ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

UNITY SCHOOL DISTRICT

and

NORTHWEST UNITED EDUCATORS

Case 26
No. 51306 INT/ARB-7365
Decision No. 28263-A

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: Unity School District Support Staff
58 non-teaching employees

HEARING: March 21, 1995
Balsam Lake, Wisconsin

RECORD CLOSED: June 3, 1995

AWARD DATE: July 15, 1995

APPEARANCES:

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For the Union: NORTHWEST UNITED TEACHERS

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ARBITRATION OPINION AND AWARD

Unity School District Support Staff
and
Unity School Board

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of a collective bargaining contract between the Unity School District Support Staff represented by the Northwest United Teachers (Union, Employees) and the Unity School District (District, Board, Employer) to replace their old contract which expired on June 30, 1994. The contract covers the wages, hours, and working conditions for a bargaining unit consisting of all regular full-time and regular part-time non-certified employees employed by the Unity School District, including teacher aides, but excluding all supervisory, managerial, confidential and casual employees of the District.

The parties commenced negotiations on matters to be included in a successor agreement in May 16, 1994 and met thereafter on five other occasions in an effort to reach an accord. On July 15, 1994, the Employer filed a petition with the Wisconsin Employment Relations Commission (WERC, Commission) requesting arbitration pursuant to the Section 111.70(4)(cm)6 of the Wisconsin Statutes. On September 20, 1994, Stuart Levitan, a member of the Commission's staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. By December 12, 1994, the parties had submitted their final offers and Investigator Levitan notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On December 19, 1994, the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was appointed by the Commission on February 1, 1995.

An arbitration hearing was held on March 21, 1995 in the Unity School District Administrative Offices in Balsam Lake, Wisconsin. At that hearing exhibits were presented and testimony was heard. It was agreed that briefs would be exchanged by the parties and mailed to the Arbitrator postmarked by May 8, 1995. Reply briefs, if any, would be sent to the Arbitrator and each party postmarked by May 15, 1995. Subsequently, the parties, by mutual agreement, revised the briefing schedule which postponed briefs until May 12, 1995, and reply briefs until June 2, 1995. Briefs and reply briefs were filed with the Arbitrator per the revised schedule, the last one of which was received June 3, 1995, and so the record was closed on June 3, 1995.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm)(7) sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in "Appendix A." For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public; (d) comparisons--similar employees; (e) comparisons--public

employees; (f) comparisons--private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

STIPULATIONS AND FINAL OFFERS

STIPULATIONS

During the certification process the parties submitted the issues to which they agreed. These issues are stated in a document entitled "TENTATIVE AGREEMENTS BETWEEN UNITY SCHOOL DISTRICT AND NORTHWEST EDUCATORS FOR A 1994-96 SUPPORT STAFF AGREEMENT November 17, 1994" and made part of the record as Employer Exhibit 3 and Union Exhibit 3. (Hereafter, exhibits will be identified as: ER EX = Employer Exhibits and UN EX = Union exhibits.)

FINAL OFFERS

Both parties have submitted proposals covering a period of two years: 1994-95 and 1995-96. Based upon the final offers there are six issues involved in this dispute: wages, health insurance (pro-rata hours), health insurance (contribution amounts), layoff/recall, assignments of aides, and summer school work. The following are the positions of the parties on these issues:

WAGES

District Offer:

> Increase all salary schedule rates 1.5% for 1994-95. The salary schedule for 1995-96 shall be adjusted on a percentage basis to provide a 4.0% total package (salary and fringe benefits) using the cast forward method of costing with 1994-95 as the base year.

Union Offer:

> 1994-95 - Increase salary schedule rates by 1.5%.
> 1995-96 - Increase salary schedule rates by 1.5%.

HEALTH INSURANCE (pro-rata hours)

(ARTICLE XVII - INSURANCE - Paragraph B.)

District Offer: Status Quo

Union Offer: REVISE to read as follows:

> All other eligible employees working twenty or more hours per week may elect to participate in the family or single plan coverage with the Board contributing on a pro rata basis equal to the ratio of hours worked by the employee in the previous year to ~~1600~~ 1520 hours in 1994-95 and 1440 hours in 1995-96 except that employees in their first year in the District, working twenty (20) or more hours per week,

may elect to participate in the family or single health plan coverage at the completion of their probationary period with the Board contributing on a pro rata basis equal to the ratio of the number of hours worked by the employees versus the number of hours a twelve (12) month full-time employee could have been compensated in the probationary period.

HEALTH INSURANCE (contribution amounts)
(ARTICLE XVII - INSURANCE - Paragraph A.)

District Offer: REVISE to read as follows:

Twelve-month full-time employees: Twelve-month full-time employees receiving health insurance shall pay ~~$20.00 per month for 1992-93 and~~ $25.00 per month ~~for 1993-94~~ toward the family premium and ~~$5.00 per month for 1992-93 and~~ $10.00 per month ~~for 1993-94~~ toward the single premium. The level of benefits for ~~1992-94~~ 1994-96 shall remain the same as in effect during the 1987-88 school year.

Union Offer: Status Quo

LAYOFF/RECALL
(ARTICLE XI - REDUCTION IN FORCE)

District Offer: REVISE first paragraph as follows:

When the District deems it necessary, it may lay off, in whole or in part, the necessary ~~to decrease the~~ number of employees in a department (cooks, clerical, bus drivers custodians, maintenance, mechanics, and education assistants),~~ the District may lay off the necessary number,~~ but only in the inverse order of the employee's appointment within department, providing the remaining employees are qualified to perform the work. Such employees shall be reinstated ~~in inverse order of their being laid off~~ when vacancies occur within the department in the inverse order of their being laid off. Such reinstatement shall not result in loss of credit for previous years of service. No new or substitute appointments may be made while ~~those who were laid off are~~ there are qualified employees on the layoff status available to fill vacancies.

Union Offer: Status Quo

ASSIGNMENTS OF AIDES

District Offer: Status Quo

Union Offer:
Aides who work one-on-one with a student will be given another assignment at the same rate of pay when the student is absent.

SUMMER SCHOOL WORK

District Offer: Status Quo

Union Offer:

Summer school work will be offered to current employees on a seniority basis as determined by previous service with the summer school program. In case of a tie, the position will be offered to the employee with the most years of regular employment with the District.

ISSUES SUBJECT TO ARBITRATION

As mentioned above, there are six issues in dispute related to the final offers of the parties: wages, health insurance (pro-rata hours), health insurance (contribution amounts), layoff/recall, assignments of aides, and summer school work. During the briefing process the parties raised another issue relevant to this arbitration that will be addressed in this decision: the appropriate comparables to be used by the Arbitrator for this award, and subsequently by the parties during collective bargaining. These issues will be addressed individually in the DISCUSSION below.

DISCUSSION

INTRODUCTION

The Arbitrator in these cases is charged with determining the more reasonable of two offers, and to order the implementation by the parties, in full, either one or the other. In this case the parties both have presented offers that contain what I, and they, would characterize as significant changes in contract language--changes that appear to be first time proposals that were unsuccessfully obtained during the current negotiations. Indeed, every issue in this case (with the possible exception of HEALTH INSURANCE (contribution amounts))is either a new addition to the contract, or a change in existing language so as to cause one or the other party to claim that a significant change is being proposed. For example, even regarding what is usually a straight forward economic issue--the wage issue--the Union accuses the District of proposing a "...significant change in procedure..." regarding its offer on a wage increase in the second year. The economic implications of these offers are completely eclipsed by the language items being proposed by both parties in this case.

It is this Arbitrator's opinion that it is unreasonable for the parties of an contract renewal dispute to submit offers that contain proposals to change the contract so significantly. I believe it is unreasonable for parties to ask any arbitrator to order such wide-sweeping and varied changes with such little bargaining history and almost a total lack of direct knowledge of the organization and its people. The Employer quotes Arbitrator Zel Rice, in Northeast Wisconsin VTAE District, Dec. No. 26365-A (1/9/91), regarding this point (ER Brief p.21):

> Arbitrators are reluctant to change existing language in the agreement unless there is evidence that demonstrates that a legitimate problem exists that requires contractual attention and the proposal is reasonably designed to effectively address that problem. A fundamental change or the expansion of an existing benefit should be negotiated voluntarily by the parties and not imposed by an arbitrator unless exceptional circumstances prevail.

It is not reasonable for the parties to place an arbitrator in the position of having to order "fundamental changes or expansions of existing benefits" that are unreasonable.

Yet, this is exactly what the parties are asking; and what this Arbitrator has been authorized to do by Sec. 111.70. Thus, as it so happens in situations of this kind, it has become the job of the Arbitrator here to determine the least unreasonable of two very unreasonable offers.

The report of my thinking and decisions will be accomplished in this DISCUSSION section. I will provide a brief summary of each of the parties arguments and positions (headed "The Union" and "The Employer") as I discuss the issue. "Discussion:" follows the summary of the parties' positions and indicates the start of my analysis and opinion. Before discussing the substantive issues, the parameters for the analysis of the evidence and argument will be established.

EVALUATION OF EVIDENCE

The evidence in this case consists of the final offers and stipulations submitted to the Arbitrator by the WERC, exhibits submitted by both parties during the hearing, and testimony presented by witnesses for both parties during the hearing. Argument was presented in written form (briefs and reply letters) exchanged by the parties subsequent to the hearing. No objections, other than those that were ruled upon during the taking of testimony and receiving exhibits during the hearing, were entered by either party regarding the evidence in this record.

REASONABLENESS TESTS

Normally the ten statutory criteria are sufficient for determining the reasonableness of the final offers, but when language changes are proposed by one or both parties, criteria and level of burden of proof need to be established by the Arbitrator. Therefore, criteria relating to two reasonableness tests will be discussed in this section: change tests and comparative tests.

Change Tests

The Employer in its brief (p. 20) suggests that a proponent of change be required to meet four considerations suggested by Arbitrator Gil Vernon in

Elkhart Lake School District, Dec. No. 26491-A (12/90). These considerations could be summarized as: 1) demonstration of need; 2) ability of proposal to address the need; 3) support among the comparables; and 4) the nature of any quid pro quo. The District, therefore, proposes that this Arbitrator use this four-part test--these criteria--to determine the reasonableness of the proposed changes in the contract as presented in the final offers.

The Union proposes no test or criteria to use in this case.

Discussion: Usually in interest arbitrations, the party proposing a language change is required to demonstrate (to prove) that its proposal is reasonable. Different burdens of proof are required depending on whether or not a change is actually being proposed, and then, if so, the kind (or degree) of change it is. Over the years arbitrators have proposed different tests and criteria to determine whether proposed changes are justified. Arbitrator Vernon's four considerations is an example of change tests that have been suggested and used by arbitrators. While I find Arbitrator Vernon's four considerations a valid method for deciding whether a change in status quo is justified, I have come to rely on a similar, but slightly different approach to these determinations.

In two previous interest arbitration decision of mine (Ripon School District, No. 42530 MED/ARB-5318, 5/20/90 [Ripon], pp.14-15; and Howards Grove School District, No. 43261 INT/ARB-5483, 9/25/90 [Howards Grove], pp.11-12), I discussed in some detail the idea of change in collective bargaining and arbitration. I think the thoughts I expressed in those decisions are very germane to this case, or any other case in which a party is proposing some kind of language change. I will not repeat my lengthy discussions here, but will provide a brief summary of the principles described there, and will rely on them for deciding what, if any, change test is needed in this case.

Before one can apply change (or burdens of proof) tests, one must first determine if a change, in fact, is being proposed. As indicated in Howards Grove (p.11), change occurs when a difference is effectuated in the form, nature, or content of something.

If a change is, in fact, being proposed, next one must determine what kind or type of change it is. In Howards Grove (pp.11-12) I presented four degrees or levels of contractual change:

- *technical* difference in the form, with no difference in the nature and content (Ex: making typographical corrections; renumbering articles, codifying a past/current practice)
- *ordinary* difference in form and content that is commonplace and usual, and/or takes place or is considered on a regular basis (Ex: replacing contract dates; changing wage increase percentages)
- *substantial* important difference in form and content, and/or nature of a primary benefit (Ex: changing the insurance carrier and/or benefit level; changing salary schedule structure)
- *critical* important difference in form and content, and/or nature of a right or an established, negotiated benefit (Ex: removing a grievance procedure; eliminating seniority)

And finally, one must decide, based upon the kind of change, what level of burden of proof will be required by the proposing party in order to show its proposal is reasonable. In Howards Grove (p.12) I suggest that burden of proof tests (such as suggested by Arbitrator Vernon and summarized above) are meant to be applied to *substantial* and *critical* changes, and not to *technical* and *ordinary* changes. Then in Ripon (pp.14-15) I adopt a three-pronged burden of proof test (the Reynolds test) to be applied to *substantial* and *critical* change proposals as follows:

1) the change is required;
2) the change will remedy the problem; and
3) there is no unreasonable burden.

The test is implemented under the following:

1) all three criteria must be passed in order for the test to be passed and the proposed language found reasonable;
2) "remedying the problem" must include a close look at the proposed language to see if it is clear, concise, unambiguous, and that it matches the intent of the proposing party; and
3) an "unreasonable burden" can be offset or diminished by a "buy-out" or "quid pro quo."

It is important to analyze each proposed language change in this case to 1) determine if it is, in fact, a change; then 2) if found to be a change, which type of change it is; and 3) what burden of proof, if any, will be required.

WAGES

District Offer:

Increase all salary schedule rates 1.5% for 1994-95. The salary schedule for 1995-96 shall be adjusted on a percentage basis to provide a 4.0% total package (salary and fringe benefits) using the cast forward method of costing with 1994-95 as the base year.

Union Offer:

1994-95 - Increase salary schedule rates by 1.5%.
1995-96 - Increase salary schedule rates by 1.5%.

Is a Change Being Proposed?

The Union in its brief (p.3) indicates that the Employer's offer on wages constitutes "...a significant change in procedure for the District." The Union implies that the District's offer of a 4% total wage and benefit package, with the wages adjustment being made after the health insurance premiums costs are known, have been calculated, and have been applied, are a significant departure from how wage rates have been established in the past.

The District provides no information or argument as to whether or not its proposal constitutes a change.

Discussion: It is apparent that both parties are proposing changes in the contract. The wage increases proposed by both parties the first year and the Union the second year are, in fact, changes. Moreover, it is my opinion that the Employer is proposing in the second year a new procedure by which wage adjustments will be calculated. Although there is very little evidence in the record relating to how the parties framed wage adjustments in the past, it is my understanding that this method, of setting a total package limit, applying benefit costs first, and then providing wage increases (or decreases) until that limit is reached, is a change in how the parties have negotiated and applied wage adjustments in the past. Based upon this, I find a change is being proposed on the wages issue.

What Kind of Change Is Being Proposed?

The importance of determining the kind or degree of a contract language change can not be over stressed. If a significant change is being proposed by a party, there ought to be a substantial burden of proof (and passing of rigorous tests) required by that party in order to prevail in arbitration. If on the other hand, a less significant change is being offered, a lessor burden of proof (and less rigorous testing) should be required.

Neither party provides any evidence or argument as to the level of change that the District is proposing here with this issue.

Discussion: It is clear that, by definition, the wage increase changes being proposed by both parties (94-95 and Union 95-96) are *ordinary* changes. Regarding the District's second year wage adjustment proposal, it would seem, at least on the face of it, that changing the procedure for determining the level of a wage adjustment would be at least a *substantial* change. For instance, the Employer freely admits (ER Brief, p.14) that it does not know the amount of its wage offer in the second year--the adjustment could be a "modest increase", or it could actually be a decrease in the wage rates of the employees in this unit. I would suggest that a change that would bring about such uncertainty where there has been in the past clarity and certainty, constitutes at least a *substantial* change.

What Burden of Proof Will Be Required?

Therefore, because the first year wage proposals, and second year of the Union's proposal, are *ordinary* changes, no special tests, other than the ten criteria presented in the Statute, are necessary. On the other hand, because the District is proposing a *substantial* change in the way the parties have calculated and applied wage adjustments--its second year wage adjustment proposal--the Employer's wage proposal, in addition to meeting the 10 Statutory criteria, will need to meet the "Reynolds test", in order to be found reasonable. Because of a lack of evidence presented by both parties on this issue (that is, neither party seemed particularly concerned about this *substantial* change) the Employer will need only meet a moderate level of proof that its change is reasonable.

HEALTH INSURANCE (pro-rata hours)

District Offer: Status Quo

Union Offer: REVISE to read as follows:

> All other eligible employees working twenty or more hours per week may elect to participate in the family or single plan coverage with the Board contributing on a pro rata basis equal to the ratio of hours worked by the employee in the previous year to ~~1600~~ 1520 hours in 1994-95 and 1440 hours in 1995-96 except that employees in their first year in the District, working twenty (20) or more hours per week, may elect to participate in the family or single health plan coverage at the completion of their probationary period with the Board contributing on a pro rata basis equal to the ratio of the number of hours worked by the employees versus the number of hours a twelve (12) month full-time employee could have been compensated in the probationary period.

Is a Change Being Proposed?

The District, in its brief (pp.20-24), maintains that the Union's offer proposes to change the status quo by decreasing the proration formula, a change *which is both significant and long lasting.*

The Union states in its brief (p.6) that the Union, indeed, is proposing a change in the number of hours used for prorating the level of payment for health insurance premiums.

Discussion: Both parties agree, and I concur, that a change is being proposed.

What Kind of Change Is Being Proposed?

The District argues (ER brief p.20) that the Union has not met its burden of proof with respect to its proposed change in the proration of health insurance benefits. The Employer maintains that the Union, in order for its offer on this issue to be found reasonable, must meet all the criteria established by Arbitrator Vernon, and that it fails to meet those criteria.

The Union maintains that the only part of its proposal that changes the current language is the number of hours used for calculating the pro rata level of payment by the Employer of health insurance benefits.

Discussion: I think the parties, while not specifically arguing point to point on this issue, are disagreeing as to the kind of change that is being proposed by the Union here. The Employer, by invoking the four-consideration test proposed by Arbitrator Vernon (described above, p.6), and then applying that criteria to the Union's offer on this issue, is, in effect, defining the proposed change as *substantial.* On the other hand, when the Union eludes to the fact that only numbers are being changed, and that those numbers are, in fact, changed or could be changed regularly, it is saying that the proposed change is *ordinary.*

In looking over the bargaining history on this issue that was provided by the parties in this case, I find that the number of hours used for prorating the level of payment for health insurance premiums have been changed by the parties over the years. For instance, for a number of years (1980-1987) the number was set at 2080 hours, or full-time. Then, in 1988 the parties negotiated a contract which called for a change from full-time to 1800 hours for the 1988-89 contract year, and 1600 hours for the 1989-90 contract year. Sixteen Hundred (1600) hours has remained since then, until the current contract and the Union's offer here to change it again from 1600 hours to 1520 in 1994-95 and 1390 hours in 1995-96.

The fact that the parties have adjusted these hours from time to time indicates to me that this issue is routinely considered by the parties during negotiations, and may, in fact, have been the subject of negotiations in other contract renewal bargains, other than those times in which changes did occur. Therefore, an issue that is routinely or regularly a part of contract negotiations, such as wage rates or the amount of insurance contribution, is an *ordinary* change. I believe this is the situation here; and I find that the Union's proposed change is *ordinary*.

What Burden of Proof Will Be Required?

An ordinary change requires only the comparative test (ten Statutory criteria) to be shown reasonable. Thus, this issue will require a normal burden of proof in an analysis of the offer against the relevant Statutory criteria.

HEALTH INSURANCE (contribution amounts)

District Offer: REVISE to read as follows:

> Twelve-month full-time employees: Twelve-month full-time employees receiving health insurance shall pay ~~$20.00 per month for 1992-93 and~~ $25.00 per month ~~for 1993-94~~ toward the family premium and ~~$5.00 per month for 1992-93 and~~ $10.00 per month ~~for 1993-94~~ toward the single premium. The level of benefits for ~~1992-94~~ 1994-96 shall remain the same as in effect during the 1987-88 school year.

Union Offer: Status Quo

What Kind of Change Is Being Proposed?

The District argues that the changes it proposes in this contract clause could be characterized as nothing more than an ordinary change to clean-up language that has become obsolete. The language that is now being deleted was inserted into the contract during the 1992-94 contract negotiations and only cloud the contract with obsolete language.

Discussion: I concur with the District that its offer here is only an attempt to rid the contact of obsolete language. I can find nothing in the proposed language changes that would bring about any changes related to the

wages, hours and working conditions of the employees. Such a change by definition is a *technical* change, and will require no proof to be considered reasonable.

On this proposal of the District to remove obsolete language, I find the Employer's proposal reasonable and preferred over the Union's status quo stand. (While the Arbitrator cannot order the parties to implement individual items from a final offer, I recommend that the parties implement these proposed clerical changes no matter the outcome of this arbitration.)

LAYOFF/RECALL

District Offer: REVISE first paragraph as follows:

> When the District deems it necessary, it may lay off, in whole or in part, the necessary ~~to decrease the~~ number of employees in a department (cooks, clerical, bus drivers custodians, maintenance, mechanics, and education assistants), ~~the District may lay off the necessary number,~~ but only in the inverse order of the employee's appointment within department, providing the remaining employees are qualified to perform the work. Such employees shall be reinstated ~~in inverse order of their being laid off~~ when vacancies occur within the department in the inverse order of their being laid off. Such reinstatement shall not result in loss of credit for previous years of service. No new or substitute appointments may be made while ~~those who were laid off are~~ there are qualified employees on the layoff status available to fill vacancies.

Is a Change Being Proposed?

Discussion: It is prima facie that there is a change being proposed here by the Employer.

What Kind of Change Is Being Proposed?

The Employer argues that there is a need for this change that it is proposing, and implies that it is providing only a slight modification to the existing contract language. The Union, on the other hand, rejects the implication that this language change is minor by stating (Un Reply Letter): "When language is added that will allow an employer to circumvent seniority during layoffs, that's major."

Discussion: Because the District, as it does above with the second year wage issue, evokes the "Vernon Test" of reasonableness, I am led to think the District believes it is proposing at least a *substantial* change regarding the layoff/recall language. And I disagree with the implication of the Employer that this issue, this proposed change, is only a minor modification in the contract. Any change of this nature, a change that directly affects a previously negotiated right or benefit is a *critical* change.

I find the Employer's proposed change in the layoff/recall clause to be a *critical* change.

What Burden of Proof Will Be Required?

Since this proposal contains *critical* changes, in order to be determined to be reasonable, a high degree of proof will be required when applying the "Reynolds Test", and the changes must also be found to be reasonable when analyzed in accordance with the relevant Statutory criteria.

ASSIGNMENTS OF AIDES

District Offer: Status Quo

Union Offer:

> Aides who work one-on-one with a student will be given another assignment at the same rate of pay when the student is absent.

Is a Change Being Proposed?

The Union argues (Un Brief p.7) that its proposed language is a codification of past and current practice of the parties and implies that the proposal really does not constitute a change, or if so, only a *technical* change.

The District strongly disagrees with the Union's position that this change is a minor change and merely a codification of past and current practice. The Employer states (ER Brief p. 28) that the proposed language change would negatively affect management's right to "...schedule and assign (including overtime assignments) employees in positions within the School District..." as guaranteed by the parties' Collective Bargaining Agreement (p.8), and implies that, in fact, the Union's proposed change is more than just putting practice into writing.

Discussion: I disagree with the Union in its characterization of this proposal as merely putting into writing past and current practice--the proposed language here is significantly different from the past and current practice as revealed in the evidence of the record in this arbitration. As the District so clearly points out, the current practice of employee either taking time off or performing other work has been discretionary on the part of the employee and Employer. While the District never chose to send an aide home when a student was absent, the Employer still had that option. I find the Union's proposed language adds something new and, therefore, constitutes a change.

What Kind of Change Is Being Proposed?

The Union implies, as stated just above, that its change, if at all, is merely a *technical* change because the language only puts into writing what the parties have been doing for many years. Since there are no changes, the argument would go, in the wages, hours, and working conditions of the employees, and no new affect on the Employer, the change is a *technical* change.

The Employer strongly objects to the characterization of this language change as just being a codification of past and current practice. There is a significant difference, the District argues, between what the District is currently doing, or able to do, and that which is proposed in the Union's language. The District suggests that the proposed language would eliminate management's right to send an employee home if there is no work to be done. The Employer implies that this kind of change, a change in a major right of the Employer that is guaranteed by the collective bargaining agreement, is a *critical* change.

Discussion: The District makes a valid point that this proposed language change would impact on management rights that are guaranteed in the parties' contract. I believe the Union's proposal goes beyond just putting into writing past and current practice, and would, indeed, constitute an important restriction on rights that management currently enjoy--that of being free to assign available manpower wherever necessary in its operation (Contract, p.8), or to lay off (Contract, p.6) when work is not available. Such a major, new restriction in a previously negotiated right or benefit constitutes a *critical* change.

What Burden of Proof Will Be Required?

Discussion: This *critical* change being proposed by the Union, in order to be found reasonable, will require a high degree of proof related to the "Reynolds test" and the relevant Statutory criteria.

SUMMER SCHOOL WORK

District Offer: Status Quo

Union Offer:

> **Summer school work will be offered to current employees on a seniority basis as determined by previous service with the summer school program. In case of a tie, the position will be offered to the employee with the most years of regular employment with the District.**

Is a Change Being Proposed?

The Union suggests that this proposal, again, only puts into the contract a letter of understanding that has been in effect for many years. The District takes issue with the Union's contention that the letter in question had contractual authority, was binding on the District, and was authorized by the Board. The District maintains the language is a new addition to the contract.

Discussion: The record indicates that this proposal is different from, or at least contains additions to, the past and current practice of the parties. Therefore, it does constitute a change.

What Kind of Change Is Being Proposed?

The Union takes the position (UN Brief, p.8) that the letter of understanding (UN EX 12) which forms the basis of this proposal, is contractual in nature and to include it in the contract would be of little consequence. In

essence, the Union is suggesting that the proposed change is *technical* in nature.

The District states (ER Brief, p.29) that the letter in question (UN EX 12) represents an agreement between a previous district administrator and the Union representative and was not at the behest of the Board, nor was there any contractual authority of the "agreement". Thus, the Employer in essence argues that the proposed language is new and is not based upon any previous understandings or informal agreements. The District also suggests that the language being proposed by the Union will have a significant impact on managements right to assign summer work in a manner it sees fit based upon work availability and employee qualifications. The District believes a practice that has been working fairly well for many years will be significantly changed by the addition to the contract of the Union's proposed ambiguous language. The implication of these posits of the Employer is that the Union's proposal constitutes a *critical* change.

Discussion: It does appear from the record that the language proposed by the Union here has significant differences from the current practices of the parties and, without considering its contractual authority, goes beyond the scope of the letter which alludes to an agreement between the parties about placement of aides during summer school. I think the Union's language could have a significant, new impact upon the Employer's management rights as guaranteed in the contract. Therefore, I find this proposed change to be *critical* in nature.

What Burden of Proof Will Be Required?

Discussion: This *critical* change being proposed by the Union, in order to be found reasonable, will require a high degree of proof related to the "Reynolds test" and the relevant Statutory criteria.

Comparative Tests

Primary Comparable Group

This bargaining unit has been in existence since at least 1980. The District and Union have been involved in contract negotiations eight times not counting the current proceedings (which started in May, 1994), and, prior to this case, all contracts were reached voluntarily. During all these years, the Unity School District has been in the Upper St. Croix Valley (USCV) Athletic Conference. On July 1, 1994, athletic conference realignment in west central Wisconsin resulted in the USCV Conference being eliminated and the districts in that conference being moved into other athletic conferences. At that time, Unity School District was moved into the Middle Border Conference.

The Union argues that, because of the length of time Unity School District was in the USCV Conference and that the District was a part of the new conference only since the beginning of 94-95 school year, it is reasonable for this Arbitrator to use the old athletic conference as the primary group for this arbitration. The Union refers to an arbitration award in 1992 by Arbitrator Zel Rice in which Arbitrator Rice emphasizes the need for arbitrators to use comparables that the parties use in negotiations, that athletic conferences are appropriate for comparisons because like districts are placed together in

athletic conferences, and that after three years of being in a particular conference a district can be completely assimilated into a conference. Because of this direction from Arbitrator Rice, and the fact that most of the bargaining in this case took place prior to the conference change, the Union believes the use of the Upper St. Croix Valley Athletic Conference would be very appropriate.

The District, on the other hand, believes that the Middle Border Conference into which Unity was recently placed, should be the primary comparable pool to which comparisons should be made. The District complains that the Union is asking the Arbitrator to establish a comparable pool that no longer exists as an athletic conference. The Employer maintains that Unity is comparable to the Middle Border schools in terms of size and equalized valuation. The District contends that the Arbitrator is given little choice but to establish the Middle Border Conference as the appropriate pool of comparables based on the lack of evidence in the case--the fact that the Union provided absolutely no evidence of the standard indicators of comparability, such as school size, geographic proximity, equalized value, or other socio-economic indicators, for the school districts it was proposing as comparable.

The District goes on to point out that arbitral precedent supports the athletic conference as the appropriate comparable pool and supports the District's contention that the athletic conference which Unity joined in 1994-95 is the relevant comparable pool. The District quotes Arbitrator James Stern in a case that involved a move from one conference to another, in which Arbitrator Stern found that the new conference was more appropriate, because the shift from the old to the new conference suggested that the districts in the new conference were either closer or more similar, or both, to district in question. The Employer even thought Arbitrator Rice's comments in the case quoted by the Union were more supportive of its position than that of the Union's.

The District concluded and submitted that the Middle Border Conference is the appropriate comparable pool, both now and in the future.

Discussion: When making a determination regarding nearly every issue in arbitration, I rely heavily on the parties' current practices, or their past practices, in negotiations and arbitration. Determining the best comparable pool is no exception to this practice. One of the first considerations is how parties have established their comparable pool(s) in the past. Generally, there are two methods: create their own, or go with something someone else has established.

In this case, while the record is pretty skimpy with regards to this question, it is my understanding that Unity School District has utilized a comparable pool that was established by someone else: the athletic conference. Unless I am misinformed, from 1980 until the present, the parties have relied upon their placement in an athletic conference to be the criteria by which they would establish a comparable pool. That is, the parties relied upon someone else, other than themselves, to pick the districts to which they would make comparisons. The Union's suggestion that Unity be compared to districts other than the athletic conference to which it currently belongs, is, in essence, proposing a different method by which the parties will establish comparability and the comparable pool--that is, a switch to a method in which the parties themselves establish comparability.

There is nothing inherently wrong with parties themselves, as opposed to an outsider, establishing the criteria and the comparable pool. As a matter of fact, it is actually preferable, and most city and county municipalities rely on comparable groups developed (and sometimes agreed to) by themselves. Parties either establish themselves, or use "standard" arbitral criteria by which "candidates" for comparability would be examined (such things as size, location, population, economic conditions, etc.). In other words, parties establish comparable pools all the time by themselves, and it is a perfectly acceptable method for establishing a comparable pool.

The problem that I have in this case with the Union's suggestion, is that not only is the Union suggesting different comparables, but is, I believe, suggesting that the parties abandon their long held practice of accepting someone else's (the WIAA or DPI, or whoever sets the athletic conferences) determination of comparability. The Union is completely changing the way in which comparability is, and will be in the future, established. And most important, and damaging to the Union's position, is that the suggestion for a change in procedure is not accompanied by a new process for determining comparability--the Union did not provide a method or procedure for the determination (including criteria to be used, maximum/minimum number in pool, etc.) of those units of government (districts?) that are comparable.

It might be possible that I am missing the Union's point on this issue. Perhaps the Union is not really arguing for a permanent, or even temporary, change in procedure. Perhaps the Union's point is that, since the realignment took place after contract negotiations began, and that the bulk of negotiations took place when Unity belonged to the USCV Conference, that the arbitrator should use the comparable group the parties were using then. And that the use of the old group is an anomaly--only a temporary, one-time adjustment.

Even if this was the Union's point (and its speculation on my part because the Union never made it), I think parties, if they accept the determination of someone else as to the pool to which they are comparable, are obligated to accept the changes that may come from that outside source. Thus, in this case, I believe the parties had reasonable notice of the impending change, and had plenty of time to make any adjustments in their offers that might have been necessary to have them reasonable in light of the new comparables.

Based on this, I find that the Middle Border Conference, including the districts of Amery, Baldwin-Woodville, Durand, Ellsworth, New Richmond, Osceola, St. Croix Falls, and Unity, is the appropriate primary comparable group. Because of the bargaining history of the parties and the timing of the realignment, I will use the group of school districts from the old USCV Conference, including Frederic, Grantsburg, St., Croix Falls, Somerset, and Webster, as a secondary comparable group for this arbitration.

Weighting of Issues and Criteria

Usually in arbitrations of this kind, general weighting of the issues and criteria is sufficient. However in this case, I have chosen to apply a percentage figure to each of these weightings in order to be more precise as the outcome of this decision. Also, when deciding on a particular issue, I will apply a percentage to how much one parties offer was favored over the other's (EX: 80/20).

Issues

Of the six issues that make up this dispute, the most important issue, according to the parties, is the wages issue. Both the parties acknowledge the importance of this issue, and also spend the bulk of their written argument (briefs) on this issue. Therefore, the wages issue has a third (33%) of the weight in this decision. The next most important issue, the health insurance (pro-rata hours), receives a major (17%) amount of weight. Three issues, layoff/recall, assignments of aides, and summer school work, each receive substantial (15%) weight. And finally, the relatively minor issue, health insurance (contribution amounts), receives little (5%) weight.

Relevant Statutory Criteria

The parties presented little or no evidence relating to some of the criteria. Thus, these criteria will receive little or no weight in this arbitration decision: (a) lawful authority; (b) stipulations; (e) comparisons--public employees; (f) comparisons--private employees; and (i) changes.

Regarding how the remaining criteria should be ranked, the parties provided little guidance, so the relevant criteria is evenly weighted.

ANALYSIS AND OPINION

In this section I will discuss the issues using the criteria and applying the appropriate tests enumerated above.

WAGES

Above (p.8) I found that the Employer's wage proposal contained a *substantial* change in the way the wage rates would be calculated, and found that the District will need to meet a moderate level of proof in relation to the "Reynolds test", as well as meet the relevant Statutory criteria, in order to be found reasonable.

The District justifies its offer by arguing that the State's mandated revenue cap has placed extreme budgetary constraints on the District. Given these financial constraints placed upon the District, the Board felt compelled to fashion a final offer which put a limit on the overall package increase afforded to the support staff. The Board believes its gamble that health insurance costs will be low and will provide a modest wage increase the staff. With a cap of 4% on the total package (wages and benefits), the District believes it can abide by the State's mandate to cap school district costs.

The Employer argues it is forced to its position because it has been severely restricted in its ability to pay--it has been forced to meet all increased costs with a fixed dollar amount. And further, the District argues, where districts in the past were able to increase their tax levy to meet their increased costs, districts are currently being forced to meet all operating expenses within constraints placed upon them by the Legislature. Unless there is an exceptional need for increased revenue, the District argues, it is very unlikely that referendum by the area voters to increase taxes would pass.

The Board indicates that it has no desire to shortchange its support staff employees, but that somewhere in the scheme of things the parties must remember the District's primary function--that of educating its students. The District believes it is in the interest and welfare of the public to maintain some cap on labor costs in order to minimize the need to cut student programs and activities or at least maintain existing programs and activities.

The District indicates it believes its offer is competitive when compared to the increase in the cost of living. The Employer points to a CPI in the range of 2.4% to 2.8%, compared to its offer of 4.09% and 4.0%. The Board maintains that, because its offer is more closely aligned with the CPI, it must be considered more reasonable than the Union's.

The District states that its final offer on the wages maintains superior wage rates for the Unity District support staff employees. Pointing to comparisons for various job classification, the District is able to find only a couple of places where Unity is not a leader in wages among the primary comparables. For whatever reason, Unity School District has been noted for paying higher wages among the remaining members of the secondary comparable group. The District suggests that even if its offer results in a minimal wage increase, Unity will remain a wage leader among both the primary and secondary comparables. For these reasons, the District's offer on the wages should be selected by the Arbitrator.

The Union argues that the Employer's offer could actually result in a reduction of wages (a negative increase!) in the second year of the contract if there is even a moderate increase in health insurance premium costs. It is not acceptable to the Union that the schedule could be reduce by 1.7% (by its calculations), and result in an actual pay cut for those employees who would not receive an increment increase.

The Union maintains that a freeze on the schedule improvement is not supported by the comparables. The Union argues that the District can find only one other district (Webster) in both the comparable pools that has a settlement based upon a total cost cap. And that settled contract, the Union points out, provides for a 4.8% total package increase--.8 percent higher that being proposed by the District in Unity. That resulted, the Union continues, in approximately a 4.0% wage rate increase.

The Union believes the information presented by the Union concerning the wages shows very specifically and accurately, using the District's own financial information, how reasonable the Union's position is.

Discussion: Lets deal with the first question first: Is there a need for the District to propose such different approach to wage adjustments? The Employer makes a very convincing argument that State-mandated cost controls have motivated it to present this kind of proposal--that is, placing a cap on the total wage and benefit costs. There certainly is a need to contain the costs that school districts are facing. The District has shown that there is a compelling need to present this proposal.

Next, we need to ask: Will the proposed solution remedy the problem? Again, the District has crafted an interesting solution that would seem to provide a certain amount of increase in wages, while at the same time staying

within the budget constraints. The Union provided no insight on how the District's offer might not remedy the problem.

Looking closer at the specific language, I find it fairly straight forward and understandable. It does not appear to be ambiguous, and does not equivocate.

There is, however, one minor point that might be characterized as "nit picking" by some. The phrase "...to provide a 4.0% total package (salary and fringe benefits) using the..." probably was meant to say "...to provide a 4.0% total package (salary and fringe benefits) increase using the...". The District was not offering to only pay in wages and benefits 4% of the 1995-96 total budget, was it? My understanding is that the Employer is offering a 4.0% increase over what was spent the previous year (1994-95) in the combined budgetary items of wages and benefits. Right? Perhaps what seems as self evident to some (the District and Union), might be taken literally by others (arbitrators)!

On the question of whether or not the proposed language will remedy the problem, I find that the District's proposal will remedy the problem.

Finally, we need to consider whether or not the proposed change will cause an undue burden on the parties. And this is where I have problems with this language. I find the language, the change in how the Employer makes wage adjustments, puts uncertainty and instability where there was none previously. If a union bargaining committee brought back to the employees a proposal that did not indicate what wage increase or decrease is being proposed, the employees could not make a very informed decision. How could the employees make a decision, vote on an offer, if it isn't clear what is being offered as far as what wage increase they could expect? I think this uncertainty is an undue burden on the employees, especially if the possible outcome was a reduction in pay, as is the case here.

Perhaps what's troublesome about the deal for the employees, is that they have absolutely no control over what happens. If social security taxes go up, wages go down. Health insurance goes up, wages go down. Perhaps, if the insurance premium costs portion of the total costs, for instance, were affected by the behavior of the employees (premiums went down if they stopped smoking, or whatever), this variable and dependable wage increase might be more palatable. Or if the Employer was sharing a bit more of the costs, or something, the deal might not seem so lopsided. As it is, it seems a pretty harsh burden for the employees to bear by themselves.

I find, on the Employer's second-year wage offer, that: 1) there is a compelling need for the change, 2) the proposed language will remedy the problem, but 3) the proposed language places a harsh burden on the employees. Therefore, I find the Employer's proposal does not pass the "Reynolds test".

But what about the economics of this case, and particularly on this issue. It would seem that the Statutory criteria do not favor either offer. The parties agree as to the wage increase for the first year, so the dispute is over the second year. The Union's offer, compared to both sets of comparables, is low. But, as the District points out, Unity already has a high pay scale. Both offers, if it wasn't for the uncertainty of the Employer's offer, on the

economics, would be almost identical. So, on the economics, neither wage offer is preferred.

Therefore, based upon this discussion, I find the Union's offer on the wage issue to be slightly (60/40) preferred to that of the District's offer.

HEALTH INSURANCE (pro-rata hours)

As indicated above (p.11), this issue will require a normal burden of proof in an analysis of the offer against the relevant Statutory criteria.

The Union argues that its proposal to decrease the number of hours used for prorating the level of payment for health insurance from 1600 to 1520 the first year of the contract and to 1440 the second year is supported by the comparables. That is, the average of the USCV Conference on this issue is 1390 hours, well below what the Union is asking for here. And, the Union goes on, when this is coupled with the fact that Unity is the only school among those comparables that does not provide dental insurance for its support staff only adds to the Union's claim that its offer is reasonable.

The District maintains that the Union has failed to show that there is a compelling need for an increased employer contribution to health insurance. The Employer suggests that the move to 1520 hour proration formula would result in an additional cost to the District of $3,022 in 1994-95. And, the District continues, while difficult to estimate, the additional cost for 1995-96 is likely to be at least double. Additionally, the Employer is afraid that the availability of additional contributions by the District will encourage more employees to participate in the health insurance plan which will further increase health insurance costs to the District. The District states that these additional costs are not justified given the economic conditions and the cost controls that are in place.

The District suggests that the Union's offer is not supported by the comparables. The Employer points out that support among the Middle Border Conference is mixed with respect to a change in the proration formula--of the seven, four provide less employer contribution, while three provide a greater contribution. This does not constitute a pattern, the Employer states.

And finally, the District argues that any quid pro quo the Union may think it is providing by taking only a 1.5% wage increase totally ignores the high increment cost associated with movement through the schedule for almost half of the bargaining unit. The Employer suggests that the Union has not provided a quid pro quo large enough to "buy" a benefit which will have a long-term economic impact on the District's budget.

Discussion: Most of the District's points on this issue have to do with the Union not sufficiently meeting a burden of proof to change the contract. Since it has been established that the change here is an *ordinary* change, most of these arguments (relating to passing a change test) do not apply. The only relevant evidence relates to the relevant Statutory criteria. And the most important relevant criteria on this issue is comparability--how the Union's offer compares to other districts in the primary and secondary comparable groups.

While it appears that the Union's offer is not supported, as pointed out by the District, by the primary comparable group because of a lack of a pattern, there is support among the secondary group. In the secondary group all other districts have lower hours than what the Union is offering the first year, and four of the other five have the same or lower hours in the second year. This shows strong support among the secondary group for the Union's offer on this issue.

On the other hand, the District may have a point about the long term impact of the proposed change in these hours. Certainly any lowering of the eligibility for fully paid insurance benefits will have an immediate negative impact on the District's budget as more employees become eligible. And it is probably true that the increased incentive to participate in the health insurance benefit will undoubtedly bring more employees into the group plan. But don't the other districts in the comparable groups face the same added costs and still are able to provide wage increases (about 3% on average)? It would seem that about half in the primary group do; and all in the secondary group do.

Based on this discussion, and an analysis of the offers on the other relevant criteria, I find the Union's offer on this issue to be somewhat (60/40) more reasonable than the District's, and is preferred.

HEALTH INSURANCE (contribution amounts)

This issue has been determined to be a *technical* change which has been found to be reasonable (see above, p.11). The District's offer is completely (100/0) preferred over the Union's status quo position.

LAYOFF/RECALL

Since it has been found (above, p.12) that this proposal contains *critical* changes, in order to be determined to be reasonable, a high degree of proof will be required when applying the "Reynolds Test", and the changes must also be found to be reasonable when analyzed in accordance with the relevant Statutory criteria.

The District maintains that, while there may not necessarily be a problem with the layoff/recall language that refers to "department" during layoffs and recalls, the exception could occur which could cause problems for the Employer. The District points to the example of a needed reduction of employees within the kitchen where the head cook was the last person hired--under current language the head cook would need to be laid off whether or not any other cook is qualified to fill the position.

The District argues that its proposed changes to the layoff/recall provisions of the contract merely clarify the language of this clause. For instance, while the language currently in the contract, the District points out, could arguably be interpreted as allowing for partial layoffs, the District's proposal, that includes the words "in whole or in part", would now clearly make partial layoffs or reduction of hours possible. Also, the Employer suggest, while the current contract allows layoffs by department, by adding the words "qualified to perform the work" will make it possible to retain employees by job classification within a department.

The District argues that its offer is supported by the primary comparables--that Unity School District would then have the same right enjoyed by other districts in the Middle Border Conference--that of maintaining "qualified" employees during a layoff. The District contends that this "qualified" language during layoff is supported by Amery, Durand, and St. Croix Falls, while all other districts are allowed to recall only "qualified" employees to fill vacancies. Moreover, the District points out that every other district in the comparable group has the "in whole or in part" language in their respective agreements.

The Union simply argues that the District has failed to meet its burden of proof to show the change is needed based upon past experiences. The Union believes the only example the District cites to show need--that of the head cook layoff--is based solely on speculation as to something that could happen. Based on this, the Union believes its offer should be adopted on this issue.

Discussion: Before the relevant Statutory criteria are considered, the District's proposed language must pass the "Reynolds test."

Is the Change Needed?

The Union makes an excellent point about questioning the need for these changes on this issue. Actually the Employer itself admits (ER Brief, p.25 & 26) that perhaps the current language could be interpreted to provide what the District is proposing in these language changes. The record is clear that there have been no layoffs in the past two years, and further, the District provided no evidence (such as grievances, etc.) that there have been problems with the current language. Perhaps the old saying "If it ain't broke, don't fix it." should apply in cases like this.

Yet, shouldn't the parties want to be forward-looking; anticipating possible problems or looking at better ways of doing things? In looking over the District's language, I find it very reasonable and it would seem to attempt to head off potential problems within departments that may occur relating to qualifications and partial layoffs. I'm not sure why the Union would object to language that, according to the District's exhibits, nearly every other district around has agreed to. Why wouldn't the Union want it clear(er) that the District could just reduce hours (job sharing), rather than layoff a whole position? Why wouldn't the Union want the Employer to be able to layoff and recall by positions within a department? These questions go unanswered.

I find, based upon this discussion, that the Employer has failed to meet the first criterion of the change test--has failed to show adequate need for its proposed change. Therefore, the Union's offer on this issue is found substantially (80/20) more reasonable than the Employer's offer.

ASSIGNMENTS OF AIDES

It was ruled (above, p.13) that the *critical* change being proposed by the Union, in order to be found reasonable, will require a high degree of proof related to the "Reynolds test" and the relevant Statutory criteria.

The Union maintains the change it proposed should be adopted by the Arbitrator because it reflects what is being done currently. The Union suggest the evidence presented by it during the hearing supports these changes. Specifically, the testimony of Mr. Harder who testified that interviews with aides show that, when their student is absent, they currently are given the option of going home or working in another area. Because this language is exactly how the Employer is currently handling it, the Union argues, its offer should be selected by the Arbitrator.

The District rejects the Union's contention that this change merely reflects current practice. The Employer maintains that the proposed language would eliminate its right to send an employee home if there is no work--it would require the District to pay for work when there may be no work to be done. This, the District asserts, places a unreasonable burden on the District.

The Employer believes the Union has also failed to show any need--that there never has been a problem with how the District has been handling the situation when a student is absent. The District suggests that the Union simply wants the language in the contract "in case it ever happens". Based on this, the District believes the Union's proposed language is unreasonable and should be rejected by the Arbitrator.

Discussion: As mentioned above (p.12) the Union's language proposal really does not reflect the current policy and practice of the parties. It is my understanding, that when a student is absent, the District, if there is work available, gives the aide the choice to work or go home. In the past, some have chosen to go home, but most have worked. At no time was the District forced to send an aide home due to lack of work. The language proposed by the Union does not reflect the practice of giving the employee a choice.

The "If it ain't broke..." theory is probably just as applicable to this issue and the one just above. The Union really has shown no need to propose this change. By all accounts, even by way of the Union's own witnesses, the current practice of the Employer of giving the employees a choice of working (if there is work) or going home, is working. Indications are that the aides like being given a choice, and the Employer is not burdened by language that may compete with other contractual rights (to manage the work force, and to layoff/recall). The Union really presented little, if any, evidence that would support its contention that the change is needed.

The District also makes a good point about the financial burden that could be placed upon it by this language. I see it could be very possible that multi or long term student absences could result in just too many aides for the work available. The clause would function as a guarantee of wages, no mater whether work was performed or not. This would be an unreasonable burden on the District, and probably is not what the Union really had intended (right?).

On this issue of proposed addition of language to the contract covering aides and student absences, I find the Union 1) has not met the burden to show a compelling need; and 2) has proposed language that: a) does not reflect the current practice of the parties, b) might compete or contradict other contractual rights, c) would place an unreasonable burden on the Employer. Thus, I find that the Union's proposal fails to pass the "Reynolds test", is found to be substantially (95/5) unreasonable, and is rejected.

SUMMER SCHOOL WORK

Since this change has been found (p.14) to be *critical*, to be found reasonable, it will require a high degree of proof related to the "Reynolds test" and the relevant Statutory criteria.

The Union believes this addition to the contract is of little consequence. To support its claim of need, it presents evidence that a grievance has been processed relating to this matter in which the Employer admitted not following procedures that had been established in a letter of understanding that the Union now wishes to formalize.

The District questions the intent of the Union's proposed language. The Employer points out a problem with the language as proposed in that the clause would apply only to the summer school program for students, as opposed to any work available during the summer which is performed by 12-month employees. The District believes the Union is giving the language an interpretation other than its literal meaning, which could be problematic in its application.

The District rejects the Union's proposal because it does not maintain the practice of offering work on a departmental basis. The District admits that the past practice has been to offer educational assistants the opportunity to work during the summer school program based on their seniority in the summer school program. But the District points out that the Union seems to be applying its language to non-summer school program work, such a secretarial work (which is not "summer school" work). Work that has been available during the summer (but not related to the "summer school program"), the District explains, has been offered on a seniority basis by department. The Employer argues the Union's proposal will require any "current employee" to be offered work based on seniority, whether or not qualified for the position.

The District adds that if it is concluded that "summer school work" includes all available summer work, the proposed language does not allow the District to employ school year employees who are most suited to perform the available work. The District suggest as an example that the proposed language could require the District to offer a more senior (in summer school program) educational assistant the task of painting classrooms or drafting the attendance report, things that may require specialized skills.

The Employer concludes that the Union's proposal is ambiguous at best, and should be rejected by the Arbitrator.

Discussion: Well, this issue is a bit different than the previous ones in that there appears to be some problems with what the parties are doing with work that is generated during the summer. The record reveals a grievance that was processed regarding some summer secretarial work, and there has been discussion, and disagreement, between the parties regarding the status of a letter produced by the Employer several years ago regarding the summer school program. Hopefully my discussion here will be helpful to the parties in resolving this issue.

First of all, I find that there is a need to clarify this problem. Clearly the parties are frustrated with the situation and a solution (a contract

revision) should be adopted in order to help the parties to assign this work in the summer. The Union has shown that there is a compelling need for a change.

The next question is whether or not the proposed language will remedy the problem. On this point, the District raises serious question as to whether, in fact, the proposed language will do what the Union, and even the Employer, is looking for it to do. I believe that the parties want language in their contract that will cover summer work, including work related to the summer school program, and that will allow for work to be assigned to the most senior employees within certain departments or programs that can efficently accomplish the work. I agree with the Employer that the Union's language does not fulfill those needs. I agree that the terms used in the proposed language (especially "summer school work" and "summer school program") are ambiguous and/or overly restrictive, and do not match what I believe to be the intent of the Union. Simply, I do not think the Union's language will remedy the problem. Indeed, the proposed language may exacerbate the problem by adding unclear language and ambiguous procedures to the contract.

Perhaps the Union wanted to propose something like this:

> All non-school-year work within departments and/or programs will be offered to all current employees. Employees who are qualified to perform such work will be hired on a seniority basis as determined by previous service within a department or program, with credit for years of service within the District being applied in cases of ties.

This language (immediately above), seems to respond to all of the Employer complaints about the Union's proposal. It would probably require notice to be given to all employees when work and/or projects came up (even possibly weekends and breaks), but it would respond to the Union's desire to codify the current summer school program educational assistant assignments, as well as the District's concerns for departmental assignments to qualified employees (secretaries for secretarial work, etc.).

Whether or not the Union intended to propose something different, it didn't. I find the language proposed by the Union on this issue to be ambiguous and not able to meet what I believe to be the intent of the Union and the needs of the parties. I find the proposed language does not remedy the problem. The Union's proposal is substantially (95/5) rejected in favor of the District's status quo position.

CONCLUSION

This case has been a very difficult one because of the number of language issues that contained *critical* changes. Each of these changes, in and of themselves, could have been an arbitration. (And perhaps it would have been better for the parties had they been decided separately.) But combining all these important issue into one arbitration not only made it difficult to decide, *but actually will result in a substantially poorer contract. The challenge has* been to determine which offer will do the least damage.

As it stands, I have concluded the following:

1. On the wages issue (rated at 33%), the Union's offer was found to be slightly favored (60/40) over the Employer's because it placed a undue burden on the Employees because of its uncertainty and instability.

2. Regarding the health insurance (pro-rata hours) issue (rated at 17%), the Union's offer was found to be somewhat (60/40) more reasonable than the District's because there was support among mostly the secondary comparables.

3. For the health insurance (contribution amounts) issue (rated at 5%), the District's proposed language was found to be only an attempt to rid the contact of obsolete language, and it is completely (100/0) preferred over the Union's status quo position.

4. On the layoff/recall issue (rated at 15%), the Employer failed to show adequate need for its proposed change, therefore the Union's position was found to be substantially (80/20) more reasonable than the District's.

5. Regarding the assignments of aides issue (rated at 15%), the Union: 1) did meet the burden to show compelling need, and 2) proposed language that a) did not reflect the current practice of the parties, b) could compete with existing contract rights, and c) would place an unreasonable burden on the Employer. Thus, the Union's proposal failed to pass the change test and was found to be substantially (95/5) unreasonable and was rejected.

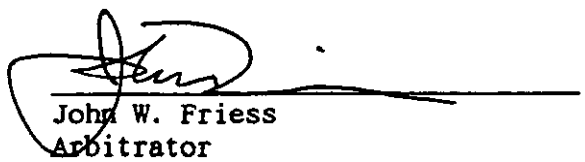
6. And finally, about the summer school work issue (rated at 15%), the Union's proposal is substantially (95/5) rejected in favor of the District's status quo position, because the proposed language was ambiguous and did not meet the intent of the proposing party.

Based upon the reasons stated above, and taking into consideration all the evidence before me, weighing the issues and the statutory criteria, and deciding the reasonableness of each of the parties' proposals on the issues in dispute, I find the District's offer is more reasonable (56/44) than the Union's offer and make the following:

AWARD

The final offer of the Unity School Board, along with the agreed upon stipulations, shall be incorporated into the 1994-96 collective bargaining agreement between the parties.

Dated this 15th day of July, 1995 at Stevens Point, Wisconsin.



John W. Friess
Arbitrator

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering an award under Section 111.70(4)(cm) 7 of the Wisconsin Statutes are as follows:

"(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 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

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

(f) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 and otherwise between the parties in the public service or in private employment."