AUG 31
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

NORTHERN EDUCATIONAL SUPPORT TEAM (NEST)

and

PHILLIPS SCHOOL DISTRICT

Case 43
No. 51350 INT/ARB-7373
Decision No. 28356-A

Appearances: Gene Degner, Executive Director, for the Association
Richard Ricci, Attorney-at-law, for the Employer

The Northern Educational Support Team (NEST), hereinafter referred to as the Association, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that an impasse existed between it and the Phillips School District, hereinafter referred to as the Employer, in their collective bargaining. It requested the Commission to initiate arbitration pursuant to §111.70(4)(cm)6 of the Municipal Employment Relations Act.

At all times material herein, the Association has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all regular full-time and regular part-time educational aides, excluding supervisory, managerial and confidential employees.

In December of 1993, the Association and the Employer exchanged their proposals on matters to be including in an initial collective bargaining agreement between them. Thereafter the parties met on six occasions in an effort to reach an accord. On July 29, 1994, the Association filed a petition requesting the Commission to initiate arbitration pursuant to §111.70(4)(cm)6 of the Municipal Employment Relations Act. On October 24, 1994, a member of the Commission's staff conducted an investigation. On March 24, 1995, the parties submitted their final offers as well as a stipulation on matters agreed upon, and the investigator notified them that the investigation was closed.

The Commission concluded that the parties have substantially complied with the procedures set forth in §111.70(4)(cm)6 of the Municipal Employment Relations Act required prior to an initiation of an arbitration. It determined that an impasse within the meaning of the Municipal Employment Relations Act existed between the parties with respect to the negotiations on an initial collective bargaining agreement covering wages, hours and conditions of employment affecting employees in the bargaining unit. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties and directed that the parties select an arbitrator from the panel submitted by the Commission. The

Commission was advised on April 21, 1995, that the parties had selected Zel S. Rice II, of Sparta, Wisconsin, and it appointed him as the arbitrator to issue a final and binding awarded pursuant to §111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act to resolve the impasse by selecting either the total final offer of the Association or the total final offer of the Employer.

The final offer of the Association, attached hereto and marked "Exhibit 1", provided that the article on employee's rights at paragraph C reads as follows:

> Health concerns of students and about students that could have an adverse affect on either the aides or the student while under the supervision of the aides shall be immediately brought to their attention.

The article on reduction in force should add a paragraph E stating as follows:

> Seniority shall mean the length of the continuous service with the Employer from the employee's last date of hire by the Employer.

The Association proposed another provision in the article on reduction in force that would be paragraph F and it provided that seniority and the employment relationship would be broken and terminated if any employee quit, was discharged or retired. The Association proposed that the article on vacancies and reassignment contain paragraph C and it would read as follows:

> Employees changing positions shall serve a trial probationary period in the new position of 45 working days. If during the trial probationary period the Employer feels the employee is not qualified to continue, the Employer may return the employee to his/her original position.

The Association proposed that the article on assignment, workload and hours include the following:

> The workday/week for employees covered by the agreement shall continue as currently in effect. In the event that the board wishes to change the regularly scheduled hours of work, the employee and the Association shall be notified of such change in writing two weeks prior to the implementation date. This two week notice does not preclude changes in hours, overtime or call in time, mutually agreed upon. All employees working five hours or more per day shall receive a duty-free one-half hour lunch break near the middle of their shift. All employee working five or more hours per day shall receive two fifteen minute breaks. All employees working less than

five hours per day shall receive one fifteen minute break.

The Association would also add a paragraph B to read as follows:

> All work over forty hours per week, beyond the fifth day in a week, including Sundays and holidays, shall be paid at time and one-half.

The Association proposed an article with respect to fringe benefits providing as follows:

> The Employer would contribute 100% of the single health and dental insurance premiums for all bargaining unit members working thirty hours or more hours per week and who request such benefits. These would be twelve month benefits. It would provide that bargaining unit members working less than thirty hours but at least twenty hours per week could receive their health and dental insurance benefit on a pro-rated basis. The Employer's contribution would be pro-rated off 33.33 hours per week as a full week. It would also contain a provision that if it was acceptable to the insurance carrier, bargaining unit employees could pay the difference to have coverage for their families. The Association would prohibit the Employer from changing the insurance carrier during the term of the agreement without the mutual consent. The article also provided that it would become effective on the first of the month 30 days following the arbitration award for bargaining unit members who are not presently enrolled but wish to be enrolled. For those bargaining unit members already enrolled the cost of such benefit would be computed on the basis of the new language from July 1, 1994.

The Association proposed that the Appendix to the new contract include a provision that there would be two wage levels for employees. Level 1 would include classroom aides and clerical aides and would provided an hourly rate of $6.92 for the 1994-1995 school year, $7.75 for the 1995-1996 school year and $8.10 for the 1996-1997 school year. Level 2 would include employees in the classifications of EEN, IMC and GT. The wage schedule would provide that employees start at 88% of the rate of the class to which assigned. After six months, the employee would receive 90% of the rate of the class to which assigned. After twelve months, the employee would receive 92% of the rate of the class to which assigned. After eighteen months, the employee would receive 94% of the rate of the class to which assigned. After twenty-four months the employee would receive 96% of the rate of the class to which assigned. After thirty months, the employee would receive 98% of the rate of the class to which assigned. After thirty-six months,

the employee would receive 100% of the rate of the class to which assigned.

The Association's proposal also provided that the pay schedule of Appendix A and the rate of pay would be implemented to provide that for the 1994-1995 school year employees hired before or at the start of the school year would receive 1/3 of the difference between their present rate and the $8.25 or $8.10 per hour and their 1993-1994 hourly rate starting July 1, 1994. For the 1995-1996 school year, employees hired before or at the start of the 1993-1994 school year would get 1/2 of the difference between their present rate and the $8.25 or $8.10 per hour and their 1994-1995 rate added to their 1994-1995 hourly rate for their 1995-1996 hourly rate, effective July 1, 1995. For the 1996-1997 school year employees hired before or at the start of the 1993-1993 school year would receive the full $8.25 or $8.10 per hour rate of pay, effective July 1, 1996. Employees hired after the start of the 1993-1994 school year would be placed at the appropriate step of the salary schedule and progress through it. The Employer opposed all of the proposals of the Association either outright or proposed its own provisions.

The Employer's proposal, attached hereto and marked "Exhibit 2", proposed that the article on management's rights would contain a paragraph L, providing that the Employer could contract out for goods and services.

The Employer's proposal would require that a paragraph C be added to the grievance procedure providing that probationary employees would not have access to the grievance procedure. It proposed that the article with respect to vacancies and reassignments would provide that employees changing departments would serve a trial period in the new position of forty-five working days and would be paid at the base rate for that trial period. It provided that during the trial period, the Employer could return the employee to his or her original position if the Employer felt he/she was not qualified to continue. The article on vacancies and reassignment would provide that if an employee quit and gave less than two weeks' notice or gave no notice, the Employer would notify the employees of the vacancy and the employees could notify the superintendent in writing of their desire for the new position within forty-eight hours and the applicant would be chosen in accordance with the provisions of the agreement. The Employer proposed that seniority would be by department and would mean that the length of continuous service with the Employer within the department. Classroom aids would constitute one department and EEN, IMC and GT aids would constitute the other department. The provisions stated that seniority would not be diminished by temporary layoffs or leaves of absence. The Employer proposed that wage scales would be determined by the departmental seniority but it would not prohibit the Employer from granting credit for prior experience to employees for time in other

department. It provided that job promotion rights and layoffs/ recall rights associated with certification and qualification would be governed by departmental seniority. The Employer's proposal provided that seniority and the employment relationship would be broken and terminated if an employee quit, was discharged, accepted other employment without permission while on a leave of absence for personal or health reasons or if he/she is retired.

The Employer's insurance proposal provided that it would provide 100% of the cost of single health and dental coverage for nine months for each school year for those employees working at least thirty-five hours per week. Once an employee reached his/her fifth anniversary by the close of the school year, he/she would be entitled to twelve months of coverage. The concept of twelve months' coverage would commence with the summer of 1995. Employees who work less than thirty-five hours but more than twenty hours per week would have pro-rated Employer paid premiums based on thirty-five hours per week as 100% of the single premiums. The number of months that such pro-rated premium would be paid by the Employer would be nine months for those with less than five years of employment and twelve months for those with five years or more of employment. The Employer's proposal contained a provision that if it was acceptable with the insurance carrier, bargaining unit members could pay the difference to have family coverage, provided the employee worked a minimum of twenty-five hours per week. The Employer's proposal provided that it could change the insurance carrier if it elected to do so, provided coverage substantially equivalent to the current plan is maintained. It would be required to notify the Association prior to any change in carrier. The provisions of the insurance article would become effective on the first day of the month 30 days following the arbitration awarded for bargaining unit members who are not presently enrolled but wish to be enrolled. For those bargaining unit members who are already enrolled, the cost of such benefit would be computed on the basis of the above language from July 1, 1994.

The Employer proposed as Appendix A, a salary schedule that provided for two levels of employees. Classroom aids would be level 1 employees and their full rate would be $6.50 per hour for the 1994-1995 school year, $7.00 per hour during the 1995-1996 school year and $7.65 during the 1996-1997 school year. Employees in level 2 would include the EEN, IMC, and GT aids and their 1994-1995 full rate would be $6.80, the 1995-1996 full rate would be $7.30 and for the 1996-1997 they would receive $7.95 per hour. The Employer's proposal was that employees in both levels would start at 88% of the rate of the class to which assigned. After six months, the employee would receive 90% of the rate of the class to which assigned. After twelve months, the employee would receive 92% of the rate of the class to which assigned. After eighteen months, the employee would receive 94% of the rate of the class to which assigned. After twenty-four months the employee would receive 96% of the rate of the class to which assigned. After

thirty months, the employee would receive 98% of the rate of the class to which assigned. After thirty-six months, the employee would receive 100% of the rate of the class to which assigned. The Employer proposed that the pay schedule of Appendix A would be implemented to provide that for the 1994-1995 school year, employees hired before the start of the 1993-1994 would get one-third (1/3) of the difference between their present rate and $7.65 or $7.95 per hour added to their 1993-1994 rate for their new 1994-1995 hourly rate starting July 1, 1994. For the 1995-1996 school year, employees hired before or at the start of the 1993-1994 school year would get one-half (1/2) of the difference between the $7.65 or $7.95 per hour rate and their 1994-1995 rate added to their 1994-1995 rate for their new 1995-1996 hourly rate, effective July 1, 1995. For the 1996-1997 school year, employees hired before at the start of the 1993-1994 school year would receive the full $7.65 or $7.95 per hour rate of pay, effective July 1, 1996. Employees hired after the start 1993-1994 school year would be placed at the appropriate step on the salary schedule and progress through it.

COMPARABLE GROUP

The Association argues that the Lumberjack Conference should be the comparable group used in this particular case. There are six K-12 districts in the Lumberjack Conference including the Employer and a union free high school district. The Association would also include the four elementary districts that feed the union free high school as part of the Lumberjack Conference. The school districts making up the comparable group proposed by the Association, hereinafter referred to as Comparable Group A, are Medford, Ashland, Tomahawk, Northland Pines, Phillips, Park Falls, Minoequa Union High School, Minocqua Joint 1, Arbor-Vitae, Lac Du Flambeau and North Lakeland. Two of the school districts in Comparable Group A do not have school aides organized.

The Employer pròposes a comparable group that includes the seven school districts in the Lumberjack Conference. The school districts in the comparable group proposed by the Employer, hereinafter referred to as Comparable Group B include Ashland, Medford, Park Falls, Tomahawk, Minocqua Union High School and Northland Pines. All of the aides in Comparable Group B are represented by labor organizations except those in Minocqua Union High School and Northland Pines.

The four feeder schools were never included among the comparable school districts that parties used during face-to-face negotiations. Those four feeder schools are elementary facilities and their students all feed into Minocqua Union High School upon completion of their primary education. The average enrollment of the Lumberjack Conference schools is 1518 and the average of the feeder schools is 439. The Employer has an enrollment of 1258. The average number of full-time equivalent teachers in Comparable

Group B is 95.87, while the average of the feeder schools is 31.65. The Employer has a full-time equivalent faculty of 73.70 teachers. Neither the Employer nor the Association relied on the feeder schools during their face-to-face negotiations and have only used Comparable Group B. The Employer falls right in the middle of Comparable Group B in terms of population, enrollment, equalized value per member, and mill rate. Almost all of the unionized school districts in Comparable Group B have separate units for teacher's aides and secretaries. The Employer's teacher's aides unit is separate from its secretaries.

In the two previous arbitrations involving the Employer, Comparable Group B was determined to constitute the appropriate comparable group. The parties relied on Comparable Group B in their direct negotiations. With this background the arbitrator finds Comparable Group B to be the most appropriate comparable group to which the Employer should be compared. On some issues consideration may be given to comparabilities with the other comparable group but the primary comparable utilized will be Comparable Group B.

SUBCONTRACTING

The Employer's final offer includes a provision that gives it the right to contract out for goods or services. The Association's final offer does not include such a provision.

The Association argues that incorporating this language into the collective bargaining agreement is an attempt by the Employer to ignore its obligation to the Association to bargain the impact of its decision to subcontract for any services that have historically been performed by the bargaining unit. It takes the position that giving away that right in the collective bargaining agreement short changes the employees in their ability to have any kind of leverage at the bargaining table when it comes to bargaining the impact of the subcontracting decision. It points out that four of the schools in Comparable Group A do not have any mention of subcontracting and Northland Pine's contract contains a provision that there will be no subcontracting that would cause the layoff of any of the bargaining unit employees. Minocqua Union High School has a similar provision. The Employer contends that Wisconsin case law holds that the impact of a decision to subcontract must always be bargained regardless of whether or not the decision to subcontract is a contractual right. It takes the position that the impact language in its agreement with its bargaining unit represented by AFSCME is merely a restatement of what is required under Wisconsin law. The arbitrator disagrees with the position of the Employer. The language proposed by the Employer for its agreement with the Association would not require it to bargain the impact of any subcontracting.

The Employer's proposal on subcontracting is not consistent with the language found in the contract with AFSCME for its custodians, cooks and bus drivers. The school districts in Comparable Group B either do not contain any language giving the Employer the right to subcontract or there is a restriction on subcontracting that would result in the layoff of employees. In only one school district in Comparable Group A or B has the Employer obtained the right to subcontract with no restrictions on it.

Based on the internal and external comparables, the arbitrator finds the Association's position preferable because the Employer's proposal would give it the unrestricted right to subcontract without even bargaining the impact of it. The Employer argues that because of specialized education needs for its employees who are not licensed/qualified, it has found it necessary to contract for early childhood and special education aides. It speculates that there may be the potential for a need for such services in the future. In the event that such a situation should arise, the Employer would have a basis for seeking the right to subcontract. It might also meet with the Association and an agreement could be reached on a way to address the problem. The other school districts in Comparable Group B are able to address problems of that type without having an unrestricted subcontracting provision and there is no demonstrated need for the Employer to have the right to subcontract in its current agreement.

NOTIFICATION OF EMPLOYEES ABOUT STUDENT HEALTH ISSUES
THAT COULD HAVE AN ADVERSE AFFECT ON THE WORKING RELATIONSHIP

The Association is proposing that language is needed in the agreement to bring about some uniformity with regard to employees being notified about student health concerns that would have an effect on their working conditions. It takes the position that there is a need for this kind of information because the employees are working in direct contact with the students and it is the Employer's obligation to see that reasonable uniformity with regard to notification of problems exists. The Association concedes that comparability does not exist in other contracts but takes the position that it has met the burden of proof to establish that such language should be included in the collective bargaining agreement. The Employer argues that the Association's language is totally inappropriate and not a proper issue for inclusion in a collective bargaining agreement. It argues that the Association's health concern proposal is not the appropriate way to address such a situation because it is full of ambiguities and it would be next to impossible for the Employer to be in compliance with it.

The arbitrator finds that there is a need for the language that the Association requests. All it requires is that the Employer keep the employees advised of any health concerns of students that would have an adverse affect on either the aide or

the student while under the supervision of the aide. It seems almost ridiculous that the Employer would be reluctant to agree to such a requirement. It is not ambiguous language. It states very clearly that the Employer need only advise the employees about health concerns that would have an adverse affect on them or the students. If the Employer becomes aware of any health concerns of students that could have an adverse affect on either the aide or the student while under the supervision of the aide, it should immediately be brought to his/her attention. It is difficult to understand why the Employer would oppose establishing a uniform system for notifying the employees in such situations. The fact that a student has a health concern that may have an impact on an employee certainly is a condition of employment and arrangements should be made to notify the employee in such situation. The arbitrator finds the Association's position on this issue to have merit and there is no basis for the Employer not agreeing to provide such information.

PROBATIONARY EMPLOYEE'S ACCESS TO GRIEVANCE PROCEDURE

The Employer is proposing a restriction that does not allow probationary employees to have access to the grievance procedure during their probationary period for any reason. The Association has agreed to permit the Employer to discharge employees during the probationary period of 90 days without just cause. The Employer's proposal would preclude the Association from grieving such items as salary schedule, placement on the salary schedule, reimbursement, overtime, fringe benefits, leaves and other items. The Association argues that the grievance procedure is the mechanism that it has for enforcement of the collective bargaining agreement. It contends that denying probationary employees access to the grievance procedure denies them the right to the protection of the collective bargaining agreement. It asserts that all schools in Comparable Group B except Minocqua Union Free High School, allow employees access to the grievance procedure. Ashland does not allow access for discipline or discharge, but all other contracts allow probationary employees full access to the grievance procedure. The Employer argues that the basis for its proposal is to avoid processing grievances for employees who might not any longer be employed. It contends that the Association's proposal would allow employees to process grievances on nondisciplinary issues even after their discharge. The Employer takes the position that such a requirement wastes its time and resources. It points out that the AFSCME contract with its custodians, cooks and bus drivers contains identical language regarding probationary access to the grievance procedure. As a result, no custodian, cook, mechanic or bus driver can utilize the grievance procedure until after they have completed their probationary period.

The arbitrator rejects the Employer's position denying probationary employees access to the grievance procedure during the period of probation. The Association has agreed to let the

Employer discharge the employees during the probation period without just cause. That is a standard that is followed in many collective bargaining agreements. However, denying the employees access to the grievance procedure for such items as salary schedule, placement, reimbursement, overtime, fringe benefits, leaves and other items is unfair and would permit the Employer to violate the collective bargaining agreement with respect to those employees during the probationary period without permitting them to have any recourse. The Employer points out that its employees covered by the AFSCME agreement have agreed to identical language such as it proposes. It does not mention whether or not its teachers have agreed to such a provision in their collective bargaining agreement. There is no conclusive evidence of an internal pattern denying probationary employees access to the grievance procedure for such items as salary schedule, placement, reimbursement, overtime, fringe benefits and leaves. The external pattern clearly established that the Employer's position on this issue is out of step with the provisions in most collective bargaining agreements and this arbitrator finds it to be unacceptable.

SENIORITY

The Association proposes total district wide seniority as opposed to the Employer's position that all seniority should be departmental seniority. The Association argues that seniority should be the length of service with the Employer regardless of whether the employee works in one department or another. It contends that the Employer's proposal has a chilling effect on employees who seek transfers and reassignments because they know they will lose their seniority if they are accepted for a transfer or reassignment to another classification. The Association takes the position that its proposal recognizes the total service given to the Employer and leaves to other parts of the collective bargaining agreement the methods and procedures by which employees may be transferred or reassigned from one department to another. It asserts that its position is supported by comparable contracts in Comparable Group B. The Employer argues that the two teacher aide departments have very different type of duties and it wants to provide for separate seniority for the two departments in order to preserve the current structuring of its special education programs. It contends that its proposal would enable it to reduce teacher aide hours in a manner that would minimize the impact on its special services programs. The Employer takes the position that its aides are employees with specialized skills. Some of them require certification from the State but classroom aides do not. It argues that from a practical point of view it is appropriate to departmentalize the two groups. The Employer argues that Ashland and Medford both provide for departmental seniority.

It is true that both Ashland and Medford provide for departmental seniority. However, both of those school districts

also provide for district wide seniority. Thus, an employee who transfers from one department to another would not lose all seniority as a result of such a transfer. The employee would still maintain his/her district wide seniority.

The arbitrator rejects the Employer's position that would only recognize departmental seniority. The pattern in Comparable Group B is to recognize district wide seniority that gives credit for continuous service with the Employer. Ashland and Medford also recognize departmental seniority and there are good reasons for it. However, a long term employee should not lose his/her seniority just because he/she transfers to a new position or is promoted to a new position in another department. The fact that some employees in one department may not have the skills to perform in another department are protected by the Employer's contract language with respect to reassignments and filling vacancies in another department. Accordingly, the arbitrator finds the pattern in Comparable Group B supports the position of the Association and is preferable to the proposal of the Employer.

LOSS OF SENIORITY

The Employer's final offer provides for loss of seniority if an employee on a leave of absence for a personal or health reasons accepts other employment without permission. The Association argues that the pattern in Comparable Group B is to be silent on that issue. It contends that the Employer's proposal is punitive and unfounded. The Employer points out that its proposal calls for a loss of seniority only if an employee on a leave of absence accepts other employment without permission. It contends that its proposal is targeted at those employees who accept conflicting employment while on a personal or health leave of absence. The Employer takes the position that it should not be required to hold a position open for an employee on a leave of absence who accepts employment with another school district. It asserts that if an employee is able to accept other substantial employment while on a leave of absence, there was no need for a leave of absence in the first place.

The arbitrator supports the Employer's position on this matter. If an employee obtains a leave of absence for personal or health reasons, he or she should not be able to accept other employment unless the Employer gives permission. There may be reasons why an employee should receive a leave of absence for personal or health reasons and be able to become employed elsewhere. However, it should not be able to do it without the Employer's approval. The pattern in Comparable Group B is for the contract to remain silent on the matter. The arbitrator is satisfied that there is no reason why an employee that it has granted a leave for personal or health reasons should be able to obtain other employment during that leave without the permission of the Employer. The Employer might be willing to permit an employee

on a personal leave or on a leave for health reasons to work somewhere else during the period of that leave but it should have some control over what its employees are doing while on those leaves. This is particularly true when an employee is given a personal leave for health reasons and then accepts employment with another school district.

TRIAL PROBATIONARY PERIOD
FOR TRANSFER AND REASSIGNMENT

The Employer proposes that during a trial probationary period, the employee be paid at the base rate. The Association has made no proposal with respect to this provision contending that it is already addressed under the article dealing with compensation in which the parties have agreed that employees who change categories affecting the wage level shall have the same percentage of the new wage level. The Association argues that the Employer's proposal that employees receive the base rate during their trial probationary period confuses the language already agreed upon to by the parties. The Employer asserts that the AFSCME contract provides for payment of an employee at the probationary rate when he/she changes departments. Neither party makes any further argument with respect to this issue. The arbitrator finds the issue to be of little or no significance and does not find one position to be more favorable than the other. The fact that the Employer has a similar provision in its contract with the bargaining unit represented by the AFSCME tends to support its position and the arbitrator would accept that as a basis for endorsing the Employer's position. However, the issue is of such little significance that it will have no impact on the outcome of this award. It is difficult to understand why the parties could not dispose of an issue of this significance without submitting it to the arbitrator.

POSTING PROCEDURE WHEN AN EMPLOYEE QUITS A POSITION
WITHOUT GIVING AT LEAST TWO WEEK'S NOTICE

The Employer proposes that if an employee quits and gives less than two week's notice or gives no notice, it shall notify the employees of the vacancy and they must notify their superintendent in writing of their desire for the position within forty-eight (48) hours. The Association concedes that in an emergency situation, the Employer would have that right if it indicated to the employees on the initial posting that they had less time than provided for in the collective bargaining agreement. The Employer contends that its proposed language simply allows it to accelerate the posting process in order to fill the position as quickly as possible. The Employer argues that the AFSCME contract contains a similar provision and it needs the language in order to fill a position in an emergency. The Association recognizes the need for the Employer to act promptly to fill the position in an emergency. The arbitrator finds that it is only reasonable to provide the Employer

with language that will enable it to meet an emergency need. Accordingly, he finds the Employer's proposal to be reasonable and should be part of the collective bargaining agreement.

BREAK PERIODS

The Association proposes that employees working five or more hours per day should receive two fifteen minute breaks and all employees working less than five hours should receive one fifteen minute break. The Employer does not propose any specific language to deal with the problem. The Association argues that its proposal reflects the current practice of the Employer. It takes the position that the practice should be spelled out in the collective bargaining agreement. The Association argues that all of the comparable schools provide for breaks. It does not make any proposal about when the breaks should be taken but only provides that the employees be given the breaks at an appropriate time. It points out that all of the school districts in the Comparable Group B provide for breaks either by specific language in the contract or by actual practice. The Employer concedes that almost all teacher aides in Comparable Group B receive two fifteen minute breaks a day. No evidence was presented about the number of hours worked by aides in Comparable Group B to qualify for the breaks that the employees receive. Neither Ashland nor Park Falls has any specific language setting forth break periods. Minocqua Union High School and Northland Pines have no language. Medford has language that allows two ten minute breaks but only for employees working 6 1/2 or more hours per day. Tomahawk's contract provides for two fifteen minute break periods for employees working eight hours per day. The Employer argues that there is no justification for five hour employees to receiving thirty minutes of break time in addition to a thirty minute duty-free lunch break. It is does not want to be specific about break periods because it claims it is not always possible to schedule them. The Employer concedes that it does provide two fifteen minute breaks to its teacher aides whenever possible. It contends that there is no support for the Association's position in the internal comparables. The bargaining unit of employees represented by AFSCME receive a fifteen minute break for each four consecutive hours worked. A five hour employee only receives one fifteen minute break per day as would be required by the Association's offer.

The Association's position reflects the current practice and no evidence was presented that explained why the Employer cannot continue that practice. The Association is requesting a longer break period than some of the other school districts receive and it requests a second break period for employees that may only work five hours. Most of the comparable school district teacher aides work eight hours if they get a second break. The Association's proposal seems to reach quite a distance but it is better than the Employer's proposal, which guarantees the employees nothing. It is not unreasonable for an employee who works four hours to expect a

break sometime during that period. Perhaps an employee should have to work more than five hours before being given a second break but the Employer does not propose that. The Employer's position would give it the discretion of providing employees with a break at a time that is convenient to it rather than assuring the employees that they would have breaks after a certain number of hours worked. The Association's position may be too big of a reach but it is not as bad as the Employer's position which offers no assurance that breaks will be given. The Employer has given breaks in the past without any contractual requirement. However, it does not even agree to continue that past practice. Under the circumstances the arbitrator finds the proposal of the Association to be more reasonable than the position of the Employer because it reflects that actual practice that has existed in the bargaining unit even without a collective bargaining agreement and is consistent with the pattern in Comparable Group B.

OVERTIME

The Association proposes that all work over forty hours per week beyond the fifth day in a week, including Sundays and holidays should be at time and one-half. The Employer presents no language with respect to overtime. The Association recognizes that it is unlikely that overtime would be paid beyond the fifth day in a week or on a Sunday or holiday because the bargaining unit works primarily when school is in session. It contends that it is a reasonable proposal to cover an initial collective bargaining agreement. The Employer argues that the Association's language is nothing more than a reiteration of overtime law. It takes the position that since the payment of overtime is governed by federal law, there is no need to include a proposal in its final offer addressing this issue.

Both parties seem to agree that the employees should receive overtime when they work over forty hours per week. The Association wants such a provision in the collective bargaining agreement while the Employer takes the position that federal law requires it and there is no need to provide it in the collective bargaining agreement. While the Employer's position makes some sense, the arbitrator finds the Association's position to be more favorable. The purpose of a grievance procedure in a collective bargaining agreement is to dispose of issues that might arise out of the employment relationship through the grievance procedure. If there is no provision with respect to the overtime in the collective bargaining agreement, problems that might arise out of the administration of overtime cannot be addressed through the grievance procedure. The arbitrator finds that the positions of both parties have some merit. Ordinarily, he would be inclined to find that the Association's position would be more reasonable because any violations could be handled in the grievance procedure. However, the issue of overtime is such a well-established practice and understood by everyone that there is little reason to suspect

that it will be a problem in the relationship. In the event that it is, bargaining unit employees can call upon the federal law to correct any violations. The issue is not a significant one because the possibility of any violations of the overtime law are quite remote. Under the circumstances, the arbitrator finds very little justification for an argument over the issue and the Association seems to concede the same. The arbitrator finds the positions of both parties have equal merit and the issue will not be a factor in determining the outcome of this arbitration.

PAYMENT OF HEALTH AND DENTAL INSURANCE PREMIUMS

The Association proposes that the Employer contribute 100% of the single health and dental insurance premiums for all bargaining unit members working 30 or more hours per week who requests such benefit and that it be a 12 month benefit. The proposal would provide that bargaining unit members working less than 30 hours but at least 20 hours per week would have their health and dental insurance premiums paid on a pro-rated basis measured against a 33.33 hour work week. The premium would be paid for 12 months. The Employer proposes that employees working 35 hours per week with less than five years of service would have 100% of their single health and dental insurance premiums paid for nine months. Employees working 35 hours a week with five years of service or more would have 100% of single health and dental insurance premiums paid for 12 months. Employees working less than 35 hours per week with less than five years of service would have their health insurance premium paid on a pro-rated basis based on a 35 hour work week for nine months. Employees working less than 35 hours a week with five years of service or more and working at least 20 hours per week would have their insurance premium paid on a pro-rated basis based on a 35 hour work week for 12 months.

The Association argues that its position is favored by most of the schools in the comparable group. All of the school districts in Comparable Group B except Ashland and Minocqua Union High School provide full benefits to 30 hour per week employees. Ashland and Minocqua Union High School only pay full benefits for employees working 35 hours per week. The Association argues that none of the other schools in the comparable group make their employees wait five years before their insurance benefits are paid for the full 12 months. It points out that the Employer pays the full single premium for health and dental insurance for teachers who only work nine months from the first day of employment. It contends that the reasonableness of its position is demonstrated by the fact that it is only requesting a single premium payment by the Employer as opposed to payment toward the family plan as is done in the comparable districts. It contends that the Employers in Comparable Group B are providing health insurance benefits that have double the cost of the benefit requested by the Association for this initial contract. The Association takes the position that employees have a vested interest in the kind of benefits that are

provided by their health insurance and when they bargain a given set of benefits, they should those benefits to continue for the duration of the collective bargaining agreement. It takes the position that the employees expect the benefits they bargained for at the onset of the collective bargaining agreement to continue at least until that agreement expires and the Employer has bargained a change in those benefits. The Association asserts that it can only maintain those benefits by requiring mutual consent to change carriers. It argues that the Employer is attempting to have the right to change the carrier at any time during the term of the collective bargaining agreement if the benefits are "substantially equivalent". It contends that the term "substantially equivalent" is undefined. The Association concedes that Comparable Group B is split on the right of the Employer to change carriers. The Employer admits that its proposal on insurance is not supported by the external comparables. However, it points to the health and dental language for its bargaining unit of cooks, custodians and bus drivers represented by AFSCME. All nine month employees in that bargaining unit are subject to the same five year requirement. All 12 month employees in the bargaining unit represented by AFSCME receive insurance coverage for 12 months without a five year waiting period, but none of the employees in the bargaining unit represented by the Association are 12 months employees. It takes that position that its proposal provides that all of its nine month employees should be treated exactly alike with respect to the five year waiting period. The Employer points out that the Association's proposal would provide teacher aides with immediate 12 month insurance coverage that none of its other 9 month support staff employees receive. The Employer argues that when it comes to benefits such as health and dental insurance, internal comparables deserve far greater weight than external comparables. It contends that in the AFSCME bargaining unit, 12 month employees receive 12 months of insurance coverage and 9 month employees receive 9 months of insurance coverage. After five years of service to the Employer, 9 month employees receive 12 months of insurance coverage. The system of benefit pro-rating is identical to the Employer's offer to the Association. It contends that it is not unreasonable to provide different benefit levels for 9 month employees than 12 month employees. The Employer asserts that it is common to see some fringe benefits pro-rated according to the amount of hours actually worked. Even in Comparable Group B, Park Falls provides 12 month employees with 12 months of health and dental insurance and 9 month employees receive 9 months of health and dental insurance. The Employer concedes that its proposal on health and dental insurance does not provide the same level of benefits received by teacher aides in Comparable Group B but points out that its offer does provide the same level of benefits that is received by its other support staff units in the bargaining unit represented by AFSCME. The Employer asserts that the Association's proposal on insurance treats teacher aides better than any of its other 9 month support staff employees. It takes the position that such a proposal is difficult to justify in the light of the fact

that this is the parties' first collective bargaining agreement. The Employer asserts that there is no justification for awarding a higher level of benefits in a first time contract for the teacher aides.

The arbitrator finds the most merit in the proposal of the Employer. There is no reason why it should provide a better health insurance package to the teacher aides than it provides to its other support staff employees. The thrust of most Employers is to maintain a uniform package of fringe benefits in order to avoid being whip sawed in every negotiation. The internal health and dental insurance benefits received by the Employer's teacher aides should be compared with the health and dental benefits received by the support staff represented by AFSCME. That comparison is a significant fact for the arbitrator to consider. The Employer has established a pattern for support staff with that bargaining unit and its proposal is consistent with it. The Association's health and dental insurance proposal would create a benefit system that would be superior to that of the AFSCME bargaining unit and the Employer cannot agree to it.

Comparisons between professional teacher's bargaining units and support staff in the school district are not necessarily appropriate because of the disparate nature of the two occupational groups. The education requirements, training and expertise and responsibilities of teachers differ significantly from those of teacher aides, even though both groups work directly with students on a school year calendar.

Accordingly, the arbitrator finds the proposal of the Employer with respect to health and dental insurance is preferable to the Association's proposal.

WAGE RATES

The issue here is not the method of how the employees would be compensated or how the current bargaining unit members would fit on the schedule. Rather it is what the actual final rate of employees would be by the time that the bargaining agreement expires at the end of the 1996-1997 school year. The Association does not argue about the beginning rates for the 1994-1995 and 1995-1996 school year, treating them as rather minor items compared to the final rate for the 1996-1997 school year. It takes the position that it makes little difference what the rates are for the 1995-1996 school year because the employees who are new will be on that rate for only one year and then would be moved to the 1996-1997 rate in the final year of the agreement. All current employees would be affected only by the 1996-1997 rates.

The Association points out that the average rate for school districts in Comparable Group A for the 1995-1996 school year is $8.62 per hour and the $8.10 per hour proposed by the Association

for the 1996-1997 school year is $.52 per hour behind the average rate received by teacher aides in Comparable Group A during the 1995-1996 school year. If an average increase of 3% was given to teacher aides in Comparable Group A for the 1996-1997 school year, the teacher aides represented by the Association would be $.78 per hour behind them. The average hourly rate in Comparable Group A for certified aides is $8.80 for the 1995-1996 school year which is $.55 per hour more than the Association is proposing for the 1996-1997 school year for certified aides that it represents. The Association argues that the difference in cost between the Employer's offer and its offer is relatively small considering a first collective bargaining agreement settlement where the Employer is opening itself to exposure based on a single health and dental insurance premium. The Association takes the position that employees should not be penalized by being paid less than standard rates for Comparable Group A employees when they will receive an insurance package that is less than the standard received by Comparable Group A employees.

The Employer argues that its wage offer is a higher increase than has been received by any of its other employees represented by labor organizations. Its support personnel represented by AFSCME received wage increases in the 1994-1995 school year ranging from 2.1% - 3% and their total wages increased by an amount ranging from 2.1% - 4.4%. In the 1994-1995 school year the Employer's teachers received wage increases of 1.1% and total wage increases of 2.13%. The Employer has offered the Association a total wage increase of 7.8% in the 1994-1995 school year and the Association demands a 10.2% increase. In the 1994-1995 school year the Employer would give its custodians, cooks and bus drivers represented by AFSCME a wage increase of 3% and total wage increases ranging from 3.1% to 3.9%. It has not yet reached an agreement with its teachers for the 1995-1996 school year but will give them a total package increase of 3.8%. The Employer is offering the Association a 7.5% increase for the 1995-1996 school year. The Association is asking for 9.6%. The Employer argues that its offer exceeds the percentage increases received by teacher aids in Comparable Group B. It contends that the external wage increases range from 2.5% - 5.75% and its wage offer of $.50 per hour in the 1995-1996 school year amounts to a 7.7% for increase for the level 1 rates and a 7.4% for increase on the level two rates. The $.65/hour it offers in the 1996-1997 school year amounts to a 9.3% total wage increase in level 1 rates and 8.9% increase in level 2 rates. The Employer takes the position that such an offer is generous. It points out that the cents per hour wage increases offered in Comparable Group B for the 1994-1995 school year range from $.15 per hour at Medford during the first semester to $.26 per hour at Tomahawk. Both the Employer and the Association propose to move the bargaining unit employees on to the salary schedule in the 1994-1995 school year. In the 1995-1996 school year, the wage increases in Comparable Group B would range from a low of $.20 per hour at Medford to $.38 per hour at Park Falls. The Employer is offering the bargaining

unit $.50 per hour while the Association is demanding $.83 per hour. In the 1996-1997 school year, none of the school districts in Comparable Group B have reached agreement except Northland Pines, which offered an increase of $.28 per hour. The Employer's proposal would provide its teachers with a $.65 per hour increase in the 1995-1996 school year and a $.35 per hour increase for the 1996-1997 school year. The Employer points out that its offer exceeds the actual dollar increases received by teacher aides in Comparable Group B. Its offer to the certified teacher aide positions exceeds the actual dollar increases received by the internal comparables. The Employer asserts that it has given a degree of catch up to its teacher aides in order to keep their wages in line with the wages of the teacher aides in Comparable Group B. It points out that prior to being represented by the Association, there was no salary schedule for teacher aides. Each teacher aide was paid at a different wage rate. Both parties' final offer provided for incremental placements on their respective salary schedules so that each employee would be fully moved on to the salary schedule by the 1996-1997 school year. As a result, many of the employees were at wage rates above the rates it offers for 1994-1995 and 1995-1996 school years. The Employer contends that its proposal provides the teacher aides with significant individual wage increases in each year of the contract. In the 1994-1995 school year, the wage increases offered by the Employer range from a low of $.15 per hour to a high of $.72 per hour. In the 1995-1996 school year the Employer's proposal provide wage increases from a low of $.15 to a high of $.74 per hour. In the 1996-1997 school year, the Employer's proposal would provide wage increases ranging from a low of $.15 per hour to a high of $.92 per hour. The Employer's final offer provides an actual average hourly wage increase of $.50 per hour in the 1994-1995 school year, $.52 per hour in the 1995-1996 school year and $.54 per hour in the 1996-1997 school year. It points out that when wage rates among external comparables are closely examined, its offer emerges as the more reasonable. It concedes that it is not a wage leader but points out that it would not be the lowest paying school district in Comparable Group B. Park Falls and Medford have always lagged behind the Employer with respect to wage rates while Ashland and Tomahawk have always had significantly higher wage rates. The Employer contends that this can be justified by the fact that both Ashland and Tomahawk are larger districts with fairly sizeable population centers. The same can be said for the Manitowoc Union High School and Northland Pines. The Employer takes the position that it is most closely akin to Park Falls in terms of school district population and location. Park Falls and the Employer are contiguous. Medford's wage rates for teacher aides were below those paid by the Employer in the 1993-1994 and 1994-1995 school years but surpass its offer in the 1995-1996 school year. While it may appear that it drops in rank, the Employer contends that is not actually the case. It asserts that such a loss in rank does not occur in the minimum range comparisons and maximum wage comparisons. The Employer argues that all of the Comparable Group