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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of:	Case 12 No. 49862 INT/ARB-7028 Decision No. 28152-A
WISCONSIN EDUCATION ASSOCIATION COUNCIL	Sherwood Malamud Arbitrator
To Initiate Arbitration Between Said Petitioner and	Heard: 11/30 & 12/5/94 Record Closed: 2/15/95 Award Issued: Monday, 4/17/95
NEW LONDON SCHOOL DISTRICT	

APPEARANCES:

Charles S. Garnier, WEAC Coordinator, 550 E. Shady Lane, Neenah, Wisconsin 54956, appearing on behalf of the Association.

Godfrey & Kahn, S.C., Attorneys at Law, by James R. Macy, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On December 7, 1994, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., in an interest dispute between the New London Educational Support Staff Association, hereinafter the Association, and the New London School District, hereinafter the Employer or the District. Pre-hearing conferences were held in the matter on November 30 and December 5, 1994. At the outset of the pre-hearing conference on November 30, 1994, the parties stipulated and agreed that all testimony and exhibits presented during the pre-hearing conferences would be the same testimony and exhibits that the parties would present at a hearing conducted subsequent to the Arbitrator's appointment. Accordingly, the parties agreed that there was no further need for any other evidentiary hearing in addition to the pre-hearing conferences. Furthermore, the parties agreed that subsequent to the Arbitrator's appointment and the proper posting of notice, should a petition for a public hearing be filed, then such hearing would be conducted. Subsequent to the Arbitrator's appointment on December 7, 1994, no petition for public hearing was filed. The pre-hearing conferences held on November 30 and December 5, 1994, were held at the District's offices in

New London, Wisconsin. Briefs and reply briefs totaling 308 pages were exchanged through the Arbitrator by February 15, 1995, at which time the record in the matter was closed. Based upon a review of the evidence, testimony, and arguments presented by the parties, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

I. BACKGROUND

The New London School District is located on the eastern border of Waupaca County and the western border of Outagamie County. The District operates one high school, one junior high school, and four elementary schools. Student enrollment for the 1993-94 school year was 2,471 students, and the number of FTE teachers number 168.9 in that year. The New London Educational Support Staff Association represents secretaries, aides, custodians, maintenance workers, food service employees, and playground supervisors. Bus drivers are not included in this unit. Some employees work 12 months a year, others only work during the school year. Some are part-time employees. In costing their proposals, the parties identify a total of 112 employees of which 74.2 the parties define as full-time employees; i.e., those who work 1300 hours in a fiscal year.

Two representation elections were conducted among the employees in this wall-to-wall unit of nonprofessional employees of the District. In the first vote, on July 16, 1991, 49 favored "no representation" and 33 favored representation by the Association.

Subsequent to the 1991 vote, the Employer surveyed its support staff on matters of salary, benefits and working conditions. It met with support staff on two occasions. As a result of the survey and these meetings with support staff, the Employer issued a Staff Handbook which it put into effect in July 1992. The Staff Handbook, hereinafter the Handbook, contains an 8-step salary schedule. This is the first salary schedule in place for these employees. Under the salary schedule, increases were not based on a merit evaluation. The Handbook sets forth other conditions of employment and benefits for non-represented employees. The Handbook rationalizes the pay and benefits provided to employees in the many classifications included in this unit. The Handbook salary schedule was created and employees paid under the Handbook salary schedule through the District's identifying the

highest rate paid to an employee in a particular classification as the highest rate for that classification. The entry level for that classification was set at 85% of the top rate. Then six additional steps were established under the wage schedule included in the Handbook for each classification of employee covered by the Handbook and ultimately included in this unit.

On October 7, 1992 the Wisconsin Employment Relations Commission (WERC) conducted a second representation election. The vote in this second election was 50 in favor of representation against 44 who voted in favor of "no representation." In the first election in 1991, 82 of 94 employees eligible to vote participated in the election. In the second election in October 1992, 94 of 108 employees participated in the vote. The Employer took no position on the question of representation prior to either election. Subsequent to the certification of the Association by the WERC, the parties engaged in collective bargaining. After an investigation by a member of the staff of the WERC, the parties submitted final offers on approximately 40 items in dispute. The Arbitrator's task is to select the entire final offer of either the District or the Association on all issues in dispute together with the tentative agreements for inclusion in an initial collective bargaining agreement for the period of July 1, 1993, through June 30, 1995. The selection of the final offer for inclusion in this initial agreement is made on the basis of the following statutory criteria.

II. STATUTORY CRITERIA

The criteria to be used to resolve this dispute are found in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are:

> 7.Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a.The lawful authority of the municipal employer.
>
> b.Stipulations of the parties.
>
> c.The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> d.Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours

and conditions of employment of other employes performing similar services.

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

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g.The average consumer prices for goods and services, commonly known as the cost-of-living.

h.The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

III. ORGANIZATION OF AWARD

There are many issues in dispute. In the Award which follows, the Arbitrator first addresses those arguments put forth by the parties which concern the scope of an initial collective bargaining agreement. Under this general issue, the parties question whether the Arbitrator should apply a status quo ante analysis and whether the Arbitrator should recognize "past practice" in the course of addressing the many issues in dispute. The Arbitrator sets out the status accorded to the Staff Handbook established by the Employer in July 1992. The impact of comparability on the many

employment policy issues reflected in the language disputes of these parties is addressed under the Scope of the Initial Contract section of this Award.

These parties stipulated to a set of comparables. However, two issues arose concerning comparability. Those are addressed below. The Arbitrator then applies each of the statutory criteria to the many issues in dispute. In light of the many issues in dispute, the Arbitrator refers to those criteria which serve to distinguish between the offers of the parties. A brief summary or short quote from the language in dispute, and a brief statement of the parties' positions are set forth to the extent necessary to establish the basis for the Arbitrator's analysis and decision. In the course of setting out the Arbitrator's preference for one position over another on a particular issue, the Arbitrator may set forth what he finds lacking in the proposal of one or both parties. The purpose of such statements is not to provide these experienced parties with advice, but to provide them with an understanding of the Arbitrator's thinking and analysis. After this issue by issue review, the Arbitrator sets out the basis for his decision for selecting one of the two final offers for inclusion in this initial Collective Bargaining Agreement.

IV. SCOPE OF INITIAL CONTRACT

The District argues that the Arbitrator should apply the status quo analytical framework as set forth in Antigo School District, Dec. No. 25728 Malamud, 1989)[1] in addressing the many proposals for change put forth by the Association. That framework may be described as follows. The party proposing the change must demonstrate a need for the change. If the party has established a need for the change, the party proposing the change must demonstrate that it has provided a quid pro quo for the change. Third, the Arbitrator will require that the evidence establishing both the need for the change and a quid pro quo for the change be clear and convincing.

The Association argues that the status quo ante analytical framework described by this Arbitrator should not be applied in an interest arbitration proceeding for an initial Collective Bargaining Agreement. The Association argues that whatever existed prior to the certification of the union was unilaterally established by the Employer. The Association quotes Arbitrator

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[1]In its brief, the Employer attributes this decision to Arbitrator Rice.

Rice in his decision in Winneconne Community School District, supra, in support of its position, as follows:

> It should be noted that there is no status quo because the previous personnel policies of the Employer were the result of a unilateral action on its part and not as the result of good faith bargaining. No employee was ever given a meaningful role in the determination of personnel policies and no negotiations ever took place. Because the arbitration in the instant case is to determine the initial collective bargaining agreement, neither party is required to provide a quid pro quo in order to depart from the status quo. (at p. 18.)

This Arbitrator takes a middle ground. **In the context of an initial agreement**, in a situation in which the salary schedule, benefits and working conditions are rationalized, as in this case, then the party proposing a change must establish a need for the change. A union may demonstrate that indeed the entire structure of wages, benefits and working conditions must be revisited, addressed and altered. However, where there is no need to reinvent the wheel, the party proposing to engage in that exercise should be required to demonstrate a need for the change.

The Employer refers this Arbitrator to six initial collective bargaining agreements for support personnel which were established through the statutory interest arbitration process and in which the Association's representative represented those support personnel units. Two of the awards concern support units which contain one or more classifications of employees similar to those in this unit and which are in the group of comparables for this New London educational support staff unit: Shawano-Gresham School District, Dec. No. 27726-A, (R.U. Miller, 9/94) and Marinette School District (Paraprofessionals), Dec. No. 27571-A (Yaffe, 10/93). In addition, the Employer cites the following four awards which determine an initial contract for a support staff unit in: Winneconne Community School District, Dec. No. 27724-A (Rice II, 2/94); Oconto Falls School District, Dec. No. 27754-A (Slavney, 5/94); Shiocton School District, Dec. No. 27635-A (Petrie, 12/93); Peshtigo School District, Dec. No. 27288-A (Baron, 2/93).

In reviewing these six arbitration awards, the Arbitrator detects two related questions which underlie each of these awards. The questions may be formulated as: 1. What is the scope and purpose of an initial collective bargaining agreement? 2. What should an employer and union seek to achieve in an initial Collective Bargaining Agreement?

There are situations in which the parties to an initial agreement attempt to rationalize the relationship of pay among the classifications included in the collective bargaining unit and the pay rates paid to employees in the unit. Similarly, these same parties may need to rationalize the working conditions and benefits for members of a newly organized unit. In that kind of case, the parties and the arbitrator, if the matter is submitted to interest arbitration, look to industry practice as represented by the well established wage structures, working conditions and schedule of benefits among employees performing similar services for comparable employers to establish the parameters for an initial Collective Bargaining Agreement.

Although there are many issues in dispute here, the arbitral task in this case is not to rationalize the wages, benefits and working conditions of the employees in this wall-to-wall unit. To a great extent, the Employer has undertaken that process through its establishment of the Staff Handbook in July 1992. It established a salary schedule for the employees in this unit. The working conditions and benefits for employees are set forth in the Handbook. To a great extent the structure for the salary schedule, benefits and working conditions found in the Handbook appear in the parties' tentative agreements and their final offers. In **this** context the Arbitrator believes that the purpose of the initial Collective Bargaining Agreement is to continue those benefits and working conditions and salary structure which work for the parties. Where a working condition, benefit, or salary structure is a problem, the party seeking a change must identify that problem. It must justify changing that benefit, working condition or salary schedule structure. Since the Handbook is not the product of the collective bargaining process, industry practice as established by the comparables, will be given substantial weight in justifying a change to the existing working condition or benefit which one party or both parties have identified as a problem area in need of change.

The District argues that the Association attempts to establish a model contract in this arbitration proceeding. The Association leaves nothing to negotiate in the future. The District directs this Arbitrator to the analysis of Arbitrator Petrie in Shiocton School District, supra. The following observation by Arbitrator Petrie as quoted by the Employer in its brief is relevant here:

> In applying the principles discussed immediately above to the dispute at hand the undersigned notes the large number of language, benefits and wage items which were voluntarily agreed upon by the parties in their negotiations, and the absence of any persuasive evidence that the residual package of demands advanced by the Union could not be effectively addressed by the parties in their future negotiations. Simply stated, no persuasive basis has been established for the Arbitrator to operate as a substitute for the negotiations of the parties and, accordingly the undersigned will conventionally operate as an extension of the parties' negotiations, will evaluate the final offers of the parties on normal bases, and will avoid giving either party that which they would not have been able to achieve at the bargaining table. (at p. 19-20)

This Arbitrator approaches his task in a different fashion than Arbitrator Petrie. This Arbitrator has not the slightest idea what these parties would have achieved through their voluntary collective bargaining. This Arbitrator only knows that in this bargain they have managed to identify in excess of 40 issues over which to disagree. However, like Arbitrator Petrie, this Arbitrator will determine the preferability of each issue and ultimately select the final offer to be included in this initial agreement based upon the application of the statutory criteria to all the matters in dispute.

The District argues that the Association attempts to obtain a wide array of benefits and memorialize many working conditions at the expense of the Employer's discretion without offering anything in return. The Arbitrator views one purpose of an initial collective bargaining agreement is to identify and include in the initial agreement those working conditions, salary structure and benefits which have worked for the parties. Also, the

parties must establish a framework for bargaining in the future. There is a lot to achieve in the context of an initial agreement.

As noted above each party may seek to change existing benefits or include new benefits or working conditions into an initial agreement. Where a change in benefits is proposed in the context of an initial agreement, two factors come to bear on such proposals.

The Union and the Employer may identify problems in existing benefits or conditions which each or both may identify as subjects for change. Each party may seek to include such change in an initial agreement. A union which attempts to rationalize the wage structure, benefits and working conditions through an initial collective bargaining agreement where such a rational structure has not existed in the past or a union which must obtain significant "catch-up" in wages, benefits and/or working conditions should not be required to confront the status quo mode of analysis described above. The purpose of the initial agreement is to bring the new agreement in line with industry practice.

The District introduced the 1969 Agreement between the New London teachers and the District. The District argues that it takes many years to obtain the benefits and conditions reflected in that agreement. The Arbitrator rejects the District's argument. No one can turn back the clock. The employment and economic contexts in which the 1969 agreement was negotiated vastly differ from the conditions under which these parties will conclude an initial agreement for support personnel. At least one difference between then and now is this interest arbitration process.

In this case, the salary structure, level of benefits and working conditions are rationalized. The major task of the Arbitrator is to determine what changes in the wage structure, panoply of benefits and working conditions are justified in the context of this initial collective bargaining agreement. In the context of this dispute, the Arbitrator inquires into the need for the proposed change. Is a proposal for change justified on the basis of industry practice where such salary structural item, benefit or working condition has not been in place prior to the organization of the unit?

A party proposing a change in benefits/working conditions, especially a change which is not well established among the comparables as an industry norm will be required to provide quid pro quo for the change. The Arbitrator recognizes that a union and an employer do not come to the bargaining table for an initial collective bargaining agreement with an equal ability to provide a quid pro quo.

The Arbitrator believes that this mode of analysis provides the basis for determining the extent to which widely accepted conditions of employment benefits, and salary structures should be included in an initial collective bargaining agreement. Similarly, this mode of analysis provides a basis for rejecting proposals for change which are not widely accepted and which may be better addressed in the future negotiations of these parties. This is the analytical framework in which this Arbitrator determines the many proposals of these parties for inclusion in or exclusion from this initial Collective Bargaining Agreement.

It follows from the above analysis, that in the course of reviewing the individual proposals of the parties, the Arbitrator applies the criterion "Such Other Factors" in a manner in which the party proposing to change the provision in the Staff Handbook must demonstrate a need for that change. The Arbitrator provides greater weight to this "Such Other Factors" criterion over the comparability criterion, unless the party proposing the change is able to demonstrate the need for that change.

V. COMPARABILITY

Thankfully, the parties agreed to the school districts which are to serve as the comparability group for this arbitration proceeding. The comparables agreed to by the parties are the unionized school districts of the Bay Athletic Conference. The support personnel of the Seymour School District are not unionized, although Seymour is a member of that athletic conference. Under the parties' stipulation, Seymour is not included as a comparable in this arbitration proceeding. The support personnel of some of the comparable employers are not included in one unit. Howard-Suamico has three units containing different classifications of support personnel; one unit of custodial employees, one unit of housekeeping employees, and one unit of secretaries, aides, and food service employees. Similarly, the

Marinette School District has two units; one unit of aides, the other unit consists of custodial and maintenance employees. Food service employees are not organized in Marinette.

Pulaski has two units, one of custodial employees and cooks, and the other of aides and clerical employees that have a direct bearing on this case and are considered under criterion (d), comparability of employees performing similar services for comparable employers. There is a third unit in Pulaski which is considered under criterion (e). This is a unit of bus drivers. Bus drivers are not included in the New London unit. However, it is appropriate to consider the Pulaski bus driver contract under criterion (e), inasmuch as they are municipal employees employed by a comparable employer.

In some of the comparable employers, only one classification of employee is organized. For example, in West De Pere only the custodial employees are represented. The multiplicity of units provides some problem in the calculation of average levels of wages and benefits. Furthermore, the language in the various agreements between one employer and its separate units of support personnel may vary on a particular language item. In the discussion below, where such differences are significant or where the Arbitrator has made allowances for the variety of units and the multiplicity of units of one employer, the Arbitrator describes in the analysis of a particular issue, how the problem of the multiplicity of units is addressed. In general, the list of comparable employers agreed to by the parties are as follows: Ashwaubenon, Clintonville, De Pere, Howard-Suamico, Marinette, Pulaski, Shawano-Gresham, and West De Pere.

The Employer argues that the recent voluntary settlement in the Waupaca School District for an initial collective bargaining agreement for its support personnel who are represented by the very same representative of the Association that represents the New London support personnel should serve as a comparable on the issues of fair share and just cause. The Association counters this District argument by noting that comparability data relative to Waupaca as a comparable was not placed into evidence, nor was the entire agreement in Waupaca placed in evidence.

The District argues that the Waupaca School District is located in the same county as New London. The Arbitrator notes that the Bay Athletic Conference covers a wide area. If one were to draw a diagonal line from New London to Marinette, not only is the distance great but one might cross two or more labor markets in the process.

Nonetheless, the selective purpose for which Waupaca is presented by the District without supporting comparability data and without including Waupaca in the analysis of all the other issues in dispute in this case is ample basis for excluding Waupaca as a comparable in this proceeding. The Arbitrator concludes that to provide any weight to Waupaca would encourage comparability shopping. Accordingly, the Arbitrator accords the Waupaca contract no weight in the discussion of the fair share and just cause issues discussed below.

The Association argues that the teachers collective bargaining agreement, as well as, the salary increases and benefits provided to administrative personnel should be considered by the Arbitrator as internal comparables. During the course of the hearing, the Arbitrator excluded the data concerning the salary increases paid to administrative personnel during the pendency of this case. The Arbitrator excluded that evidence because there is no relationship between the salaries paid to administrators and those paid to food service or other support personnel. However, testimony relative to the benefits provided to administrative personnel and the unorganized bus drivers was received in evidence.

The teacher contract in effect for the three year period 1992 through June 30, 1995, was admitted into evidence. That agreement is considered by the Arbitrator in relation to the benefits paid to teachers.

The Employer argues that all the proposals made by the Association and the Employer are important. The Association establishes a hierarchy of importance for the issues in dispute. The Arbitrator concludes that the wage schedule, wage level, and total compensation issues inclusive of the Employer's proposal to require employee contribution for health and dental insurance premiums at 10% of the cost of those premiums are of primary importance in this case. The Arbitrator agrees with the District's assertion that all of the proposals made by these parties on the various language issues

were of sufficient importance as to include them in their respective final offers. The weight accorded each of these issues depends in great measure upon the extent to which the proposal continues in effect a matter established in the Handbook, reflects industry practice or serves to create confusion in the initial agreement.

The Arbitrator first addresses the wage and insurance benefit issues. He then proceeds to consider each of the other language and benefit issues proposed by the parties through the application of the analytical framework described above.

VI. ISSUE BY ISSUE REVIEW AND ANALYSIS

1. HEALTH AND DENTAL INSURANCE

Under the Handbook, the Employer paid the full premium for both single and family coverage for employees working over 1300 hours per year. The Employer proposes that upon the issuance of this Award, most likely, for a period of no more than two months and in all likelihood one month, employees working 1300 hours or more will be required to pay 10% of the cost of single and family coverage for health and dental insurance. Those working between 650 and 1300 hours will have the 90% contribution made by the Employer to employees working over 1300 hours pro-rated in a direct relationship to the 1300 hour floor as the amount of the Employer contribution for single or family coverage for health and dental insurance. At present, the Employer pays the full premium, both single and family, for health and dental insurance. In New London, the monthly health insurance premium for 1994-95 is $478.62 and $62.40 for Dental.

Both the Employer and the Association agree that employees working 1300 hours are entitled to the full benefit provided by the Employer. Those working less than 1300 hours but 650 or more hours are entitled to receive the health and dental insurance benefit on a pro-rata basis. This agreement on proration reflects an agreed-to change by the Employer and the Association. Under the Handbook, employees working from 976 to 1300 hours per year received 75% of the health and dental premium paid by the Employer. Those working from 650 to 975 hours per year received 50% of the health and dental premium paid by the Employer.

The Employer argues that the level of premium which it pays is above the average and its proposal for a 10% contribution by employees on health and dental will bring the Employer's contribution for these insurance premiums closer to the average contribution paid by comparable employers.

The Arbitrator used the series of exhibits in District 17-C to calculate the average cost of the family premium for health insurance for the 1993-94 and the 1994-95 school years. In addition, the Arbitrator calculates the average comparable contribution for secretary/clerical employees where such differentiation in units exist, as in Howard-Suamico, Marinette, and Pulaski. In addition, the Arbitrator calculates the average comparable contribution for custodial employees where such differentiation exists as in Howard-Suamico, Marinette, and Pulaski. In Pulaski, the contribution for the Custodian III classification was used. The West De Pere unit is a custodial unit. West De Pere was used only in the calculation of the average employer contribution for custodial employees in both 1993-94 and 1994-95.

These calculations demonstrate the following. In fiscal year 1993-94, the average monthly cost of family coverage for health insurance paid by comparable employers is $437.77 as contrasted to the level of premium paid by New London which is $455.92. In New London the Employer paid the full contribution for the 1993-94 school year. The average level of contribution made by comparable employers for clerical employees in 1993-94 for family coverage for health insurance was $408.17 or 93% of the average premium level for family coverage and $405.64 which also approximates 93% of the average employer contribution for family coverage within the custodial classifications.

The Employer proposes employee contributions towards health and dental insurance premiums upon the receipt of the Arbitrator's Award. Although the level of contribution will be in effect for no more than two months until the expiration of this agreement, the Arbitrator considers the impact of the Employer's proposal relative to the cost of premium and the average contribution made by comparable employers towards that premium during the 1994-95 school year. In making these calculations, the De Pere School District and Howard-Suamico custodial unit had not settled for the 1994-95 school year.

The average cost of family coverage for health insurance among the comparables for the 1994-95 school year is $457.04 as contrasted to the level of premium in New London which is $478.62. The average employer contribution for secretary/clerical units averaged $426.34 or 93% of the average premium paid for family coverage for health insurance. In the custodial units, the average employer contribution among the comparables amounts to $427.64 or approximately 94% of the cost of the family premium for the custodial units. New London experienced an increase in premium from 1993-94 to 1994-95 of approximately 5%. The average increase in premium among the comparables approximates 4%.

Thirty-seven employees receive the full extent of the Employer's contribution for insurance for family coverage. Three receive the full extent of the Employer's contribution for insurance for single coverage. Eight receive a 75% pro-rata payment on the basis of the pro-ration system established under the Handbook. Four receive a 75% pro-ration for single coverage. One employee receives a 50% pro-ration payment by the Employer for single coverage for the insurance premiums. The Employer proposal to contribute 90% rather than 100% of the cost of family coverage for health insurance will reduce its contribution for full-time employees from $478.62 to $430.76 for the one or two months remaining in this initial agreement.

New London, with 1300 hours worked in either a fiscal or school year which serves as the cutoff point for provision of the entire benefit offered by the Employer for its contribution towards health and dental insurance premiums and the 650 hour floor for part-time eligibility to receive a pro-rated benefit encompasses the broadest range of eligibility for these insurance benefits. Only Shawano-Gresham School District, which pays the entire employer contribution for employees working 1260 hours per year but whose floor for eligibility for pro-rated benefits is 720 hours, approximates the range of eligibility for participation in the health and dental insurance premium benefit afforded by New London.

The above data supports the Employer argument that the cost of health insurance premium, the level of its contribution, the range of eligibility for the benefit, all support the Employer's position that individual employees should contribute towards premium. Furthermore, in the 1994-

95 school year, there is no school district which provides full payment of premium. The Ashwaubenon School District, which paid the full premium through the 1993-94 school year, requires a small contribution from employees toward the cost of family coverage in the 1994-95 school year for both health and dental insurance. All the other comparables require employees to contribute. The range of employee contribution is 15% in Marinette to the small contribution levels required in Ashwaubenon. The average employer contribution based on the average cost of premium relative to the average level of employer contribution, as noted above, approximates 93-94%. The percentage contribution of each of the comparables approximates 95%. The Arbitrator concludes that this data supports a need for change.

The criterion "Such Other Factors," internal comparability tends to limit the weight of the above evidence. Although the School Board may unilaterally change the benefit afforded to its administrators, to date the District has not required administrators to contribute towards their insurance premiums. The teacher unit is in the final year of a 3-year agreement. The Employer pays the full premium for both single and family coverage for both health and dental premiums for teachers. The Association notes that the teacher agreement will expire on June 30, 1995. The health insurance issue may be addressed, at that point in both the support personnel and teacher units.

Here, the Employer asks the Arbitrator to impose employee contributions towards health insurance premiums when it is unwilling to require those employees of the District subject to its unilateral decision to make such contribution. This Arbitrator provides substantial weight against the Employer's proposal to introduce a substantial change in this benefit in the context of an initial Collective Bargaining Agreement when it has failed to do so with those employees subject to its unilateral control. In this regard, the Employer's failure to act undermines its position that there is a need for a change.

The Employer's proposal for employee contribution shifts the cost of this benefit from the Employer to the employee. It is not a cost containment proposal. The Employer argues that an employee contribution will alert employees to the importance of the benefit and restrain employees from

using the benefit. This Arbitrator in his decision in Marathon County (Highway Department), Dec. No. 27035-B (6/92) concluded after considering an extensive record submitted on this very issue that there is no reliable data to suggest that employees do not value the health insurance benefit or that cost shifting serves to restrain the increase in premium costs. Consequently, this Arbitrator favors cost containment proposals that restrain the increase in the cost of the benefit rather than cost shifting proposals.

The Employer presents private sector data which detail the level of Employer contribution towards health insurance premiums among New London's three main private sector employers. The Association argues that the Arbitrator should give little weight to this data. Criterion (f) mandates arbitral consideration of the wages and benefits paid by private sector employers in which the municipal employer which is the subject of this arbitration proceeding is located. The three private sector employers are Curwood, New London Family Medical Center, and Simmons Juvenile Products, Inc. All require employee contributions far in excess of the dollar amounts proposed by the District or the percentage contribution proposed by the District, here.

In addition, the Employer introduced the level of employer contribution which the City of New London provides to organized units of its employees. The employees in the street unit must contribute 5% towards premium, the police officers contribute 7% towards premium, effective January 1, 1994. This data under the criterion (e) supports the Employer's demand for employee contribution. However, it tends to support a contribution at between 93-95% rather than the 90% proposed by the District.

At pages 35 and 36 of its initial brief, the Association includes a chart detailing the impact of the Employer's proposal to require employee contribution towards premium for the 54 employees who currently participate and avail themselves of the health and dental insurance benefits. Twenty-four of the 54 will suffer a decrease in net income as a result of the cost of monthly premiums which will totally offset the employee wage increases provided through the Employer's offer. To the extent that the above data demonstrates that employee contributions are the rule among the

comparables, the Employer's attempt to get it all in the context of an initial agreement has a Draconian impact on the employees in this unit. In its reply brief, the Employer argues that the negation of any wage increase through the employee contribution proposal is the result of the few hours worked by these employees. The Arbitrator must assume that these employees are working the hours required and needed by the District. In the 1993-94 school year and for most of the 1994-95 school year, many of these employees contribute towards the cost of their health and dental insurance through the pro-ration of benefits established under the Staff Handbook. An Employer proposal of a 5% contribution would go a long way to approximate this Employer's costs for the insurance benefit as compared to the comparables, but such 5% contribution would not have the Draconian effect demonstrated by the Association's chart which is labeled Appendix A and numbered page 18a & b.

When all the above arguments are considered with regard to the need for change, the Arbitrator concludes that all the comparables in the Bay Athletic Conference, the other municipal employees in the City of New London and private sector comparables support a proposal for employee contribution to health and dental insurance premiums. The comparability data support the Employer demand that it no longer be required to fully fund the cost of health and dental insurance premiums for both single and family coverage. The Employer's failure to impose the demand it makes here on its own administrators and its argument concerning the impact of Act 16 on its ability to bargain with its teachers for a substantial change in the health insurance benefit without abandoning its right to submit a Q.E.O. offer, all suggest that if a change in benefit were made in this unit, it would be the only unit of employees of this District who would be required to contribute towards their health insurance premiums. Nonetheless, the comparability data is so overwhelming, that it supports the Employer argument that a change is necessary.

As noted above, the Arbitrator does apply the status quo analytical framework where a party, in the context of an initial agreement, seeks to obtain a substantial change in benefits. The Employer argues that its economic offer provides a quid pro quo for its proposal to require employee contribution towards insurance premiums.

APPENDIX A

Impact On Take Home Pay Of District's Insurance Offer For 1994-95 On A Monthly Basis
(Key To Column Headings)

A. Post award 1994-95 monthly health insurance premium contribution increase or decrease
B. Post award 1994-95 monthly dental insurance premium contribution increase or decrease
C. Total post-award 1994-95 monthly employee health and dental insurance premium contribution increase (or decrease)
D. Pre-award 1994-95 monthly employee wage increase over 1993-94
E. Post-award 1994-95 monthly employee wage increase (or decrease) over 1993-94.

Employee Name	A.	B.	C.	D.	E.
Zuehlke	20.28	2.31	22.59	113.25	90.66
Haase	56.86	6.24	63.10	95.92	32.82
Hoffman	56.86	6.24	63.10	63.42	.32
Huntley	56.86	6.24	63.10	95.92	32.82
Kolth	56.86	6.24	63.10	63.42	.32
Kleinbrook	20.28	2.31	22.59	67.58	44.99
White	56.86	6.24	63.10	95.92	32.82
Hameister	56.86	6.24	63.10	56.92	(6.18)
Lathrop	56.86	6.24	63.10	60.67	(2.43)
Handschke	56.86	6.24	63.10	35.25	(27.85)
Hoffman	56.86	6.24	63.10	39.09	(24.01)
Thiel	56.86	6.24	63.10	61.09	(2.01)
Bergman	56.86	6.24	63.10	33.42	(29.68)
Coenen	56.86	6.24	63.10	33.42	(29.68)
Dahn	56.86	6.24	63.10	33.42	(29.68)
Dailey	56.86	6.24	63.10	33.42	(29.68)
Kloehn	56.86	6.24	63.10	50.17	(12.93)
Swanson	56.86	6.24	63.10	35.83	(27.27)
Mathewson	-24.19	-3.15	27.34	28.92	56.26
Schubert	56.86	6.24	63.10	34.92	(28.18)
Dent	56.86	6.24	63.10	53.75	(9.35)
Volz	56.86	6.24	63.10	57.08	(6.02)
Wolford	56.86	6.24	63.10	49.50	(13.60)
Smiley	56.86	6.24	63.10	33.00	(30.10)
Bonack	-3.74	-.43	(4.17)	27.75	31.92
Hathorne	56.86	6.24	63.10	64.17	1.07
Lienhard	---	-5.04	(5.04)	35.00	39.04
Gorges	-58.87	-5.04	(63.91)	47.25	110.35
Kaczorowski	-22.77	-2.58	(25.35)	31.17	56.52
Mueller	56.86	6.24	63.10	51.75	(11.35)
Jackels	-67.48	-8.80	(76.28)	32.17	108.45
Nabbefeld	56.86	6.24	63.10	89.67	26.57
Bartel	56.86	6.24	63.10	69.33	6.23
Pelkey	56.86	6.24	63.10	114.42	51.32

Gore	56.86	6.24	63.10	69.33	6.23
Smith	56.86	6.24	63.10	83.33	20.23
Gorges	56.86	6.24	63.10	69.33	6.23
Humblet	56.86	6.24	63.10	69.33	6.23
Fisher	-24.80	-2.82	(27.62)	52.50	80.12
Fitzgerald	00.00	2.31	2.31	56.75	54.44
Gorges	-24.80	-2.82	(27.62)	56.67	84.29
Lamers	56.86	6.24	63.10	52.17	(10.93)
Linberg	56.86	6.24	63.10	86.67	23.57
Mathewson	56.86	6.24	63.10	45.92	(17.18)
Miles	9.39	1.23	10.62	44.00	(33.38)
Rosenthal	56.86	6.24	63.10	86.67	(23.57)
Schuldt	56.86	6.24	63.10	54.42	(8.68)
Zietlow	56.86	6.24	63.10	57.17	(5.93)
Knapp	27.62	3.60	31.22	41.67	(10.45)
Fingland	56.86	00.00	56.86	52.00	4.86
Riley	19.33	2.52	21.85	28.17	(6.32)
Chapman	-73.45	-9.15	(82.60)	32.42	115.02
Popke	-73.45	-9.15	(82.60)	48.58	131.18
Paters	-34.91	-3.97	(38.88)	24.25	63.13

The data on this chart can be summarized as follows:

(1) Of the 54 employees who currently receive health and dental insurance, 43 will have their monthly take home pay reduced when compared to the pre-award amount.

(2) Of the 43 employees mentioned in (1) above 24, will suffer a reduction large enough to totally negate the monthly raise they received over their 1993-94 wages.

(3) Of the 54 employees who receive health and dental insurance, 10 will receive an increase in their monthly take home pay after the award is received. This is because the current District policy set the employer's premium payment at 75% if they were working less than full-time; whereas the post-award amount is exactly pro-rated based upon the number of hours worked. (The Association proposal is identical to the

2. WAGES

One purpose of the analysis which follows is to establish if the Employer makes a discernible increase above the average and provides an overall compensation package which justifies its insurance premium contribution proposal which it makes, here. In the analysis which follows, the Arbitrator reviews the wage rates paid by comparable employers at several benchmark classifications in this unit to ascertain the relationship of the wage levels paid by this Employer to those paid by comparable employers and to chart the level of increases generated by the comparables and by the Employer and Association in their proposals. The Arbitrator addresses the wage issue both in its linkage to the health insurance proposal and as a separate independent issue in the analysis which follows.

The Employer proposes a 4.65% wage increase for the 1993-94 school year and a 4.61% wage increase for the 1994-95 school year. The total package cost of its proposal is 4.61% in the first year and approximately 4.65% in the second year, assuming that the employee contribution towards health insurance would be for one or two months during the term of this initial agreement.

The Association proposes a wage increase in the first year of 5.38% and 4.7% increase in the second year. The total package impact of its economic proposal is 5.21% in the first year and 5.55% in the second year. The Arbitrator finds it difficult to clearly establish the percentage increases generated by the comparables for each of the classifications found in this wall-to-wall unit. In some cases, the increases in comparable units includes "catch-up." In De Pere a substantial decrease in salary in 1993-94 over 1992-93 served to skewer the results. The Arbitrator's analysis is reflected in chart 1 below.

Chart 1

SECRETARY I			
School Year	Aver-age	Dis-trict	Associa-tion
1992-93	$9.51	$10.00	$10.00
1993-94	9.38	10.37	10.45
1994-95	9.80	10.76	10.84

Data from six comparables used in calculating the average.

AIDES					
School Year	Special Ed. and Higher Paid Aides	Dis-trict	General Aides	Dis-trict	Associa-tion
1992-93	$7.99	$7.64	$7.55	$7.64	$7.64
1993-94	7.92	7.92	7.54	7.92	7.98
1994-95*	8.20	8.22	7.78	8.22	8.28

*5 settlements
Seven comparables used. Data calculated for Aides paid at a higher rate and those paid at a lower rate.

CUSTODIANS						
School Year	High Rate	Dis-trict	Associa-tion	Low	Dis-trict	Associa-tion
1992-93	$9.58	$8.47	$8.47	$8.84	$8.47	$8.47
1993-94	9.66	8.78	8.85	8.15	8.78	8.85
1994-95	9.79	9.11	9.18	9.31	9.11	9.18

Calculations were made for Custodians paid at a higher rate and those paid at a lower rate. It should be noted that the range of rates paid Custodians

varied among the comparables by as much as $5.44 per hour. It is unclear whether the rates paid are for the performance of similar tasks. The calculation of higher paid and lower paid custodians should minimize this effect. The New London unit contains a number of Custodians. Consequently, the Custodian classification was used as a benchmark. All eight comparables were used in the calculations of the average for this classification.

COOK BAKER						
School Year	High Rate	Dis-trict	Associa-tion	Low	Dis-trict	Associa-tion
1992-93	$8.33	$7.81	$7.81	$7.66	$7.81	$7.81
1993-94	8.19	8.10	8.16	7.79	8.10	8.16
1994-95*	8.57	8.40	8.46	8.07	8.40	8.46

*Based on five settlements.

The average increase for the Maintenance Worker classification under the District offer is 44 cents in 1993-94 and 45 cents in 1994-95. The average increase at this classification is 52 cents in 1993-94 and 44 cents in 1994-95. The Association proposal closely approximates the average increase at this classification. Its proposal generates a 53 cent increase in 1993-94 and a 46 cent increase in 1994-95 at the Maintenance Worker classification.

The salary levels generated under either the Association or the District offer at the Bookkeeper classification is substantially above that paid by comparable employers. Based on a review of the cents per hour average increases generated by the average comparables including De Pere and if De Pere is excluded, the Arbitrator concludes that the District offer generates a cents per hour increase which closely approximates that provided by the average of the comparables. The cents per hour increase generated by the Association offer is slightly above the average.

The private sector data reflected in the DILHR 1993 wage survey for the statistical area including the area covered by the school district and the statewide averages at the Secretary, Janitor, Maintenance Mechanic, and Cook classifications all establish that the rates paid at these classifications by this Employer exceed the levels paid by private employers to these classifications in the statistical area and exceed the wage levels paid by private employers on a statewide basis at each of these classifications. The disparity in wage rates between those paid by New London School District and the rates paid in the New London School District's statistical area is significant except for the Secretary and Maintenance classifications. All exceed $1.00 per hour even at the statewide rates paid to these classifications.

The above data suggests that New London pays rates above the average at most of the classifications included in this unit. However, the increase generated by its proposal for 1993-94 and 1994-95 closely approximates the average increase of comparable employers. The wage data standing by itself does not serve to establish a discernible quid pro quo for the insurance premium contribution proposal of the Employer.

The total dollar difference between the total package of these parties over the two years for this unit approximates 1.5% and is less than $30,000. The difference between the final offers is reduced by the potential of any employee contribution for health and dental insurance premium occurring for one or two months. The Employer argues that it has borrowed and taxed to the maximum. The Arbitrator gives little weight to this argument. The difference between these parties on both wages and total package costs is minimal.

In the context of evaluating the wage proposal independent of the insurance contribution issue, the cost of living criterion tends to support the Employer proposal. The increase in the Consumer Price Index approximates 3.5% at the nonmetro urban index. This index increased from September 1992 to September 1993 by 2.9%. This data supports the lower total package offer, the District's offer. Standing by itself, the comparability criteria and the cost of living criterion slightly favors the District wage offer.

(h) Overall Compensation

The Employer argues that the Arbitrator should consider the totality of the wage and benefit changes offered by the Employer in its proposal in considering whether it has provided a quid pro quo for its proposal for insurance contribution by employees in this unit. In the parties' tentative agreements, and under the criterion stipulations of the parties, the Employer correctly notes that this Employer has agreed to a funeral leave benefit without equal among the comparables; i.e., six days of funeral leave. It has offered to increase life insurance from a $5,000 policy to an amount equal to one times an employee's annual salary. The life insurance is fully paid by the Employer.

The Arbitrator has considered the totality of the Employer's offer as detailed below and concludes that it does not offset the Draconian impact on many of the employees who take health and dental insurance through this Employer. The Employer suggests that the premium contribution will eliminate duplication of coverage. However, it presented no evidence or data to suggest that indeed that is a problem in this District.

The criterion "the interest and welfare of the public" supports the selection of the Association offer. Unlike the private sector comparables referenced by the Employer, many of the employees in this District come in contact with children. An effective insurance program encourages employees to promptly take care of medical problems. Prompt care will prevent the spread of illness in the district. It does not serve the interest and welfare of the public for employees such as cooks and bakers, whose wage rates and hours may tempt them to drop insurance coverage in the face of the Employer's premium sharing proposal, to delay obtaining medical attention and treatment for illnesses which may be spread to children and teachers in the District.

The Employer attempts through its proposal to obtain too much and too fast in the context of an initial collective bargaining agreement. It breaks an internal pattern of benefits which it provides to its employees. The Employer's proposal in this regard provides a negative impact on the totality of its final offer. The Arbitrator recognizes that the Association, for its part, did not propose any contribution by employees towards insurance

premiums. Rather, its offer fails to take into account the overwhelming comparability data suggesting that employees must absorb some of the cost of health insurance premiums. This conclusion serves to temper the negative impact generated by the Employer's proposal on the totality of its offer.

3. OTHER INSURANCE ISSUES

a. Fiscal Year - Calendar Year Calculation of Hours

There is dispute between the Association and the District as to the period over which the annual hours for eligibility purposes are to be computed. The Association proposes that it be calculated on a fiscal year basis. The District proposes a calendar year basis. The District argues that its proposal continues the status quo. It asserts that the retirement report is calculated on a calendar year basis.

The Association's proposal is consistent with the computation of other benefits. The Staff Handbook establishes eligibility for benefits as follows:

> Health insurance, dental insurance, long-term disability insurance, life insurance, and optional dependent life insurance will be available to employees working a position which the District has established at 650 hours per fiscal (7/1 to 6/30) year or more on a regular basis.

The Arbitrator can ascertain no basis for changing this calculation to be consistent with the retirement report rather than all other benefits. On the basis of the above discussion, the Arbitrator finds that the evidence supports the Association proposal on this minor issue.

b. Change in Carrier

The Association proposes that the Employer may change carriers provided the new carrier provides level of benefits "equal to or better than the level of benefits in effect July 1, 1993." For its part, the District provides no standard and no assurance on maintaining the level of benefits should it change carriers.

The District argues that it requires flexibility in order to insure its ability to bid the health and dental insurance benefits. The Arbitrator concludes that both proposals are equally flawed. The District provides no assurance that the level of benefits will approximate their present level. The Association's proposal may ultimately lead to testimony by two insurance salesmen concerning the intricacies and secrets contained in their insurance administration manuals of their respective health and dental insurance programs, should the District change carriers and the Association maintain that the new insurance plan or plans are not equal to or better than the plan in effect in July 1993.

All but the Howard-Suamico and Shawano-Gresham contracts provide no language or permit the Employer to change carriers. The comparability criterion supports the District's offer. On this basis, the Arbitrator selects the District's offer on this more significant proposal for inclusion in the initial Collective Bargaining Agreement.

c. Flex Benefit Plan

The Association proposes the inclusion in the Agreement of a tax deferred flexible benefit plan as identified under Section 125 of the IRS Code. The District maintains such a flexible benefit program not only for this unit, but also for the teachers and administrators of the District. The District, however, resists reference to the inclusion of this benefit in the Agreement, although it is referenced in the Handbook.

The status accorded the Staff Handbook would dictate that a benefit provided to employees should be included in the initial Collective Bargaining Agreement. The District objects to the Association's language proposal which provides that:

> The flexible benefit plan with specifications equal to or better than the plan in effect as of July 31, 1993.

The District argues that if the IRS or Congress eliminate this flexible benefit plan, it should not be required to maintain the benefit.

The Arbitrator would have selected the Association's offer if it had referenced the benefit in terms of its continuation so long as the benefit is provided under the tax code. However, the language which the Association proposes may require that the District continue in effect a benefit which no longer exists. Furthermore, although the District resists the inclusion of this benefit in the collective bargaining agreement, there is no evidence that in the two months remaining under this contract that it would terminate this benefit plan for this unit while continuing it for its teachers and administrators. Accordingly, the Arbitrator finds that the District proposal, in the face of the flawed Association proposal, is preferable.

d. New Employee Eligibility for Health and Dental Benefit

The Association proposes that insurance benefits be made available to employees as of the first day of hire. The District maintains that this is not the status quo. The Association maintains that the language for its proposal comes from the New London teachers contract. It is unclear from this record what is the status quo. The Arbitrator finds that the statutory criteria do not support the selection of either proposal.

e. Coverage for Employees Who Quit or are Discharged

This Association proposal is taken from the Teacher's contract. It is appropriate for such contract. It does not transfer to a support unit contract which contains different classifications of employees. This proposal is not supported by the comparables. Insurance is administered to provide coverage to the end of month in which the employee is discharged or quits. The Employer position is preferred.

4. ENTIRE MEMORANDUM OF AGREEMENT/SAVINGS CLAUSE/TERM OF AGREEMENT AND AGREEMENT LANGUAGE

a. Agreement Language

There are a number of Association and District proposals on the various subjects under this heading. They are all interrelated. Should its final offer be selected for inclusion in the initial Agreement, the District proposes for Section 1.02 of an initial Collective Bargaining Agreement, that:

> Any previously adopted policy, rule or regulation of the parties which is in conflict with a specific provision of this Agreement shall be superseded by this Agreement. Furthermore, unless specifically set forth herein, past practices of any kind whatsoever, are hereby discontinued.

The Association proposes no language on this subject.

Inasmuch as this is an initial Collective Bargaining Agreement, it follows that any actions which occurred prior to the certification of this collective bargaining representative were unilaterally undertaken and implemented by the Employer. The Association should not be burdened with any claim of the existence of a "practice" to which it was not a party. Accordingly, the District's proposal clearly sets forth that it relinquishes any claim of existing practices being carried forward into this Agreement. In a renewal agreement, the parties next collective bargaining agreement, this sentence may take on a totally different meaning. The Arbitrator finds it inappropriate to address that issue in the context of this dispute. The Arbitrator certainly has sufficient number of issues to address in this case without concerning himself with issues which might arise in the parties next bargain.

The District proposes that if any policy or rule is inconsistent with the terms of the agreement, it is the agreement which is to be enforced. This District proposal is supported by the "Such Other Factors" criterion in the context of an initial Collective Bargaining Agreement. It establishes the clean slate for this bargain. Most of the comparable agreements contain no such language. However, the "Such Other Factors" criterion serves to support the inclusion of this provision in the initial Collective Bargaining Agreement.

The District argues and the Arbitrator accepts its position that the intent of its proposal in Section 1.02 is to encourage the Association to bring forth all matters which should be included in the Collective Bargaining Agreement. In light of this Arbitrator's views concerning the scope of an initial Collective Bargaining Agreement, it follows therefore, that matters included in the employee Handbook which clearly set forth the benefits and working conditions for employees and which have not served as a problem

for either party and which neither party proposes to change in this bargain, should be included in the Collective Bargaining Agreement under this very proposal of the District. The Arbitrator finds that the District cannot have it both ways. It cannot assert that all conditions should be subject to negotiation, and then resist including benefits and working conditions which it established and which do not serve as a problem for the relationship between these parties and which the Association proposes to transfer from the Staff Handbook and include in the Collective Bargaining Agreement.

Where the District opposes the inclusion in the Collective Bargaining Agreement of a benefit or working condition set forth in the Staff Handbook and which the Association proposes to include in the Collective Bargaining Agreement, where the District is unable to justify the exclusion of that benefit or working condition from the Collective Bargaining Agreement, the Arbitrator finds such District proposal inconsistent with its proposal for Sec. 1.02, here.

b. Savings Clause

The parties differ on whether bargaining should ensue in the event that a tribunal of competent jurisdiction should set aside a particular provision of the Agreement. The District argues that the need for bargaining is covered by its entire memorandum of agreement proposal. The District maintains that any provision subject to the savings clause would be a matter which arises subsequent to the date of this Agreement. Under its entire memorandum of agreement, such matters are subject to negotiations. The Association proposal provides the option to either party to initiate negotiations on replacement language for the provision found invalid.

The comparability criterion equally supports the inclusion of language similar to that proposed by the Association or the introduction of no language on this subject. The Arbitrator concludes that the Association provision which clearly sets forth the limited circumstances under which either party may initiate negotiations for a replacement for a provision found invalid is clearly preferred. Clarity is the "Such Other Factor" which supports the inclusion of the Association proposal on this subject.

c. Entire Agreement

The District proposes a zipper clause, whereas the Association proposes mid-term bargaining for changes in board decisions, rules, practices or policies which occur during the term of the agreement which affect employee wages, hours or conditions of employment.

The two proposals reflect a wide disparity in philosophy concerning mid-term bargaining. The District argues that decisions which affect employee wages, hours or conditions of employment is very broad. It argues it may be a permissive subject of bargaining. In its reply brief, the Association correctly notes that this proposal is included in the final offer. As such, the Arbitrator must address it as written.

The court-approved phrase "primarily related to wages, hours or conditions of employment" which appears in the District's proposal would provide a better legal basis for the Association proposal for mid-term bargaining. However, the Association's proposal permits either party to initiate bargaining for changes in board decisions or policies. Such a light trigger for negotiations may relegate these parties to continuous collective bargaining. The Association proposal is overbroad, overreaching and is best omitted from any collective bargaining agreement.

Language similar to that proposed by the District appears in five collective bargaining agreements of comparable employers. The balance of the contracts in comparable units have no language on this subject. There is no support among the comparables for the broad, all-inclusive, mid-term bargaining proposal of the Association.

d. Duration

Both parties agree that this Agreement will be in effect from July 1, 1993 through June 30, 1995. They differ on the retroactivity impact of this Award. The Association has carefully included in each of its proposals language which identifies the effective date of any benefit or proposal it is making. In many cases, the Association notes that the benefit or working condition shall become effective upon the issuance of the Arbitrator's award.

The District proposes that only salary for the 1993-94 and 1994-95 school year are retroactive. Presumably, all other provisions would be effective with the Arbitrator's award.

Certainly, the District's proposal is clear and simple. The Arbitrator agrees with the District's approach to identify those provisions of any agreement which will be retroactive.

The District presents many arguments against the retroactivity provision contained in the parties' respective offers. The Arbitrator concludes on the basis of all the proposals made by the parties and the specific notation by the Association in its proposals, such as the grievance procedure which shall become effective on the receipt of the Arbitrator's Award, that there is really little difference between these parties on this issue. Accordingly, the Arbitrator concludes that this issue does not serve to distinguish between the final offers of the parties. The District arguments concerning the long list of items over which these parties disagree and the retroactive impact that may follow from the Association's proposal fails to take account of the Association's specific statement that the grievance procedure itself will only become effective upon receipt of the Arbitrator's Award. Otherwise, the District's strenuous objections constitute a repeat of the objections that it has set forth to the many proposals at issue, here.

5. DEFINITION OF EMPLOYEE

The Association proposes a definition for regular full-time fiscal-year employee; regular full-time school-term employee; regular part-time fiscal-year employee; regular part-time school-term employee. The Association proposes that regular full-time school-term refer to employees working 30 or more hours each week and that a regular part-time school-term employee be one who works less than 30 hours per week.

The Employer proposes a definition for 12-month and school-year employees. It defines full-time and part-time employees on the basis of employees working above or below 1300 hours. Those working less than 1300 hours in a fiscal year are part time.

As will be the case in many of the issues which follow, internal consistency and the continuation of definitions as they presently exist in the Staff Handbook, unless some basis is provided for a change, will be the deciding factor in the determination of which proposal should be favored. The "Such Other Factor" criterion serves as the basis for the selection of these proposals which may be difficult to compare and contrast on the basis of the comparability criteria.

In this case, the Arbitrator concludes that the Association proposes too many definitions. The definition 1300 hours worked in a fiscal year serves to identify those employees who are full-time employees eligible for "full" benefits. The insertion of the 30 hour per week provision may in fact serve to establish a lesser standard for school-term employees who are to be considered full time.[2] Since the Association definition of employees may be inconsistent with the 1300 hour fringe benefit eligibility line for the receipt of "full" benefits, the Arbitrator concludes that the District's proposal on this issue is strongly favored.

6. MUTUAL COOPERATION

The District proposes that the following language be included in the initial collective bargaining agreement under the heading Mutual Cooperation:

> The Association and employees of the bargaining unit pledge that they will cooperate with the District in a concerted effort to achieve the most efficient and qualified employees consistent with the standards of the profession. Every employee shall endeavor to increase his/her individual qualifications and productivity and make efficient use of all suggestions relative thereto from the District or the employee's supervisor. Anyone setting or maintaining limits on

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[2]Here, both the Employer and the Association calculate the 1300 hours on a fiscal year basis. The Arbitrator's determination that the calculation of hours for eligibility for the insurance benefit should be on a fiscal year basis is consistent with the proposals of both parties. The retirement report to the state is the only report which is calculated on an annual basis.

his work or suggesting that others do so shall be considered in violation of this Agreement.

The District maintains that this is a most important proposal. It sets forth the dedication of the employees to the efficient operation of the district. The Association maintains that the last sentence in this provision provides a basis for disciplinary action by the Employer against employees. The Association does not propose any language on this subject.

In interest arbitration proceedings, oftentimes the parties appeal to rhetoric to castigate the position of the other side on a particular proposal. This is one instance of the injection of rhetoric in the arguments of the parties. Director of Business Services Yerkey testified that few employees have been disciplined or discharged in this District during his lengthy tenure with this Employer. Any concern that the above proposal is made by the District to serve as a basis for the discipline of the employees in this collective bargaining unit is not supported by the facts.

However, there is little that is mutual in this proposal. The proposal states that suggestions for efficiency emanate solely from management and supervision. There is no commitment by the District to solicit employee suggestions for efficiency and seriously consider those suggestions. In the absence of language which, indeed, commits both Employer and employee to efficiency and productivity, this language is best omitted from the initial collective bargaining agreement. Accordingly, the Arbitrator finds that the Association's position to omit this language from the initial agreement is strongly favored.

7. GRIEVANCE PROCEDURE

a. Definition of a Grievance

The District proposes that a grievance be defined as, "a dispute over the application and/or the interpretation of a *specific* provision of this Agreement. (Italics added for emphasis) The Association defines a grievance as, "a dispute over the application and/or the interpretation of the Agreement."

The District argues that its definition of a grievance should be selected by the Arbitrator. The Arbitrator is required to apply and/or interpret a specific provision of the agreement under its definition. The District cites the Wisconsin Supreme Court decision in County of La Crosse v. WERC, 182 Wis. 2d 15 (1994) in which the Supreme Court noted the significance of the definition of a grievance. That case concerned a worker's compensation claim. In that case, the claim was allowed to proceed to arbitration, thereby creating a second forum for the consideration of the worker's compensation claim. It is for that reason that the District proposes to include the limiting phrase "a specific provision of the agreement" in its definition of a grievance.

The Association argues that there is little difference between the two definitions of a grievance. The Arbitrator finds that the language found in the contracts of comparable employers equally support the inclusion of the term specific or reference to application and/or interpretation of the agreement. The District's proposal may impose a more limiting standard on the definition of a grievance. However, the Arbitrator is not convinced that the difference in definition is one which may be readily measured against the statutory criteria other than the comparability criteria. As noted above, those criteria equally support the selection of the Employer and Association proposals. Both are reasonable and worthy of inclusion in the initial Collective Bargaining Agreement.

b. WERC Staff Arbitrator Versus Private Arbitrator

The District favors the selection of an arbitrator from the panel of private arbitrators maintained by the WERC. The Association proposes that the arbitrator come from the staff of the WERC.

The District argues that the use of a private arbitrator affords both the Association and the District a choice in selecting the arbitrator who is to determine a grievance. The District adds the following at p. 36 of its initial brief:

> It is the District's position that the use of neutral, outside, independent arbitrators is more reasonable for additional reasons beyond the fact that it

provides the parties a choice in the selection of arbitrators. Outside arbitrators are trained and certified to be grievance arbitrators. Members of the WERC staff may or may not receive on-going training depending upon the employment status, state budget and other priorities of that agency.

Furthermore, WERC grievance arbitrators can no longer maintain a sufficient appearance of impropriety (sic) based upon the ever increasing roles which they must play. Quite specifically, the District objects to a grievance arbitrator who also is a prohibitive practice hearing examiner, an investigator, and a fact finder. The District believes that with the new concept of "qualified economic offer," WERC investigators must now play a far greater role of "certification of impasse" in disputes between the parties. As such, it is far more difficult for them to remain completely neutral in returning to hear a District's grievance disputes. Plain and simple, the District does not want a grievance arbitrator from the same staff which has employed a hearing examiner regarding a prohibitive practice, or an investigator in an investigation, in this same district. Grievance arbitrations are of extreme importance to the District, and the District wants the utmost neutrality without even the appearance of impropriety.

In addition, neutral, outside arbitrators render timely decisions. Recognizing the extreme and overlapping duties performed by WERC staff members, grievance decisions take sometimes over a year to be determined. The reality is that with the changing playing field in municipal collective bargaining, with the added responsibilities being given to WERC staff members, the timeline problem of grievance decisions will not get better, but will become worse. With the very reality of state budget constraints, it does not look favorable for receiving timely decisions from WERC staff members as grievance arbitrators.

The Association maintains that the District's charges are unfounded.

The only District argument in which the Arbitrator finds merit is its argument that the selection of a private arbitrator affords both the Association and the District the ability to select the arbitrator who will determine a grievance.

The comparability data provide an even split among the eight comparables and twelve units contained therein (inclusive of Pulaski bus drivers). Six provide for WERC staff arbitration; six provide for selection of a private arbitrator from the WERC's panel. As noted by the Association, many private arbitrators receive their training on the WERC staff. This Arbitrator obtained his training while serving as a member on that staff. Furthermore, this Arbitrator as a private arbitrator, suffers from a lack of appearance of neutrality on this particular issue. For that reason, this Arbitrator concludes that the inclusion of the Association or the District proposal on this particular issue will be based on the preferability of their final offers on the other issues in dispute.

8. FAIR SHARE AND DUES DEDUCTION REFERENDUM

The District proposes that fair share and dues deduction be implemented only after the WERC conducts a referendum in which 50% plus one of all eligible bargaining unit employees vote in favor of the implementation of the dues deduction fair share article.

The Association proposes the inclusion of this substantial benefit of fair share in the initial Collective Bargaining Agreement without the conduct of any referendum.

The District argues that this proposal emanates from the history of the creation of this collective bargaining unit and the selection of the Association to represent the employees in this unit. The District reminds the Arbitrator that two votes were conducted. In the first vote in 1991, the Association lost to no representation. In the second election in October 1992, the Association prevailed by a close vote of 50 to 44. At the hearing, the District introduced unrebutted testimony that it did not participate or campaign in any way or try to influence the vote of employees in either election. It makes this proposal to avoid getting in the middle of any employee concerns with paying fair share dues.

Although the statute provides a majority standard of 50% plus one of those eligible to vote to terminate a fair share agreement, the Arbitrator finds that this higher standard is not supported by the record evidence or by any of the statutory criteria for the implementation of a fair share agreement. Under this standard, an employee absence serves as a negative vote in an election conducted where the union must prevail by a vote of 50% plus one of all eligible employees in the unit. On the other hand, the Association fails to recognize the legitimate concern of the Employer and the narrow margin of victory the Association obtained in a second election to represent the employees in this collective bargaining unit.

The Employer lumps together fair share and dues deduction in its proposal. There is no evidence presented as to the cost of including dues deduction on the Employer generated pay stub, and the cost of the Employer collection of Association dues from those employees who voluntarily request the Employer to deduct dues. In this regard, the Arbitrator finds the District's proposal overreaching in the context of this initial Collective Bargaining Agreement.

Each and every collective bargaining agreement in a comparable employer for a unit of support personnel contains a fair share agreement. None of the comparables contain language for a referendum.

Despite the comparability criteria, the "Such Other Factors" criterion would lead this Arbitrator to select the District's proposal had it proposed a referendum in which a majority of those voting rather than a requirement that the total number of employees participating in the vote must exceed 50% of those eligible to vote supporting a referendum. Simply put, most elections in these United States are based upon majority rule. The majority is of those voting, not of those eligible.

Fair share is a substantial benefit, especially in a situation in which the collective bargaining representative is selected by a narrow vote. This is a benefit which should require some quid pro quo for its inclusion in this Agreement. The Association makes no pretense of providing a quid pro quo for the inclusion of this benefit. The Employer's proposal for a high standard for the implementation of the fair share provision and the overwhelming comparability data support the inclusion of this provision in

the agreement. However, the Arbitrator believes that a vote is necessary before fair share should become effective in this unit. The lack of a vote may cause dissension in the ranks.

No referendum should be required to implement voluntary dues deduction. Both proposals on this important proposal are seriously flawed. However, in the absence of a quid pro quo, the Arbitrator favors by the slightest amount the District's proposal on this issue.

9. JUST CAUSE

The District proposes the inclusion of language which spells out the steps of progressive discipline and which concludes with an arbitrary and capricious standard for the imposition of discipline. On this proposal, as in many of the proposals at issue here, the District argues that its proposal represents the status quo and that the Association should be required to provide a quid pro quo for the inclusion of just cause in the initial Collective Bargaining Agreement. In The Scope Of Initial Agreement section of this Award, the Arbitrator addresses the District's argument.

District Business Services Director Yerkey testified that in 25 years only 2 employees have been discharged from their employment. The District's proposal comes out of the Staff Handbook.

The "Such Other Factors" criterion and the comparability criteria support the selection of the Association final offer on this issue. The District offer sets out a four step progressive disciplinary process which culminates in the termination of employment of an employee subject to discipline. It is unclear whether the omission of one step in the disciplinary process would render the District's decision arbitrary and capricious. The juxtaposition of an extensive progressive disciplinary step process against an arbitrary and capricious standard only injects confusion into the decision to impose discipline and arbitral review of that decision.

With the exception of West De Pere, all other agreements contain the just cause standard for the imposition of discipline. Many of the agreements not only set out the just cause standard, but also set out a progressive disciplinary process similar to the one proposed by the District.

The Arbitrator considers the overwhelming support for the Association's proposal to include the just cause standard as the basis for the imposition of discipline as an indication of the industry wide practice in the manner in which disciplinary matters are handled by school district employers and the unions representing support personnel. It is in this context, that the Arbitrator finds it appropriate to include the just cause standard in an initial collective bargaining agreement. The Arbitrator finds the imposition of the status quo-quid pro quo analytical framework is inappropriate for consideration of this issue. There is no reason why this initial Agreement should not conform to "industry practice." This is an important issue. The Arbitrator finds that the Association proposal to include just cause in the initial Collective Bargaining Agreement is preferred by a wide margin.

10. SENIORITY

a. Method of Calculation

The Association proposes to measure seniority by the number of days scheduled/worked. The District proposes to measure seniority by years worked. Both the Association and the District propose commencing the calculation of seniority from the date of hire.

District Business Services Director Yerkey testified that it would be difficult or impossible to go back the 20 years necessary to calculate the days worked/scheduled for employees who have been with the District. The District can readily calculate years of service.

The dispute underlines a problem in measuring seniority among two groups of employees, one of whom works a full 12-month work year and the other works a school year. When each employee works a 12-month period and the other a 9-10-month period, do they equally achieve one year of seniority or should the seniority accumulation and measurement of a 12-month employee receive additional weight? The District proposal appears to answer this question in a manner which provides the school and 12-month employees with an equal measure of seniority when they complete their respective "years of service." The Association proposal provides additional weight to the seniority accrued by the 12-month employee.

The problem posed by this dispute is a real one. It is worthy of resolution. The Arbitrator's conclusion, here, does not resolve this issue. The Arbitrator determines this proposal on the basis of District Business Services Director Yerkey's unrebutted testimony that it would be difficult to calculate seniority by days. This conclusion should not prevent the parties from answering the question whether 12-month employees should accrue weighted seniority as against the seniority accrual of school-year employees. If the Association and the District agree on the answer to that question and their answer is in the affirmative, then in future negotiations they may be able to identify a process which provides additional weight to the seniority accrual of a 12-month versus a school year employee.[3]

b. Accrual While on Paid Leave

In its reply brief, the Association acknowledges the inconsistency in its proposal at Article IX.C. in which it proposes that "seniority shall not accrue nor be considered interrupted while an employee is on an approved, paid leave or on an unpaid leave of five days or less." The District proposal on this issue is consistent. Accordingly, it is preferred. In its reply brief, the Association suggests a number of ways to correct the oversight in its proposal. The Arbitrator gives this issue little weight in his ultimate decision as to which proposal to select for inclusion in the initial Collective Bargaining Agreement. The Association's inconsistency may be remedied when the parties put the final agreement together or may be corrected in their future bargaining which shall commence immediately upon the issuance of this Award, should the Arbitrator select the Association's final offer.

c. Classification Groupings - Aides

Both the District and the Association agreed to classification seniority, especially for purposes of reduction in staff. The District proposes one Aide classification category consistent with the Aide classification found in the

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[3]The Association argues that the comparables support its proposal to calculate seniority by days of service. However, most of the agreements, six of the eleven cited in its brief, do not address this issue. The Arbitrator concludes that the comparability criterion does not support either proposal.

salary schedule proposed by both the Association and the District. The Association proposes three classifications of Aides. One classification would include Teacher Aides, Learner Aides, Playground Supervisors, Crossing Guards, etc. The second category would include all certified Aides including Chapter One and Special Education Aides. The third category would include Library Aides.

The Association argues that certified Aides may be professional employees who should not be included in a support personnel unit, Grafton School District, Dec. No. 28093. The determination of who should be included or excluded from a particular unit falls outside the jurisdiction of an interest arbitrator. The Arbitrator's task is to consider the unit and the issues as certified by the WERC.

The Association argument to treat certified Aides, and in the opinion of this Arbitrator, Library Aides in one category and part-time aides such as Learner Aides or Playground Supervisors as a separate category has logic to support it. The District proposal to lump together all aides for purposes of seniority under a classification seniority system makes no sense. The Association separation of Library Aides into a third category is not supported by any evidence. However, its proposal to separate the aides by the kind of work they perform is preferred over the District's all inclusive aide category.

On the basis of the criterion "Such Other Factors," logic supports the adoption of the Association proposal with regard to separating by category aides into three separate aide classifications as opposed to lumping them altogether in one classification.

d. Classification Groupings - Maintenance Workers/Head Custodians

The District proposes two separate categories of Maintenance Worker and Head Custodian, again consistent with the salary schedule classifications identified in the salary schedule proposed both by the Association and the District. The Association notes that there are only two Maintenance Workers. They should be able to vie with the Head Custodians to retain employment with the District should it become necessary to reduce staff in the Maintenance Worker/Head Custodian classifications. Although the District's classification system for seniority purposes is consistent with the

salary schedule and simple to understand, the Association's proposal serves to protect the employment of highly skilled maintenance employees and retain their employment with the District should a layoff be necessary in the Maintenance Worker-Head Custodian area. The Arbitrator agrees with the Association argument that the criterion "The Interest and Welfare of the Public" supports this Association argument.

In addition, the Arbitrator finds that "Such Other Factors" criterion supports the retention in employment of experienced employees with multiple skills should a reduction in staff be necessary. Accordingly, the Arbitrator concludes that the classification seniority system proposed by the Association is preferred.

e. Retention of Seniority in Classification

The District proposal does not contain specific language which protects employee seniority by classification as an employee transfers or promotes to one classification from another. The Association proposal permits employees to retain their classification seniority as they move from classification to classification.

The District in its argument notes that seniority is a creature of the parties' collective bargaining. The Arbitrator agrees.

It is important to clearly identify those rights which are protected in a classification seniority system. The District does not oppose the protection of classification seniority. Both the Association and the District calculate seniority in classification by the length of time which an employee works in a particular classification. If over the course of time, an experienced employee with the District has achieved seniority in more than one classification, certainly, the District would benefit by clearly identifying the seniority of that employee in the various classifications where that employee has worked. Accordingly, the Arbitrator concludes that the criterion "Such Other Factors" supports the Association proposal.

f. Loss of Seniority

The Association proposes that seniority be lost if an employee accepts a non-bargaining unit position and remains in that position for more than 30 days. The District objects to this proposal on the grounds that it discourages employees to seek advancement in the district.

Only Shawano-Gresham provides for the loss of seniority when an employee voluntarily transfers to a non-bargaining unit position for more than 30 calendar days. The Association's proposal is not supported by the comparables. Furthermore, the Association provides no compelling argument in support of this position which impacts an important contractual right of bargaining unit employees. If a certified special education aide who is also licensed as a teacher is hired as a teacher by the District, why should that employee lose seniority by moving to the teacher unit.

The District proposes the inclusion of a three-day quit provision as a basis for loss of seniority. The Association objects to the severity of the penalty for an employee's absence for three days without contacting the Employer. However, only Ashwaubenon excludes a three-day quit provision. All the other comparables include a three-day quit as a basis for the loss of seniority. Accordingly, on both the loss of seniority for taking a position outside the unit for more than 30 days and on the inclusion of a three-day quit provision, the Arbitrator concludes that the District's proposals are preferable by a substantial margin.

11. REDUCTION IN STAFF

a. Reduction in Hours

The major issue which separates the District and Association proposals is the Association's treatment of reduction in hours as a layoff. A wall-to-wall support personnel unit is a complex unit. It contains employees in various classifications who work a variety of schedules. The Association proposes three classifications of aides. The Arbitrator concludes in the discussion above that two classifications are preferable, but adopted the Association proposal on classifications of aides over that of the District.

The Association maintains that the comparability criteria support its proposal for reduction of hours as a layoff. It asserts that the contracts in Clintonville, De Pere and Shawano-Gresham specifically refer to reduction in hours as a layoff. The appearance of this provision in three contracts out of eight comparable employers, and twelve units, does not establish a majority in favor of including such language. The Arbitrator concludes that comparability criterion supports the District's position rather than the Association's.

The treatment of a reduction in hours as a layoff could easily cause confusion. For example, the hours worked by special education aides may increase or decrease due to fluctuations in student populations. Under these circumstances, the District should not have to engage in a layoff process, particularly during the school year. The Association proposal, in this regard, in the complex setting of a support personnel unit, carries within it the potential to be burdensome and disruptive to the educational process.[4] The "Such Other Factors" criterion supports the District's position. Accordingly, the Arbitrator concludes that the District proposal on the reduction in staff to the exclusion of reduction of hours is preferred by a wide margin on this significant issue.

b. Recall Rights

There are two additional differences between the District's and Association's proposals on reduction in staff. The Association proposal contains a provision which provides an option for full-time employees on layoff to reject an offer of a part-time position without jeopardizing their recall rights. In a unit which includes both full-time and part-time positions, the identification of the recall rights of full-time employees vis-a-vis part-time positions should be spelled out. The District provides no reason for not specifying that full-time employees may reject proffered

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[4]The only place where the notion of hours would serve as a basis for distinguishing one position from another is in the area of vacancy and transfers. For example, if during the summer months the Employer is able to identify vacant aide positions which may have additional hours, aides with fewer hours may be offered the opportunity to post to such vacancies. However, the practicality of even that limited possibility is questionable in a unit of this size.

recall to part-time positions. Where the Employer proposes to abolish all practices and proposes that the terms and conditions of the agreement be set forth in the agreement, it is appropriate, therefore, to set forth the panoply of rights and responsibilities of employees on layoff who are subject to recall. Accordingly, the Arbitrator concludes that the right of full-time employees to reject offers of part-time positions without jeopardizing their recall status should be included in an initial Collective Bargaining Agreement. The Association proposal is preferred.[5]

12. VACANCIES AND TRANSFERS

a. Preference for Internal Candidates and a Limitation on Hiring the Most Qualified Candidate

There is a wide disparity in the proposals of these parties on this issue. The District proposes the broadest discretion for filling vacancies in the unit. It offers to post vacancies. It proposes no preference for unit employees. Surprisingly, the District does not propose to hire the most qualified applicant be it a person not in the employ of the District or a unit employee to fill a vacant position. It only claims that as the status quo in its brief.

The Association proposes that a qualified unit employee seeking a voluntary transfer be considered for the position, before it is filled by an outside applicant. It does not mandate that the most senior unit applicant be selected.

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[5]The other issue which distinguishes between the parties' offers in the area of layoff is the Association proposal that no temporary or substitute appointments be made while there are laid off employees qualified to fill such appointments and who have not rejected such appointments. This proposal is consistent with the Association's proposal concerning part-time employees. Although the evidence suggests that there have been no layoffs in the District and the District does not anticipate any layoffs in the future, again, it is important to set out the full panoply of rights and responsibilities of employees on layoff who are subject to recall. The parties have not presented argument on this point. Accordingly, it is not included in the selection of one final offer over the other for inclusion in the initial Collective Bargaining Agreement.

The District's proposal for flexibility to fill vacant positions with unit employees or outside applicants is understandable. This Arbitrator would select the Employer's proposal to maintain flexibility in filling vacancies in a unit containing a wide range of classifications of employees performing a wide variety of duties requiring quite different skills. Vacancies and transfer language in a support personnel unit must be carefully crafted. However, the District makes no commitment to hire the most qualified applicant for a position. It does not want the decision to fill a vacancy subject to a grievance. The Arbitrator concludes that the District proposal is contrary to the interests and welfare of the public. Instead of a commitment to hire the most qualified employee, the District proposal preserves the right to fill vacancies for any reason and on any basis.

The comparability criterion does not support the District's proposal. All of the comparables provide either a preference for internal candidates or a commitment to hire the most qualified applicant be it an internal candidate or an outside applicant. The De Pere contract specifies that the Employer may hire a better qualified outside applicant for a position.

The District proposal neither encourages employee advancement nor does it reflect a commitment to hire the most qualified employees for vacant positions. The "Such Other Factor" criterion does not support the District's position. This District proposal serves as a serious detriment to the selection of its final offer for inclusion in the initial Collective Bargaining Agreement.

The other material difference between the parties' proposals on vacancies and transfers concerns the posting. The District proposes to exclude work location from the posting. The Association insists that work location be included in the posting.

The Handbook promulgated by the District includes work location in a job posting. The District has provided no evidence that the inclusion of work location on the job posting has created any problem in the filling of vacancies. For example, an aide who assists teachers in the classroom may wish to work with elementary students, but may not wish to work with high school students. It makes sense to include work location on the job posting.

The "Such Other Factors" criterion supports the selection of the Association proposal.

Half the agreements specify work location in the job posting provision contained in the contracts of the group of comparable units of support personnel, the other half do not. On the basis of the "Such Other Factors" criterion, the Arbitrator finds the Association proposal preferable.

b. Voluntary and Involuntary Transfers

The Association proposes the inclusion of a provision on involuntary transfers. The Association proposes that an employee who voluntarily transfers to a lower paid position have his salary frozen at the higher rate of pay until the rate of pay for that position is equal to or exceeds the frozen salary. The employee seeking a voluntary transfer to a lower paying position should be paid the rate of the position to which she/he seeks a transfer. The Association fails to explain why the District should pay a higher rate of pay to a Secretary I who voluntarily transfers to a playground supervision position. This Association proposal serves as a detriment to the inclusion of its final offer in the initial Agreement.

The Association makes the same proposal in the case of an involuntary transfer. Yerkey testified that in the last 25 years no employee has been involuntarily transferred. The Arbitrator concludes that in the context of an initial Collective Bargaining Agreement, the Association has failed to demonstrate the need for the inclusion of this provision in the initial Agreement. The Arbitrator concludes that there is no basis for the Association proposal on voluntary transfers. It is not supported by the comparability criterion, nor is it supported by the "Such Other Factors" criterion. With regard to involuntary transfers, the Association proposal goes beyond the reasonable scope of an initial Collective Bargaining Agreement. Accordingly, the Arbitrator finds the District's proposal of no language in this area is preferable to the Association's proposal.

12. SALARY SCHEDULE

a. Placement

The District proposes the following language:

> 24.01 Support staff employees may be granted wages per the attached Appendix A.

The Association proposes that personnel move one step for each year of service with the Employer. The Association proposal provides for the Employer's withholding of a wage increase for disciplinary purposes.

The District supports its proposal by asserting that it uses the term may because of the language in its proposal that provides:

> The District reserves the right to deny any salary modification to an employee who is not fulfilling or meeting their job requirements.

Certainly, the District may propose language which provides for movement on a salary schedule except in those instances where for disciplinary reasons it determines to deny a salary increase. Such a proposal would be consistent with the Association proposal on this very point. However, the language as proposed by the District does not commit the District to provide any wage increase to any employee. Obviously, it undermines the purpose of the salary schedule. It negates the entire analysis concerning the percentage wage increases offered by the Association and the District. The District argues that it does not intend to withhold wage increases for any reason other than for disciplinary purposes. If that is the District's intent, it should so state. The Association proposal is preferred.

The Association proposes that the District be permitted to place experienced new hires at any of the first three steps of the salary schedule. The District argues for retention of discretion to place employees anywhere on the salary schedule. The record evidence establishes that the District has hired above the schedule.

Arbitrator Rice observed in Winneconne Community School District, supra, that if the employer may place new hires anywhere on the schedule and if indeed there is no limitation on what it may pay new hires, why have a salary schedule at all. If the District finds that its rates are not competitive for attracting qualified new applicants or experienced personnel, it should negotiate a change in the rates with the Association.

In support of the District position, the comparables suggest that the manner in which business is transacted between employers and the collective bargaining representatives of support personnel, comparable employers are not limited in the placement of new hires on the salary schedule.

The Arbitrator concludes on this evidence that the District proposal is preferred. It reflects the manner in which comparable employers conduct their business. Nonetheless, there should appear somewhere in a collective bargaining agreement a provision, whether it be the initial agreement or an agreement long in existence, which commits the employer to pay the agreed-upon rates to employees in its employ and to new hires.

The Association proposes that employees move along the salary schedule on their anniversary date. The District proposes that such movement occur on July 1 regardless of when an employee is hired. Both proposals are reasonable. These proposals do not serve as the basis for distinguishing between the final offers of these parties.

b. Calculation of Wage Increases

The District proposes to calculate wage increases as it has in the past when it implemented the Staff Handbook. It calculates the average increase by classification and between the top and the bottom step while keeping a 15% spread between the top and bottom, the wage increases are plugged into the schedule.

Under the Association offer, the wage increase in the first year shall be implemented on an across-the-board basis. Each rate in the schedule shall be increased by the 5.38% wage increase it proposes. In the second year of the Agreement, the Association proposes to calculate the wage increases in the manner the District proposes for both years.

The Arbitrator concludes that both proposals are reasonable. However, the District proposal continues the method of calculating increases, as it has in the past. The Association has not shown any basis for changing this method of calculation. Accordingly, the Arbitrator prefers the District proposal on this issue.[6]

13. VACATIONS

The parties disagree on the number of hours to be paid as a "day" of vacation for employees who work a different number of hours during the school year and during the summer months. At present, under the Handbook, employees are paid in accordance with the number of hours they are working at the time that vacation is taken. The District argues that this encourages employees to take vacation during the summer months when they may be working eight hours per day, rather than during the school year when they may be working fewer hours each day. The Employer presented no data that establishes this District claim as fact. Accordingly, the Association proposal to continue in effect the manner in which paid vacations are calculated under the Staff Handbook is preferred.

14. INJURY ON THE JOB

The Employer's Handbook provides a generous benefit. Employees injured on the job receive their regular salary for the number of days for which they have accumulated sick leave. However, under the Handbook:

> Sick leave will not be deducted from your account for time off due to injury on the job.

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[6]Somewhat related to this issue is the District proposal that:

> The salary schedule shall be reviewed on an annual basis. Modifications to the schedule will be calculated on the average of the steps in each classification.

This language is unclear.

The District omits this last sentence from its proposal. In testimony, the District maintains that it intends to continue this benefit as stated in the Handbook. The District argues that the provision did not read well.

The Association proposal is consistent with the provision as it appears in the Handbook. In light of the Employer's bargaining position and proposal to have all benefits set forth in the Agreement, it is appropriate, therefore, that the extent of the benefit appear in the Agreement. The Association offer, in this regard, is preferred.

15. SICK LEAVE

The District argues that, under its proposal, it is clear that part-time employees receive sick leave on a pro-rata basis. The District argues that the Association proposal does not make it clear that sick leave is a benefit afforded to part-time employees on a pro-rata basis. The District proposes in Section 24.02 of its final offer that part-time employees eligible for benefits shall receive those benefits on a pro-rata basis. Elsewhere, such as in the insurance provisions, the parties clearly delineate the fact that part-time employees receive this benefit on a pro-rata basis. Both parties agree on the range of benefits for which part-time employees are eligible. They also agree that part-time employees shall receive those benefits on a pro-rata basis.

The Association in its sick leave proposal implies that the method of identifying a sick day takes into account the pro-rata nature of the sick leave benefit available to a part-time employee. The District's proposal makes it clear that sick leave is available to part-time employees on a pro-rata basis. "Such Other Factors" supports the District on this minor point.

16. COMPENSATORY TIME

The Association proposes:

> The District, with the advance approval of the employee, may provide compensatory time for hours worked in excess of forty (40) hours in a week. Such compensatory time must be scheduled within a

thirty (30) day period or the employee shall receive pay for such work.

The District proposes that the Employer may schedule overtime. Such overtime shall be paid in accordance with the Fair Labor Standards Act.

The District argues that the Fair Labor Standards Act governs the right of an employee to take comp time in place of pay for overtime worked. The District implies that all matters concerning overtime and compensatory time are governed by the Fair Labor Standards Act. The District did not put into evidence relevant regulations promulgated by the Department of Labor under the Fair Labor Standards Act. To the knowledge of this Arbitrator, the regulations do not set forth whether compensatory time must be taken within a two week period or a thirty day period in which the overtime was worked.

If the option of compensatory time is to be provided, it follows that the terms for taking such compensatory time should be set forth in the Agreement. The Handbook specifies that compensatory time is available but must be taken within the same two week pay period in which the compensatory time is earned. The District does not propose the continuation of the language which appears in the Handbook. The Association modifies the Handbook provision to extend the time period in which the compensatory time may be taken off from two weeks to thirty days. The Association argues that its proposal sets forth a reasonable time period in which the compensatory time is to be taken off.

The comparability criterion supports the District's proposal to exclude language on this issue. With the exception of Ashwaubenon, Clintonville, and De Pere School Districts, the collective bargaining agreements of the other units of comparable employers contain no language concerning compensatory time off. On the basis of the above analysis, the Arbitrator finds that the Association's proposal which is closer to the status quo and the provision on this point found in the Handbook is slightly preferred.

17. EMERGENCY SCHOOL CLOSING

The District proposes that the Employer retain sole discretion to determine which employees are required to report to work in the event inclement weather forces closure of the schools on a particular day. The Association proposal does not limit the Employer's discretion.

The nub of the disagreement between the parties concerns the Association proposal that:

> All employees may use emergency, sick leave, or vacation days to provide pay for days on which school is canceled or for days which the employee has no opportunity to make up.

The Handbook provides the classifications which do enjoy a vacation benefit, specifically, Mechanics, Custodians, Maintenance and Secretaries. The Handbook specifies they may use vacation time if they do not report for work on a snow day. If the Association had proposed continuation of the language which appears in the Handbook, its proposal would be preferred.

The District argues that it intends to continue the policy of affording those employees with vacation with the opportunity to use vacation if they do not report for work on a snow day. Again, the District maintains a bargaining stance of identifying all benefits and the scope of such benefits but a reluctance to transfer benefits clearly identified in the Handbook to into the initial Collective Bargaining Agreement. If employees may use vacation to maintain full pay when they do not report on a snow day, they should know that benefit is available to them. If that is not the case, then the District should so state. What is the purpose of retaining discretion in this area? If an employee takes a day of vacation in January to cover the snow day and the District decides to make up the snow day in May, there is no double payment for the snow day. The employee has used a vacation day to maintain pay on a day when she/he could not get to school. The failure to set out the scope of benefits serves as a material detriment to the selection of the District's final offer. The District fails to demonstrate how it is harmed if the vacation benefit set forth in the Handbook were included in the Collective Bargaining Agreement.

The Association proposal provides that employees may use sick leave for days they do not appear at work as a result of inclement weather. Under the Association proposal, an employee need not be sick or attending to a sick family member in order to claim sick leave.

The District strenuously objects to the use of sick leave in this manner. The Arbitrator agrees with the Employer's objection. The Arbitrator can see no better way to undermine the purpose of sick leave than to make it available for use when employees are not sick. The Association justifies this demand by noting that if the day is made up, employees who do not enjoy a vacation benefit will work and make up the time and the pay. It is possible that the time will not be made up in the same pay period and such employees will suffer a loss of pay.

However, the Arbitrator finds that the introduction of the notion that sick leave may be used for occasions when the employee or a family member is not sick or for medical appointments will serve as the basis for a rationalization that sick leave may be used for other purposes. This is a first step to the creation of a serious enforcement problem. The Arbitrator finds this proposal serves as a serious detriment to the acceptance of the Association's proposal for inclusion in the initial Collective Bargaining Agreement.

Several of the comparables confront the problem of pay for "snow days" by providing that employees shall not suffer loss of pay for such days. Other contracts contain no language on the matter. This issue is an appropriate subject for future agreements.

The Association proposes that the employees will be provided an opportunity to make up all snow days. This proposal is overbroad and overreaches. Either the District will make up a snow day and employees such as Food Service and Aides will have an opportunity to work on those days, or it will not make up those snow days and the employees will not have an opportunity to make up the days. The Association proposal, in this regard, is unacceptable. It is contrary to the interests and welfare of the public that school be scheduled to the makeup of work opportunities for support personnel. Unfortunately, that is how the Association proposal reads.

On the basis of the above discussion, the Arbitrator concludes that the District's proposal on emergency school closing is preferred by a substantial margin, even though it fails to transfer the policy set forth in the employee Handbook into the initial Collective Bargaining Agreement.

18. HOURS OF WORK

a. Work Schedules

The Association proposes to include in the Agreement provisions setting forth the normal work week for Secretaries at 40 hours and 8 hours per day, Cooks at 35 hours per week and 7 continuous hours per day, Custodians at 40 hours per week at 8 hours per day and Aides at 37.5 hours per week and 7.5 continuous hours per day. The problem with the Association proposal is that employees in each of these classifications who may be full-time, do not necessarily work the hours per day and per week set forth in the Association's proposal. They may regularly work fewer hours. If employees work 7 hours when the Association sets forth that the normal work day should be 8 hours, does that establish the basis for a grievance? Employees in a support personnel unit work in a variety of classifications and they work different hours and schedules to accommodate the Employer's needs.

The comparables do not support the Association proposal. Where the agreements address the issue of "normal work day/work week," they do so by setting forth a range of hours in which employees shall work. For example, a comparable contract may spell out that a secretary should be scheduled to work between the hours of 7 a.m. to 5 p.m. A contract in another comparable defines a normal work day in terms of a range of 6-8 hours. The range spans the hours regularly worked by employees in this classification. In this manner, the comparables recognize the variety of hours and times which different employees work in various employment

settings present in a school district.[7] The District offer which contains no language concerning work schedules is strongly preferred.

b. Breaks

The Association delineates the entitlement of employees to breaks of 15 minutes each during the morning and afternoon. Employees working less than full time but more than three hours per day are entitled to one break.

The District has no language on this issue. The District mischaracterizes the Association proposal with regard to breaks. The proposal does not establish a time for breaks, rather it establishes an entitlement to breaks. It argues that the testimony of the bargaining committee employees presented at the hearing establishes that there is no problem with employees obtaining breaks, scheduling breaks, be it morning, afternoon breaks or lunch breaks.

The Association proposal is phrased in terms of full-time employees. In light of the variety of hours worked by employees, the Arbitrator finds that if a provision is to be included on breaks and lunch breaks, it must be carefully crafted in order to conform to the practice of the parties. The Association does not attempt to increase break time through its proposal. In the absence of a demonstrated need for contractual language on this issue, the Arbitrator finds the District omission of language on this particular subject to be preferable.

c. Call-in Pay

The District provides payment at time and a half for the first two hours an employee is called back to work or is required to make a building check on Saturday or Sunday. The Employer guarantees at least two hours pay at time and on-half. Any additional time worked is paid at the actual rate

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[7]See Association exhibits 9a. and 9.b. and District exhibits 10.b.-1 through 10.b.-4. Some Secretaries work 1950 hours, others 2080 hours. Custodians work 2080 hours, 1977 hours, 1362 hours, 1260 hours. Such variation in hours does not lend itself to statements concerning normal work day/work week.

for such work, under the District proposal. The District maintains that this is the present practice. The Association proposes that all time for which an employee is called back to work including building checks which take in excess of two hours be paid at time and a half for all time worked.

Both proposals are reasonable. The Association has failed to establish that employees are paid any less than time and a half for work performed under these circumstances. In the absence of any evidence that employees are required to perform bargaining unit work on Saturday and Sunday at non-premium rates, the Arbitrator concludes that the Association has failed to establish the need for inclusion of this proposal in an initial Collective Bargaining Agreement.

d. Standby Pay

The Association proposes that employees working on non-school related activities on Saturdays and/or Sundays be paid at least two hours pay at premium rates. The Association proposes that Custodians and Cooks working on Saturday, Sunday, or holiday on non-school activities receive at least two hours pay for standby time.

The Association presented no data concerning the number of occasions that employees were asked to work on non-school activities on Saturdays, Sundays, or holidays. The Association has failed to establish a need for this proposal. In the context of an initial Collective Bargaining Agreement, this proposal extends beyond the scope of the purpose of an initial Collective Bargaining Agreement.

e. Time Clocks

The Association proposes that time clocks be provided in each building. It proposes that employees be required to punch in and out in accordance with their work schedule. The District proposes that employees fill in time cards reflecting the hours which they have worked.

The Association argues that time clocks will prevent employees from fudging time or being accused of improperly completing their time cards. The Association proposal reflects this bargaining committee's serious

concern that the Employer pay employees for hours worked. This proposal goes a long way to eliminate the grounds for disputes over time worked; disputes which may lead to discipline.

No contract of a comparable has language mandating the use of time clocks.

The Association proposal is both laudable and reasonable. However, in the context of an initial Collective Bargaining Agreement, in the view of this Arbitrator, it lies outside the scope of the purpose of such an agreement. Again, the purpose of an initial Collective Bargaining Agreement is to establish the basic framework of working conditions and policies which the parties have found to have worked, and to set those conditions and benefits into a collective bargaining agreement.

For this reason, the Arbitrator concludes that the District's proposal concerning time cards at Section 8.03 is preferable to the Association's proposal on this subject.

19. SUMMER EMPLOYMENT

The District presents no specific language on this issue.

The Association proposes that the District post summer jobs. It proposes that employees have the right of first refusal for such jobs for which they are qualified. The Association agrees that the employees accepting such summer work be paid at the rate established by the District for such work. However, summer work will be included for purposes of calculation of entitlement to fringe benefits and retirement.

The comparability criterion does not support this Association proposal. None of the comparables have language on this subject. The District strenuously resists this proposal. It insists that it will increase its costs. It notes that it will discourage employment of high school and college students from the District during the summer months.

The Association attempts to obtain a new and substantial benefit into the Agreement without demonstrating a need for its proposal or offering any quid pro quo for its inclusion in the Agreement.

This Association proposal discouraged the Employer from hiring summer help in the 1994. It may well have discouraged the Employer from hiring unit employees to perform this summer work. There is no evidence supporting the inclusion of this proposal in the initial Collective Bargaining Agreement. Accordingly, the Arbitrator favors the District offer on this subject.

20. GENERAL EMPLOYMENT CONDITIONS

a. Pay Periods

The Association proposes to specify when pay periods in the District shall fall. In the context of an agreement which requires that all conditions and benefits be set forth in the agreement, it is appropriate for the Association demand specific identification when employees are paid. Certainly, in light of the definition of a grievance, the Association concern that the Employer be required to meet its payroll at specific times and that employees may anticipate payment on specific dates should appear is a reasonable request. The Association has a right to insist through the grievance procedure that the Employer conform to and pay employees in accordance with established pay periods.

The District makes no language proposal on this subject. It points to the testimony of members of the bargaining unit at the hearing who testified that no problem exists concerning the payment of employees during well-established, recognized pay periods. Nonetheless, clarity suggests that the Association proposal be included in the initial Agreement.

b. Equal Employment Opportunity

The Association proposes to transfer from the Staff Handbook the statement that the District is an equal opportunity employer and include it in the Collective Bargaining Agreement. The District strenuously objects to this proposal. It argues that the inclusion of this proposal in the Collective

Bargaining Agreement will provide another forum for the determination of disputes concerning charges of discrimination on the basis of race, etc.

The Employer's objection is well taken. The inclusion of this proposal in the Collective Bargaining Agreement will serve to include such charges of discrimination as a basis for the filing of a grievance. Not only will this introduce another forum, but it may provide a forum which may be detrimental to the full resolution of employee claims. The introduction of this language not only is detrimental to the District in its affording an employee another forum in which to litigate a charge, but it may serve to undermine the ability of an employee to obtain a full recovery. It may require the parties to try this matter before an arbitrator who is not up to date on the legal developments of employment discrimination law. Among the comparables, it appears that only Shawano-Gresham contains a statement concerning equal employment opportunity.

The statement that the Employer is an equal opportunity employer appears in the Staff Handbook. This is one instance where the District has established a basis for excluding from the initial Agreement a provision set forth in the Handbook. Accordingly, the Arbitrator finds that the District proposal to omit such language from the initial Collective Bargaining Agreement is strongly preferred.

c. Prerequisite of Employment

The Association proposes:

> Within 90 days of employment each new employee must provide evidence that they are free of communicable disease. A physical and either a TB skin test or TB x-ray are required. The school district will pay up to $40 each.

The District proposes no language on this matter.

The comparable agreements provide that the employer pay for medical exams, TB skin tests or x-rays when such tests are required by the district. If the Association had made a proposal similar to the provisions which appear in comparable agreements, the Arbitrator would find such

proposal which is consistent with the District's practice, an appropriate subject for inclusion in the Collective Bargaining Agreement. However, the Association proposal requires the District to test each new employee whether or not such tests are required by the District. The Association has failed to demonstrate why the discretion of the Employer should be limited by requiring it to mandate a TB skin test or x-ray of all new employees.

The Arbitrator concludes that this provision is neither supported by the comparability criterion nor is it in the interest and welfare of the public that it be included in the initial Collective Bargaining Agreement. The District proposal of no language on this issue is strongly preferred.

VII. SELECTION OF THE FINAL OFFER

The District proposes premium sharing for health and dental insurance for both family and single coverage on a 90%/10% split. On a percentage basis, this proposal exceeds the 93%-95%/5-7% contribution level among the comparables. In addition, the District proposal attempts to get this above average contribution level immediately; all in an initial Collective Bargaining Agreement.

Furthermore, the Arbitrator finds that the District's wage increase proposal is consistent with the wage increases afforded by comparable employers. In salary levels paid among the various classifications, this Employer ranks toward the top. However, for many of the employees who obtain the health insurance benefit, the District's overreaching health insurance premium proposal all but obliterates the wage increases which these employees will obtain over the term of this initial Collective Bargaining Agreement. The District notes that its proposal will only become effective upon the issuance of the Arbitrator's Award. Accordingly, employees may be required to make a contribution for no more than one or two months. However, should the Arbitrator select the Employer's final offer for inclusion in the initial Collective Bargaining Agreement, the Arbitrator is well aware of the difficulty that the Association may have in achieving a contribution level for insurance premiums which are consistent with the percentage contribution levels of comparable employers.

In the above analysis, the Employer has established that the premium levels which it pays for an extensive health and dental insurance program exceeds the average premium levels paid by comparable employers. Furthermore, New London is the sole Employer which pays the full premium for family and single coverage in 1994-95. In 1994-95, Ashwaubenon employees begin to make a small contribution towards premium costs. In 1993-94, outside of Ashwaubenon, New London is the only other district which pays full premium for health and dental insurance coverage. The District has demonstrated that the City of New London requires a 7% contribution by its employees towards insurance premiums. In the private sector, the private employers located in New London require substantial contributions towards insurance premiums far in excess of the premium percentage or dollar contribution levels sought by the District in this arbitration proceeding. For the above reasons, the Arbitrator concludes that the Employer's overreaching proposal is not determinative of this case.

In this final review of the parties' proposals, the Arbitrator encounters the two basic issues which underlie the positions of the parties throughout this case: 1) the role of the status quo-quid pro quo analytical framework in an initial Collective Bargaining Agreement; and 2) the related issue of which existing benefits and working conditions should be included in this initial Collective Bargaining Agreement.

The problem inherent in the application of the status quo analytical framework in the context of an initial agreement creates a dilemma. On the one hand, Arbitrators do not wish to encourage parties to litigate everything or to seek the inclusion of all provisions in an initial Collective Bargaining Agreement because the party seeking change is not subject to the status quo-quid pro quo analytical framework. On the other hand, the imposition of the status quo-quid pro quo analytical framework would tend to favor the employer's position. In an initial agreement the union comes to the table with little quid pro quo to offer. The imposition of this framework to all Union proposals may encourage employers to resist establishing an initial collective bargaining agreement which conforms to "industry" standards as to levels of benefits and working conditions and which continues in effect those working conditions and benefits, although unilaterally imposed, which have worked well. So, the failure to use the status quo-quid pro quo

analytical framework tends to favor the union's position; the imposition of that framework tends to favor the employer's position.

In this Award, the Arbitrator has adopted a middle ground which is described extensively above in the Scope of Initial Contract section of this Award.

The summary of preferred positions and the weighing process to select the final offer to be included in the initial agreement, begins with the Employers insurance premium sharing proposal. The Arbitrator would have found a 5%, rather than a 10%, proposal far more acceptable. The Arbitrator concludes that the Employer failed to provide a quid pro quo for this substantial contribution proposal which exceeds the average contribution found among the comparables. The District's argument that it provides a quid pro quo through the stipulated benefits in the parties tentative agreements together with its other proposals reviewed below **may** provide a quid pro quo for a 5% contribution.[8]

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[8]In City of Verona (Police Department), supra, this Arbitrator made the following observation concerning the difficulty in determining the adequacy of a quid pro quo:

> The party proposing change must establish the need for change and convince the arbitrator of that need. The imposition of this burden accords to the status quo its important role in maintaining stability in the bargaining relationship between the parties. On the other hand, once a need for change is established, the imposition of a quid pro quo provides the opponent of change with something in exchange for changing the status quo. . . .
>
> The risk incurred by the opponent of change mounts when one considers that the most difficult job facing the arbitrator is to evaluate the adequacy of the quid pro quo. The opponent of change is left to the argument it ain't enough in the face of a clear need for change.(At p. 22.)(emphasis added here)

The observations made in the City of Verona case were made with reference to a successor, rather than an initial, Collective Bargaining Agreement.

In several instances, the District resists including a working condition or benefit in the initial Agreement even though the particular benefit or working condition is set out in the Handbook promulgated by the Employer. The Arbitrator finds the Employer's position inconsistent with its proposal for Sec. 1.02. In its justification for including the language in that provision, the Employer asserts that its proposal forces both parties to bring to the bargaining table all benefits and working conditions which should be included in the Agreement. The Arbitrator does not accept the Employer's premise that an agreement which must effectively deal with the problems of the 1990s, nonetheless, must start out with language and terms appropriate to the 1960s.

Both offers contain serious flaws. The Arbitrator makes his selection, in large part on the basis of which offer does the least damage or which flaws are easiest to correct. The Employer's insurance premium sharing proposal for this unit, if adopted through this Award, will place this unit of employees in a position in which they are the sole contributors to health insurance premiums, not only for the one or two months remaining in this Agreement, but the Arbitrator believes for the successor as well. The Employer has failed to require its administrators to contribute towards the cost of these insurance premiums and, in its argument, the District clearly indicates its intent to pursue a Q.E.O. offer in its negotiations with its teachers. In order to do so, the Employer will have to continue its full contribution towards health and dental premiums for both single and family coverage. Accordingly, this Employer proposal serves as the most serious detriment to this Arbitrator's selection of the District's final offer for inclusion in this initial Collective Bargaining Agreement.

The District proposal contains four additional serious flaws which serve as a detriment to the selection of its final offer. Those proposals are as follows: mutual cooperation, just cause, vacancies and transfers and vacations.

On the positive side of the ledger, the Employer's position on the following proposals were preferred: wages, change of carrier language, flex benefit language, insurance on termination of employment, agreement-zipper clause language, fair share (only by the slightest amount), seniority calculation and accrual while on paid leave, voluntary/involuntary transfers,

call-in/standby pay, breaks and time clocks, salary placement of new hires and calculation of increases, sick leave. The Arbitrator has not included in this list or in the list of the Association proposal which are preferred those proposals which serve as a significant detriment to the selection of either the District or the Association proposal for inclusion in the initial Collective Bargaining Agreement.

In that regard, the proposals which serve as a material detriment to the inclusion of the Association proposal are: mid-term bargaining, definition of employee, loss of seniority for taking a position outside the unit, summer employment, reduction in hours, emergency school closing, normal work day, equal employment opportunity statement, and the mandate for TB tests. The Association offer is preferred on the following subjects: use of fiscal year for calculation of hours for eligibility for insurance benefits, savings clause, seniority classifications, retention of seniority, recall rights, salary placement, injury on the job, pay periods and compensatory time.

The above summary clearly indicates that the number of items which the Association proposes which serve as a material detriment to the selection of its offer are double those made by the District. In addition, the District's proposals on many more of the matters at issue are preferred over the proposals of the Association. The Arbitrator has **not** weighed all the proposals equally. However, in the final analysis, the Arbitrator concludes that even in light of the serious reservation which the Arbitrator has with regard to the Employer's insurance premium sharing-cost shifting proposal, the District's final offer has less flaws and is preferable to that of the Association.

Based on the above Discussion, the Arbitrator issues the following:

VIII. AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the New London School District for inclusion in the initial Collective Bargaining Agreement for the period of July

1, 1993, through June 30, 1995, between the New London School District and the New London Educational Support Staff Association. The initial Collective Bargaining Agreement shall include not only the District's final offer but the tentative agreements reached by the parties in their negotiations.

Dated at Madison, Wisconsin, this 17th day of April, 1995.

Sherwood Malamud
Arbitrator