees and a 5 step schedule for other employees. In view of the differences between Nekoosa's pay schedules and pay schedules in comparable districts, the lack of cast profiles in other districts and the absence of any costing data from comparable districts, it would only compromise the data further if we further included an additional variable.

The Union has argued that the entire support staff spread across 9 wage classifications in Nekoosa is underpaid in comparison

to average comparable wages. The Board did not deny that some wage classifications are below the average, but, it did argue that many of its wage rates are very competitive. The Board's summary of its evidence for secretarial and custodian wages appears to support its argument that Nekoosa's employees in these two categories receive wages in excess of average comparable wages. After the Board's data has been adjusted to reflect more accurate comparative data in the Pittsville, Port Edwards and Mid-State school districts and, adjusting for the Board's concern that the Union used data for the "head custodian" position in Pittsville and questioned data presented by the Union in Tri-County, it appears that the Board's conclusion is incorrect. Though it is not possible to determine the exact average wage for each classification, a review of the corrected data compels the conclusion that maximum support staff wages in Nekoosa are, across the board, below the average for comparable wages in comparable districts. Nekoosa's secretarial and custodial wages are its most competitive wage categories. They appear to start between 35¢ and 75¢ higher than the comparable average. The secretaries and custodians will fall behind the average of their comparable peers by between 40¢ and 90¢ at salary maximum by 1994-95 depending on which party's offer is selected in this proceeding. The wage disparity will be much greater for other wage classifications without regard to which offer is selected in this proceeding. Cleaners, teaching assistants, licensed special education assistants, clerical assistants, food service workers and utility employees in Nekoosa will earn from



close to one dollar an hour less to approximately three dollars an hour less than their peers in comparable districts during the term of this contract. The ten maintenance and secretarial employees appearing on the Association's seniority list, who have been employed by the district for an average of over eleven years receive competitive, but slightly below average, wages. The other thirty-seven employees, averaging over seven years of seniority, appear to be receiving wages that are considerably lower than average wages received by their counterparts in comparable school districts.

The District argued that employees in Nekoosa are able to move to the top of their respective wage schedules in less time than employees in comparable districts, except for Port Edwards. That may be a reason for lower maximum wages in Nekoosa. However, the support staff in this proceeding is a reasonably senior group; more than half have been with the District for over seven years, ten have been employed for more than fifteen years. Only four employees have been with the District for less than two years.

The District has argued that its wage offer for two 3% wage increases is more in line with comparable increases than the Union's offer, which would increase wages by an average of 4.89% in 1993-94 and by 4.39% in 1994-95. Association exhibits 15 through 23A include 1992-93 through 1994-95 wage increase summary data for the nine employee classifications involved in this proceeding, and comparative data from comparable districts. A review of that data does not support the District's argument. The Union's wage offer

would result in employees in two categories, custodians and cleaners, receiving above average wage increases for both years of the contract. Secretaries, licensed special education, clerical assistants, teaching assistants and assistant cooks would do better than average during the first year, but below average during the second year of the contract. Other food service and utility employees would receive below average increases during both years of the contract under the Union's offer. Under the District's offer, employees in each of the nine categories would receive increases that are below the average increase for their counterparts in both years of the contract. Based upon the foregoing, the Association's wage offer is preferred.

BENEFITS - The District has emphasized the cost of the improved benefits that it has provided over the past five years and its agreement to increase its percentage contribution to the employee's health insurance coverage. It is indignant that the Association is requesting additional benefit enhancements at this time, in view of increased total package cost in 1990-91, which "was in excess of 10 percent - an increase of over \$52,000 - in just one year." The Association argued that those particular costs were incurred as a result of the 1991 arbitration award. There is merit to the Association's argument. The District does not deserve any more to be credited, in this proceeding, for complying with the 1991 arbitration award than it would deserve to be sanctioned for not prevailing in that case. The two offers in this proceeding

must be evaluated on their respective merits in accord with statutory criteria.

The District's offer does contain some improvements in benefits which should be included in evaluating the parties' benefit offers. The offer to increase the Board's contribution from 82.5% of health insurance costs in 1992-93 to 85% in 1993-94 and to 87.5% in 1994-95 is a significant improvement. The health insurance provisions of the two offers are identical. Those offers will increase the Board's contribution to 87.5% of premium cost by the last year of this contract. That contribution will require payments of \$180.32 a month for single coverage and \$431.36 a month for family coverage for secretarial employees, it will cost \$173.32 for single coverage and \$414.23 for family coverage for all other eligible employees. The information the parties provided about health insurance benefits provided to the employees in comparable school districts is varied and complicated by the fact that is not clear that all full time employees in the comparable districts are eligible for the employer's reported contributions. Subject to that limitation, it appears that full time and regular school year employees in Nekoosa will have a greater share of their health insurance premium paid by the employer than will the employees in the Wisconsin Rapids district. All of the other comparable districts will pay a greater share of their employees' premium cost and will contribute more in terms of dollars per employee than the Nekoosa District. The initial cost of this improved benefit will be \$2,803. Both offers will also extend a benefit already received

by secretaries and maintenance employees, to cleaners and aides, one personal/necessary day off during the year with pay. The District said this benefit will cost \$1,472 per annum.

The disagreement over benefits revolves around the Association's attempt to improve some fringe benefits for some categories of employees. Full time cleaners would receive more liberal vacation benefits than they currently enjoy. The improved benefit would not, however, be as liberal as vacation benefits received by maintenance/custodial employees. Neither party provided any costing data for the Union's proposal. The Association's offer would provide cleaners in Nekoosa a vacation schedule which is closer to being comparable with the vacation benefits cleaners receive in other districts than the Board's offer which does not address this subject. Cleaners would also receive a new dental insurance benefit costing \$16.95 monthly for single coverage and \$42.23 monthly for family coverage. This would give cleaners the same coverage as the maintenance/custodial staff. The District's contribution for dental coverage for all covered employees would be increased by varying amounts. The greatest beneficiaries would be secretaries who received employer contributions toward dental insurance of \$14.18 (single) and \$37.85 (family) in 1992-93. The Union's proposal would increase the employer's contribution to \$18.84 (single) and \$46.92 (family) for the term of this contract.

Changes in dental benefits included in the Association's offer would increase costs by \$2,222 over the contract period. There is

insufficient information to determine what part of this cost is attributable to increasing the District's contribution toward dental insurance to reflect the same percent of fixed cost that was paid during the previous contract period, or of determining the cost of extending the benefit to cleaners. It appears that the Association's proposal to extend dental insurance coverage to cleaners in Nekoosa is supported by the practice to do so in all comparable school districts except Wisconsin Rapids.

Neither party provided any costing data for the Association's proposal to increase the amount of sick leave time that its employees may accumulate from 50 days to 60 days. The evidence introduced by the Association supports its position on this matter. The Association's request for a 15¢ an hour shift differential for two maintenance employees who work the second shift would cost \$312 per annum. There is no evidence that this proposal is supported by comparable comparisons.

Based upon the foregoing, it appears that both offers will make this District's health insurance contributions more comparable to similar benefits provided in other school districts. Those offers will also improve the internal comparability of benefits received by the cleaners by providing a personal/necessary day which is currently enjoyed by secretaries and the maintenance employees. Both external and internal comparability support the Association's offer for improved vacation and dental benefits for Nekoosa's cleaners. Evidence of practices in comparable districts supports the Associations' fringe benefit offer.

OTHER STATUTORY CRITERIA - The Association, in arguing its case, has relied primarily upon comparisons of the wages and benefits that would be received by these employees under the two offers in this proceeding with wages and benefits that will be received by employees in comparable districts who perform similar services. The District relied primarily upon other statutory criteria to support its position that "This Arbitrator must view the Association's final offer together with the benefit improvements and associated costs absorbed by the District during the 1988-91 contract period." Along the way, both of the parties took some liberties in arguing the merit of their positions. This is a relatively straightforward case. There is nothing in the Union's offer which would require it to offer a quid pro quo as was suggested by the District. The Association's offer, on the other hand, must be viewed as a package. There is no merit to suggestions that portions of this package should be disregarded as bearing de minimus cost, as was argued by the Association.

It has not been possible to evaluate the merit of many of the District's arguments because there has not been sufficient comparative data placed in the record to permit analysis of those arguments. The District argued repeatedly that it had provided substantial wage benefits and increases since 1988-89, however, it did not provide a cost analysis to support these claims. Nor did it provide any cost analysis for the benefit packages or total package settlements in comparable districts for any of the periods referred to in its arguments. The Board's argument that private

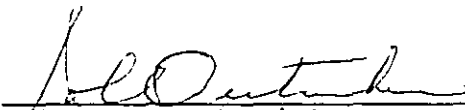
sector agreements support its offer also suffers from a lack of comparable data. If there was reliable evidence that private sector employees performing similar jobs and receiving similar benefits had settled in the 2.5% to 3% range for the contract period, that information might be compelling. Evidence that a large private company in a recognized high paying manufacturing industry arrived at a long term agreement calling for between 2 and 3 percent wage increases is relevant. That information does not, however, provide for a comparison of the wages, hours and conditions of employment of the employees in this proceeding with those private sector employees.

The District's cost control arguments are also relevant but not compelling. Association Exhibit 48 reflects 1993-94 total expenditures of \$8,390,024 and total 1994-95 expenditures of \$8,406,480 in the Nekoosa School District. District Exhibits 6 and 7 reflect that the total cost of this final offer will be either \$666,924 or \$678,652 in 1993-94 and either \$689,584 or \$711,855 in 1994-95 depending on which offer is selected. While there was some testimony that some of Nekoosa's building principals were required to maintain zero percent increase budgets in 1994-95 because of budget caps, there was no testimony that those caps would prevent the district from paying the cost of the Union's offer if it were to be selected in this proceeding. There has not been evidence introduced into the record that additional expenditures of \$507,944 budgeted for 1993-94 (above 1992-93) or the additional expenditures of 16,456 budgeted for 1994-95 (above 1993-94) will not permit the

District to meet its financial obligations, which will include those obligations arising out of this decision.

The Board's evidence and arguments that its offer which exceeds 1993-94 increases in the consumer price index is more comparable to that standard than the Association's offer have merit. Since both of the offers exceed this index, the District's offer is more reasonable based upon the standard. The cost of living index is only one of the standards against which offers in interest arbitration proceedings are evaluated. Arbitrators have struggled for many years in their efforts to "give weight to" the various enumerated factors for decision making. In some interest arbitration cases, some factors appear to strongly favor one party, and other factors strongly support the other party's claim. In other instances, as in this case, the weight of the evidence appears to demonstrate that some of the enumerated factors have greater relevance in arriving at a reasonable decision than other factors. In the present case, the weight of the reliable evidence compels the conclusion that factors 111.70(4)(cm)(7) b, d, e, h and j support the Association's position. For that reason, the Association's final offer shall be incorporated into these parties' 1993-95 collective bargaining agreement.

Dated at Madison, Wisconsin, this 24<sup>th</sup> day of January, 1995.

  
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John C. Oestreicher  
Arbitrator