BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Arbitration of a Petition by

Mineral Point Educational Support Personnel

and

Mineral Point Unified School District

WERC Case 20
No. 54086 INT/ARB-7956
Decision No. 28879-A

APPEARANCES

Marvin A. Shipley, Executive Director, South West Education Association, appearing on behalf of the Mineral Point Educational Support Personnel.

Eileen Brownlee, Esq., Kramer & Brownlee, appearing on behalf of the Mineral Point Unified School District.

I. BACKGROUND

The District is a municipal employer (hereinafter referred to as the "District" or the "Board"). The Mineral Point Educational Support Personnel (the "Auxiliary" or the "Union") is the exclusive bargaining representative of certain District employees, i.e., a unit consisting of all regular full-time and regular part-time non-professional employees of the District. The District and the Union have been parties to a collective bargaining agreement which expired on June 30, 1996. On March 4, 1996 the parties exchanged their initial proposals; after two meetings no accord was reached and the Association filed a petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission, on October 16, 1996, issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the Commission and received the order of appointment dated November 8, 1996. Hearing in this matter was held on January 8, 1997 at the Wisconsin Power and Light facility in Mineral Point, Wisconsin. No transcript of the proceedings was made. At the hearing sworn testimony of witnesses was received and each party had the opportunity to present its exhibits and respond to questions

on them.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule.

II. ISSUES AND FINAL OFFERS

The parties agree that the term of the contract shall be for two years, 1996-97 and 1997-98. The unresolved issues before the arbitrator are:

Subcontracting: The District proposes modifying the management rights provision of the contract to grant it the right to contract for transportation services irrespective of whether those services are being provided by current employees (bus drivers). The union wishes to maintain the status quo which permits the District to contract only for goods and services not provided by current staff members on a regular basis.

Salary: The District proposes to increase the base of the salary schedule for each classification by $.20 for 1996-97, giving each employee a step increase plus $.20. For 1997-98, each classification will receive an increase of $.25 per hour, giving each employee a step increase plus $.25 according to the schedule. The Employer is also proposing that bus drivers receive no increase in the route rate.

The Union proposes for 1996-1997 to increase each cell of the 1995-1996 salary schedule by $.20 per hour; for 1997-1998, to increase each cell of the 1996-1997 salary schedule by $.20 per hour.

Dental/Vision Insurance: The Union proposes an increase in the Employer's contribution to $550 for family and $315 for single rates. The Employer proposes maintaining the current contribution of $500 and $300.

Retirement: The Union proposes to increase the contribution by the Employer to retirement by 0.5% in the second year (1997-98) of the contract. The Employer's offer is to retain the contributions to retirement at the current level.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.70(4)(cm)7:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

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

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

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

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

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

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

IV. POSITION OF THE PARTIES AND DISCUSSION

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the

selection of one of the parties' final offers, that matter will be addressed first.

A. The Comparables

1. The Union

The Union argues that the appropriate comparables are the nine school districts in the athletic conference where wages, hours and conditions of employment are established through the collective bargaining process between organized unions and school districts. The Union has proposed comparables that include all the school support staff unions for which the South West Education Association bargains in southwest Wisconsin and which are also included in the South West Athletic Conference (hereinafter referred to as SWAL). These are:

Boscobel	Iowa Grant	Richland Center
Darlington	Platteville	Riverdale
Dodgeville	Prairie du Chien	Southwestern

Iowa Grant, Prairie du Chien, and Riverdale locals include Bus Drivers in their Collective Bargaining Agreements.

It is the Union's position the comparables it has proposed include a sufficient number to make valid comparisons even if the number of settlements is only partial. Further, arbitral precedent is cited for the proposition that it is inequitable to compare collectively bargained conditions with those that have been established unilaterally by employers. While the wages established unilaterally may reflect the economic viability of an area, they are not as relevant as comparables as wages agreed upon through bargaining.

2. The District

The District has proposed the thirteen school districts which are members of the South West Athletic League (SWAL) as comparable. It cites a prior interest arbitration in which Arbitrator Tyson selected the SWAL as comparables. These are:

Boscobel	Fennimore	Prairie du Chien
Cuba City	Iowa-Grant	Richland Center
Darlington	Lancaster	River Valley
Dodgeville	Platteville	Riverdale
		Southwestern

The Employer maintains that its proposal for comparables is appropriate. Factors considered include geographic proximity, average daily pupil membership and bargaining unit staff, equalized value of taxable property and state aid. Also considered is whether the proposed set of comparables provides a sufficient basis for comparison of settlements, whether or not the proposed comparable district has collectively bargained its agreement, and whether or not a group of comparables has been previously agreed upon between the parties or determined by arbitration (citations omitted).

The District argues that the Union has provided no new evidence to support a change from the comparable group which was determined to be appropriate by the arbitrator two years ago. The District therefore requests that this arbitrator continue to use the SWAL as the comparable group in this matter.

3. Discussion

The arbitrator has carefully considered the arguments of the parties and had also reviewed Arbitrator Tyson's October 13, 1995 award to determine whether there is any reason to deviate from his decision regarding comparables. The District contends that no evidence has been submitted by the Union that would compel this arbitrator to revisit the comparability issue. The arbitrator agrees that once a comparability group is agreed upon, or is imposed by an arbitrator, it serves the parties best to continue its use in order to provide stability in future bargaining. However, in this case, the arbitrator finds that there is a considerable difference in the choice of comparable school districts which the Union has made in the instant case than those it proposed two years ago. Although the District contends that no new evidence has been provided by the Union in support of its proposed group, the argument presented by the Union must be given consideration, particularly

since its present comparability group is part of the athletic conference selected by both the former arbitrator and the District in the present case. The Union cannot be accused of going "forum shopping" by including school districts outside the athletic conference; what it has done is to limit its comparisons to districts within the SWAL whose support staffs are organized and whose wages, hours, and conditions of employment have been bargained for and not unilaterally imposed upon them by the public employer.

Arbitrator Tyson noted that in the case before him that the Union's comparables consisted of 15 groups of support staff for which it bargains: they represented a sufficient number of units, were more similar in size to Mineral Point, were represented by a union, and their common representation by the South West Education Association insured similarity of bargaining unit priorities. Nonetheless Arbitrator Tyson placed greater weight on a subset of eight districts of the athletic conference which the Union had included (Boscobel, Darlington, Dodgeville, Iowa-Grant, Platteville, Prairie du Chien, Riverdale, and Southwest Wisconsin). He stated that the other seven proposed communities which were nearer in size and had bargained contracts, i.e., Benton, Cassville, Blackhawk, Mt. Horeb, Pecatonica, Potosi, and Seneca, were at the geographic outer edges of the athletic conference; little evidence of comparability had been provided. He therefore, declined to include them in the pool of comparables. Arbitrator Tyson also stated that non-union employees exert some influence on the bargain and are not statutorily excluded. He explained his decision to use the athletic conference as the appropriate comparable: "The Arbitrator is inclined to accept the use of the SWAL for purposes of the following comparisons <u>in the absence of evidence in support of an alternative</u>." (Decision No. 28322-A, p. 14, emphasis added).

There is a difference between the comparables proposed by the Union two years ago and the proposed comparables in the present case. In this case, the Union has limited its list of school districts to nine in the athletic league, all of which are represented by labor organizations. Thus the Union has not

gone beyond the athletic conference as it did previously, but has adopted, in part at least, the guidance of Arbitrator Tyson in that regard.

The Employer urges that this arbitrator should continue to use the SWAL as the comparable group in this case. It argues that no new evidence has been presented by the Union in support of its proposed group. Arbitral precedent is cited for those factors normally considered to establish comparability both within and outside the athletic conference: geographic proximity, average daily pupil membership and bargaining unit staff, equalized value of taxable property, and state aid. Other factors often considered include whether the proposed comparables provide a sufficient number of settlements for comparison purposes, whether the proposed comparable district has bargained its agreement, and whether or not a group of comparables was agreed to or imposed upon the parties by arbitration (citations omitted).

The question of the quantum of weight to be placed on limiting comparables to organized school districts is not a new one. There have been occasions when this arbitrator has accepted a combination of organized and unorganized units based upon the specific facts of the case before her. For example in Benton School District, Decision No. 24812-A (1988), neither party's proposed comparables was accepted in toto; the Union's comparables were all organized, but some were too distant from Benton to meet the geographic proximity test. The District's nine comparables included three organized units (which were also among the Union's), and two unrepresented units in the athletic conference located close to Benton. The final set of comparables selected by the arbitrator included five organized units and two unorganized units. The inclusion of the unorganized units had only a minimal impact on the outcome.

In a later case, this arbitrator was faced with a first contract for non-professional employees and the need to establish a structure upon which the parties could build for the future (Merton School District, Decision No. 27568-A, 1993). Arbitrators have often considered the acceptability of

utilizing unorganized units as comparables when the parties cannot agree on language issues. Arbitrator John Flagler's reasoning in Cochrane-Fountain School District, Decision 272344-A is particularly relevant. He said:

> ...While comparisons with nonunion support staffs may provide some limited guidance on the economic package, in the absence of collective bargaining agreements no useful comparisons are possible with non-union school district as to contract language issues. (emphasis added).

The logic of this assertion is particularly applicable in the instant case where the most hotly contested issue is that of changes in the subcontracting provision. The present contract language provides:

> ARTICLE III -- MANAGEMENT RIGHTS
>
> Management retains all rights of possession, care, control, and management that is has by law, and retains the right to exercise those functions under the terms of the collective bargaining agreement except to the precise extent such functions and rights are explicitly, clearly, and unequivocally restricted by the express terms of this Agreement. The rights include, but are not limited by enumeration to, the following rights:
>
> 13. To contract out for goods and those services which are not currently provided by present staff members on a regular basis.

The District has proposed changes in the language as shown in bold type:

> 13. To contract **out** for goods and those services which are not currently provided by present staff members on a regular basis **and to contract for transportation services irrespective of whether or not such services are currently being provided by present staff members.**

In addition to language issues, it is this arbitrator's opinion that the economics of wages and hours are better analyzed in light of what has happened at the bargaining tables of organized school districts than with conditions of employment which have been unilaterally imposed by an employer.

As noted earlier, the District described factors normally considered to establish comparability, e.g., geographic proximity, pupil membership, equalized value and state aid, sufficient number of settlements, whether or not a proposed comparable district has collectively bargained its agreement, et al. The Union cites several awards in which arbitrators have held that it

is inequitable to compare collectively bargained working conditions with those unilaterally imposed by employers. Although the District contends that the decisions cited by the Union were issued before this arbitration, the arbitrator is not persuaded by that argument; good law remains good law regardless of the passage of time and, when circumstances are similar, provide guidance for the decision-maker.

This arbitrator believes that a consideration of union status is necessary to reach a reasoned decision. While the statute is silent as to the role and weight union status is to play in the arbitrator's decision, this factor may be examined under Section 111.70(4)(cm)7.j:

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

The fact that the nine school districts proposed by the Union are included in the District's larger group confirms their acceptability as comparables. Based upon the greater weight of the evidence, the arbitrator concludes that the Union's proposed comparables are the more reasonable and they will therefore form the basis for the following examination of each of the unresolved issues before the arbitrator: subcontracting, salary and fringe benefits (dental/vision insurance and retirement). The comparables shall be: Boscobel, Darlington, Dodgeville, Iowa Grant, Platteville, Prairie du Chien, Richland Center, Riverdale, and Southwestern.

B. Subcontracting

1. The Employer

As noted above the District proposes a change in the management rights section that will allow it to subcontract for transportation services whether or not these services are being performed by current staff members. The District contends that its reason for this proposal is "economic necessity" (District Brief, p. 7).

It is asserted by the District that its financial position compares unfavorably with other districts in the athletic conference. It has the second lowest student enrollment, thus it receives less state aid and must rely on local taxes for a greater percentage of its operating expenses. Compared to other districts, Mineral Point's tax levy has increased and its mill rate decreased by less than 1% while the average in the conference was +14.60%.

The District has had to utilize its fund balance to pay for its operational expenses over the last three years. The available fund balance compares unfavorably with general fund balances in comparable districts (based on the District's comparables (not accepted by the arbitrator) both in dollars (fifth from bottom) and percentage of expenditure (sixth from bottom). Further, because of the timing of receipt of funds, the District has had to borrow over a million dollars to meet its expenses at a cost of $50,000.

The District determined that it could save between $23,000 and $50,000 a year in student transportation by subcontracting for student transportation services. It could then sell its current bus fleet and a building owned by the District which would generate over $200,000 in receipts. The District's financial position requires that it consider every reasonable means available to reduce its operating costs.

The District notes that eight of the comparable thirteen districts that it proposed subcontract their bus services and five provide their own transportation services. Of the five, however, three may subcontract and only two provide limits on the effect of the subcontract on its employees.

It is contended that both the comparables and economic necessity provide sufficient rational for changing the status quo with respect to subcontracting. The District also asserts that with respect to the bus drivers, it is the Union and not the District which is proposing a change in the status quo. The party proposing a change in the status quo has the burden of providing a rationale in support and of providing a quid pro quo. The District has provided a reasonable basis for the proposed change and the comparables

favor its position. Also it is asserted that the District, through its wage proposal, has offered a quid pro quo for its proposal.

2. The Union

It is the Union's position that the present subcontracting language provides standard job security for employees represented by the Union while giving the District flexibility to deal with short-term jobs and special projects. One of the major responsibilities of the Union is to protect the jobs of its members and therefore it cannot agree to a subcontracting clause which would remove all Job Classification VI employees (bus drivers) from the bargaining unit.

The Union claims that the District has not offered a quid pro quo for its offer since the salary packages are so similar that the total package percentages are nearly identical. Arbitral precedent is cited for the proposition that for a quid pro quo to be effective, there must be a meeting of the minds; there must be mutual consideration. The Board has not made any proposal which it characterized as a quid pro quo for a change in the subcontracting language. The Union further challenges a statement made by the District in its initial brief that, with respect to the bus drivers, it is the Union, and not the District, that was proposing a change in the status quo. The Union argues that the District is the moving party to change the status quo of the bus drivers.

The Union asserts that there is cause to doubt the accuracy of figures found in Board exhibits 78 and 79. It points to an error of addition in Board Ex. 78: the total cost of transportation for 1996-97 is $301,027, not $313,027. Further it appears that, based on figures provided to the Union by the Board (Appendix 1 to the Union's brief), the amount of $8065 designated for TSAs is in addition to the $17,698 already included in the cost for 1996-97. In addition, the District has added increases in bus purchases and extra-trip costs to the 1995-96 expenditures and multiplied this by 4% without explanation. The Union perceives this as purposely inflating costs to persuade

the arbitrator that it is more cost efficient to subcontract bus services.

The Union notes that the debt for the current fleet is $90,000 and also asserts that the value of the buses, estimated to be between $117,500 and $180,000 (Board Ex. 79), should be an offset against operating expenses or both the worth and debt should be factored out of the equation.

The Union estimates the cost to the District of continuing to operate the buses in 1996-97 would be the cost in 1995-96, i.e., $237,218, minus the over cost of TSAs of $8,847, plus $10,000 cost for a new bus purchase and approximately $4,000 for the cost of the Union's bargaining package for a total cost of $242,370. This figure is less than the three bids for bus service shown in Board Ex. 78.

In its analysis, the Union states that the District could sell its I-A building for approximately $105,000, which in addition to the sale of the buses, would give it a total one-time receipt in the range of $220,000 to $280,000. If the District is to retain the building for use as a parking garage, there is no need to include the cost of the rented bus garage in its projected costs.

The Union maintains that the District has not proven an "economic necessity" but rather that the data show that the current practice is more economical than any of the bids it received for outside bus services.

Further, it points to the fact that the District, through a referendum, built a new high/middle school which caused an expenditure of over $5 million dollars in the 1995-96 fiscal year. The District deplores the revenue caps but has done nothing to solve the problem; there has been no corresponding referendum on operating costs. It is, in effect, demanding that its employees shoulder the cost for the entire community.

In reference to the nine comparables selected by the Union, four have language substantially similar to the Union's proposal (current language), three have language substantially similar to the Board's offer, and two have

no language on this issue. The comparables favor the Union's position (Union Ex. 5).

3. Discussion

The District has proposed a change in the subcontracting language currently in the collective bargaining agreement, i.e., the status quo, and therefore has the burden of proving the necessity for such a change. In its brief, the district has argued that there is an economic necessity for selling off its fleet of buses, a building contemplated for use as a garage, and for subcontracting bus services for its pupils to a privately-owned company. To that end, the District has sought bids (Appendix 2) and asserts that it could reduce its anticipated transportation costs by between 7.35% and 15.79% (Board Ex. 78). In addition, the bus fleet and building could be sold for an estimated $220,000 to $280,000 which would counteract the depletion of the District's fund balance.

The Union argues that it cannot agree to the change proposed by the District since to do so would result in the termination of the bus driver-members who were recently accreted to the bargaining unit. The Union's position is that District's plan to contract out these services would not result in any meaningful savings in its transportation costs. Further the Union relies on the comparables to support its position that subcontracting language should be retained as it is. Union Ex. 5 shows that of the nine unionized comparables two, Boscobel and Darlington have no language; three, Dodgeville, Richland Center, and Southwestern have language similar to that contained in the Board's final offer; and four, Iowa Grant, Platteville, Prairie du Chien, and Riverdale have language similar to the Union's final offer. It is noted that three of the four districts have their own bus service, i.e., Iowa-Grant, Prairie du Chien, and Riverdale. The arbitrator finds that by a very slim margin, 4 to 3, the comparables support the Union's position.

The present contractual language protects incumbent workers when and if the District decides to contract out; the new language, under the specific circumstances, described above, would result in a severance of the employment relationship between all the bus drivers and the District. This would be a major change in the labor-management relations between the District and the Union and one which must be given serious consideration. Traditionally arbitrators consider whether a need exists (sometimes requiring a "compelling reason for the arbitrator to change the language," Barron County, Krinsky, Dec. No. 16276, 1978), meaning that a legitimate problem exists. A further consideration is whether the moving party has offered a quid pro quo for the change. Arbitrator Sherwood Malamud, in D.C. Everest, (Dec. No. 24678-A, 1988) added another facet to the analysis, i.e., that proof has been established by clear and convincing evidence.

In the case of Northeast Wisconsin VTEA, (Dec. No. 26365-A (1991, Arbitrator Zel Rice stated:

> The arbitrator holds strongly to the view that basic changes in a collective bargaining agreement, such as a change in a salary schedule or a method of reclassifying employees should be negotiated voluntarily by the parties unless there is evidence of a compelling need to change the existing language. In such a circumstance the parties (sic) seeking the change has the burden of demonstrating not only that a legitimate problem exists that requires contractual attention, but that its proposal is reasonably designed to effectively address that problem. (emphasis added).

In the instant case the District's subcontracting proposal continues to provide the job security which employees in the bargaining unit had previously enjoyed with the single exception of one class of employees, the bus drivers, whose jobs would be eliminated if the proposal prevails. The arbitrator must first consider whether there is a compelling need for the District's proposed change. Adopting Arbitrator Malamud's standard, the District has the burden of proof by clear and convincing evidence. The second prong of its proof is whether the proposal is reasonably designed to address the problem. An

additional consideration is whether the moving party, here the District, has offered the Union a quid pro quo. Arbitrators have long held that when a party proposes a significant reformation of a fundamental aspect of the collective bargaining agreement, some concession or trade-of, i.e., a quid pro quo, is offered which would persuade the other party to accept the offer. See, e.g., Stanley-Boyd School District, Dec. No. 26777-A (Baron, 1991). Finally, the Union's assertion that the status quo regarding subcontracting language is supported by the nine comparables will be examined.

Is there a compelling need for a change in the subcontracting provision of the collective bargaining agreement? The arbitrator has examined the data furnished by both parties regarding costing to determine if the District has shown by clear and convincing evidence that an economic necessity exists which compels it to subcontract its bus service. The District claims an inability to pay the increases demanded by the Union without a quid pro quo. Wis. Stats. 111.70(4)(cm)7(c) provides that the arbitrator is to consider "The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement."

In its brief, the District points the low level of the county in terms of economy and population. It is claimed that Mineral Point is in a worse position compared to other school districts in Southwest Wisconsin. Under the revenue cap legislation, the District is prohibited from raising revenues, other than via a referendum procedure. The District argues that it has become concerned because of the need to utilize its fund balance for operational expenses over the last three years. It anticipates the necessity to deplete the fund balance by an additional $40,000 during the 1996-97 fiscal year.

Based upon the data encompassing its thirteen district comparables, the District states that its fund balance compares unfavorably i.e., fifth from bottom in dollars; sixth from bottom in percentage of expenditure. The arbitrator has taken the data from Board Ex. 83 and limited the comparison to the nine selected comparables:

TABLE I

1995-96 Budgeted Fund Balances

DISTRICT	AMOUNT	% OF TOTAL EXPENDITURE
BOSCOBEL	$ 543,000	8.00
DARLINGTON	470,000	7.70
DODGEVILLE	468,000	4.90
IOWA-GRANT	1,147,000	16.30
PLATTEVILLE	2,701,000	20.80
PRAIRIE DU CHIEN	1,555,000	18.90
RICHLAND CENTER	1,543,000	11.20
RIVERDALE	1,284,000	19.20
SOUTHWESTERN	1,100,000	22.90
Median (average)	1,147,000	16.30
MINERAL POINT	863,000	13.60
Deviation from Median	- 284,000	- 2.70

Inspection of Table I, column 1 shows a range in budgeted fund balances from a low of $468,000 (Dodgeville) to a high of $2,701,000 (Platteville), with a median (the average found at the half-way point between nine districts) of $1,147,000 (Iowa-Grant). Mineral Point falls below the average by $284,000. In terms of ranking, Mineral Point is fourth from the lowest in a field of ten.

Column 2, percent of expenditures ranges from a low of 4.90% (Dodgeville) to a high of 22.90% (Southwestern), with a median of 16.30% (Iowa-Grant). Mineral Point with 13.60% deviates from the median by minus 2.70%. It ranks fifth (from bottom) in a field of ten.

Although the District asserts that Mineral Point compares unfavorably in general fund balances with its comparables, by using the unionized comparables, it is found that Mineral Point appears to be in the low average category. The District argues that because it has the second lowest student

enrollment in the conference, it receives less state funding and must rely on local taxes for a greater percentage than any school district in the conference other than Dodgeville. It is further asserted that other districts experienced a reduction in property tax and mill rate over the last three years while Mineral Point did not.

Board Ex. 85 provides the data for the following analysis which has been limited to the nine unionized comparables.

Table II

Equalized Value, Property Taxes, and Mill Rate for 1995.

DISTRICT	EQUALIZED VALUE	PROPERTY TAXES	MILL RATE
BOSCOBEL	107,989,000	1,831,000	16.95
DARLINGTON	150,732,000	2,391,000	15.87
DODGEVILLE	330,138,000	5,826,000	17.65
IOWA-GRANT	130,383,000	2,457,000	18.85
PLATTEVILLE	323,180,000	4,838,000	14.57
PRAIRIE DU CHIEN	225,111,000	3,471,000	15.42
RICHLAND CENTER	266,757,000	5,182,000	19.42
RIVERDALE	131,844,000	2,499,000	18.96
SOUTHWESTERN	102,366,000	1,698,000	16.58
Median	150,732,000	2,499,000	16.95
MINERAL POINT	142,484,000	2,944,000	20.66
Deviation (+/-)	- 8,248,000	+ 445,000	+ 3.71

These data show that Mineral Point's equalized value is below the average as measured by the median, its property taxes exceed the average, and its mill rate exceeds the average. In terms of ranking in a field of ten, Mineral Point is fifth from the lowest in equalized value, is sixth from the lowest in property taxes, and is the highest in mill rate.

While these data comport with the District's belief that Mineral Point's financial position compares unfavorably with other districts in the SWAL conference, the arbitrator does not agree with the District's argument that

this finding demonstrates "economic necessity." Nor does the District's contention that it is forced to borrow close to $1,300,000 to meet its expenses in a timely manner, thus costing the District $50,000 in interest, lead to that conclusion. Borrowing funds by school districts because of delayed funding is common. The need to borrow money is an unfortunate reality and the cost of borrowing no doubt would be better spent on services to students. Nonetheless the arbitrator is not persuaded that this evidence supports the District's economic necessity argument.

The District has calculated that it could save between $23,000 and $50,000 a year if its bus service were to be subcontracted. The Union claims, based on its calculations, that it would be less expensive to continue the operation as it is. The parties, in their reply briefs, concede that arithmetic errors were made, however, each reiterates the correctness of their basic data. It is difficult for the arbitrator to reach a conclusion as to the accuracy of the financial analyses provided by both parties and therefore must place greater weight on other considerations.

There does not appear to be clear and convincing evidence that it is an "economic necessity" for the Board to get out of the bus-service business. Rather it is the Board's desire to avoid further depletion of its fund balance to pay for operational expenses each year. The Board appears to believe that it would be prudent economics to turn the service over to a private contractor. Assuming arguendo, that the Board's wish to do so represents a compelling need under the arbitral standard enunciated by Arbitrator Rice set forth above, its goal is to eliminate its bus service, sell off the fleet and building, and subcontract the service to a private company, we turn to the second prong of the status quo analysis.

Is the District's proposal to modify the subcontracting language reasonably designed to deal with the problem? The Union points out the bus drivers were recently accreted to the bargaining unit after an election was conducted by the Wisconsin Employment Relations Commission at the instigation

of the District. The Union implies that the District is trying to rid itself of these employees by fiat since it did not prevail in its opposition to their inclusion in the bargaining unit. This argument has been considered by the arbitrator and it is concluded that there is no evidence in the record which would permit the arbitrator to determine whether the District's motivation in rewriting the subcontracting clause was motivated by union animus. Therefore, if its proposal to eliminate its bus service is based upon a compelling need, then it follows that the proposed language change is a reasonable way for the District to deal with the problem even though it means the termination of Job Classification VI employees. It is now necessary to consider the third prong of the status quo analysis.

What has been offered to the Union as a quid pro quo for the expansion of the District's subcontracting rights? When parties meet at the bargaining table to discuss their respective demands it is not unusual for an impasse to be reached on a certain issue. Depending on how important it is to the moving party to prevail in its position, concessions may be made, trade-offs may occur, and in some cases a buy-out or additional benefit may be offered. The other party will weigh the offer to determine if it is of sufficient value to cause it to, for example, retreat on a position, give back a benefit, or make significant changes in working conditions. As in any contract, there must be mutual consideration and a meeting of the minds. In the instant case the District asserts that its wage offer was the quid pro quo for the change in the subcontracting language. Inspection of the final wage offers of the parties in terms of wages reveals only a small difference; both parties propose an increase in each cell of the salary schedule by $.20 for the 1996-97 school year (the Union's offer includes a $.20 per route increase for bus drivers while the District's does not). In the second year, 1997-98, The Union proposes a $.20 increase in each cell and $.20 per route for bus drivers, while the District proposes $.25, with the exception of the bus drivers. It is noted that each employee beyond probation moves up one step in the salary

matrix. Thus the District asserts that its offer of an increase of $.40 for the first year and $.45 for the second year to each employee except for the bus drivers is not a "catch-up" or keep-up" but is a quid pro quo for expanded subcontracting authority. The increase in wages, standing alone, exceeds the increases in the comparables.

The Union argues that the Board has not made any proposal which it characterized as a quid pro quo. It cites Arbitrator Frederick P. Kessler's discussion regarding the quid pro quo, i.e., something of value given as consideration for another thing. Most relevant for the instant case is this statement: "For a quid pro quo to be effective there must be a meeting of the minds; there must be mutual consideration." Baraboo School District, Case 31, No. 40897 INT/ARB-4986 (1989).

Although the District argues that its wage offer was meant to be the quid pro quo for the expansion of subcontracting authority, the evidence does not support this contention. The arbitrator can find no reliable evidence that the de minimis $.05 increase in each cell for the second year of the contract was presented to the Union as a sufficient trade-off for language which would eliminate an entire classification of employee. The Union wrote in its brief: "The Board has not made any proposals which it has characterized as a quid pro quo for their desire to gut the contract of meaningful subcontracting language (at p. 10).

The arbitrator appreciates the District's wish to reduce its costs of operation. In order to do so, it focused its efforts on its transportation services which it believed could be handled at a lower cost by a private contractor. The arbitrator noted above that the costing data provided by the parties was contradictory and difficult to reconcile. However, even if the District has shown compelling need, and that the means to accomplish its goal of expanding its subcontracting authority by modifying the language of Article III, Management Rights, subsection 13, was reasonable, the District cannot prevail in its plan. As discussed above, the District failed to provide the

necessary quantum of trade-off, the quid pro quo, for the extraordinary concession it was seeking from the Union.

Based on the totality of this record, the arbitrator concludes that the District has not met its burden of proof by clear and convincing evidence that its final offer to revise the subcontracting provision of the management rights section should be adopted. The position of the Union to maintain the present contractual provision on subcontracting is the more reasonable, and it is therefore accepted by the arbitrator. The fact that the comparables support the Union position by four to three is noted but is of lesser consequence in this determination than the failure of the District to provide a quid pro quo.

C. Salary and Fringe Benefits

1. The Union

Salary: For the 1996-97 contract year, increase each cell of the 1995-1996 salary schedule by $0.20 per hour. For the 1997-98 contract year, increase each cell of the 1996-97 salary schedule by $0.20 per hour. For both years, category 6, bus drivers, an increase of $0.20 per route is proposed. The Union seeks to have the Board increase its contribution to retirement to 11.5% in the second year of the contract (1997-98). It is also proposed that the dental/vision family payment be increased to $550 and the single payment to $315.

The Union utilizes the total cost for its "money package" in its analysis; it includes salary, retirement, FICA, health, dental/vision, life and disability insurance (Union Ex. 24-F). The cost for the package in 1996-97 is $31,303 or a 4.44% increase from the previous year; for 1997-98 it is $33,748 or a 4.59% increase from 1996-97.

In its comparison of offers, the Union shows the District's total cost of its offer for 1996-97 to be $29,119, a 4.13% increase. For 1997-98, the District's total package cost is $33,021, a 4.5% increase.

The Union asserts that the traditional arguments relating to the differing positions on money are not appropriate herein because of the

minuscule difference in the amounts of each offer, i.e., $2,911 for two years.

The salary offers differ in the first year because the District did not include the bus drivers. In the second year of the contract, the District's offer is greater than the Union's by $0.05 per hour. it is the Union's position that its lower offer, i.e., $0.20 versus $0.25, represents its willingness to buy the increase in its retirement proposal.

The Union responds to the District's longevity argument by indicating that the offers of both parties maintain the current ranking of Mineral Point in relation to the comparables. Comparing the 1996-97 wage with 1995-96 (based upon figures found in the District's brief) the following conclusions are reached:

Aides: For both years without longevity, the ranking was first; for both years with longevity, the ranking was second.

Head Cooks: For both years without longevity, the ranking was third; with longevity, the ranking was second.

Custodial: For both years without longevity, the ranking changed from ten the first year to nine the second year; with longevity, it was third both years.

Secretarial: Without longevity, the ranking changed from ninth the first year to seventh the second year. For both years with longevity, the ranking was second.

Cooks: Without longevity, it was fourth the first year and fifth the second year. With longevity, it was second the first year and first the second year.

The Union notes that the District failed to include the bus drivers in its data. It is concluded that the District's offer does not "significantly enhance" the salary offer as there is only a slight change from the status quo in both directions.

Retirement: The Union's retirement amount remains the same in the first contract year. The Union has proposed to increase the Board's contribution by 0.5% in the second year. This would increase the retirement amount to 11.5%

for the 1997-98 year. All other employees of the District are part of the Wisconsin Retirement System and are funded at 12.4%. The Union believes that the members of the bargaining unit should be treated equitably; this increase is reasonable in that the Union is not seeking to gain equity in one year. The cost of the Union's offer for 1997-98 is $4,915 versus the District's cost of $2,234.

The Union relies also on the comparables shown in Ex. 7: Darlington, Iowa Grant, Platteville, Prairie du Chien, Richland Center, and Riverdale offer retirement contributions above those of the Union's proposal.

Dental/vision program: The present contract provides employees with dental/vision insurance with the District's contribution being $500 for family plan and $300 for single plan per year. The Union seeks to have the District increase the family payment to $550 and the single payment to $315; the District proposes no change in the amount of contribution.

The Union contends that all other Mineral Point employees receive a greater dental/vision benefit than that which the Union is asking for, e.g., teachers receive $625 for family coverage and $340 for single coverage per year for insurance. The Union points out that Mineral Point is the only district to self-fund these benefits and to combine the benefits. Relying on the nine comparable school districts (Union Amended Ex. 6), it is noted that five have no dental or vision insurance; Dodgeville and Platteville have vision insurance included in their health insurance. Separate dental insurance is provided by four of the comparables: Dodgeville, Platteville, Prairie du Chien, and Richland Center.

2. The District

Salary: For 1996-97, the District offers an increase of $0.20 per hour per cell in categories 1 through 5; no increase for bus drivers. In the second year, an increase of $0.25 per hour per cell for categories 1 through 5; no increase for bus drivers.

Although the District contends that there are differences in costing

between the two offers based on utilizing different base costs, it admits that the discrepancies create only a negligible difference. The District also points out that unlike teachers' benchmark comparisons, educational support staff have a wide variance in experience increments, i.e., between 2 and 12 years.

The District argues that the cents per cell increase it is proposing exceeds that of the comparables. The District also admits that at the lower levels of the schedule its wages are lower than the comparables. However, Mineral Point compensates for by this its longevity provision which "backloads" its wages while the comparables do not have such a benefit. Thus the Union's use of benchmarks does not take this into account and it has ignored the impact of the longevity provision. The District explains that its offer of $0.25 per hour in the second year of the contract is a quid pro quo for the subcontracting authority it seeks regarding its transportation service.

The District provides extensive data on the effect of longevity on the wages paid to secretarial, custodial, aides, head cooks, and cooks). Twelve of thirty-six non-bus driving employees were at the longevity-level in 1995-96; by the end of the 1996-97 contract year there will be fifteen. The District concludes that its offer, and that of the Union, does not merely maintain the District's rankings with respect to the comparables, but enhances them. The Union has offered no quid pro quo for this enhancement, therefore, the Board's offer should be preferred over the Union's as to wages.

Retirement: The District contends that there is no support to be found in its thirteen comparables for the proposed increase in the Employer's contribution to the retirement fund (Board Ex. 76).

The Union has argued internal comparables in support of its proposal to increase the retirement contribution, however, the District questions whether evidence on internal comparables was submitted for consideration.

It is also argued that the retirement contribution made by the District must be viewed in light of the other benefits offered by the District. The Union is receiving greater benefits in almost every area and should not therefore complain of deprivation of a benefit increase.

Dental/vision insurance: The District's position is that its current contribution is supported by its proposed thirteen comparables. Mineral Point is the only one of all these districts which offers vision insurance.

Mineral Point's vision and dental insurance is self-funded. There was no evidence or testimony presented which would in any way show that funds provided by the District are inadequate or that the employees' expenses for dental or vision care have increased so that the funds provided by the District are inadequate. The Union has failed to show any justification for an increase in the District's contribution for this benefit.

3. Discussion

Salary: The arbitrator has discussed at length the issue of whether the District's proposal of an increase in each cell by $0.25 in the second year of the contract was a quid pro quo for expanded subcontracting authority and ruled that it was not. Therefore, consideration of the salary offer by both parties must begin with a comparison of Mineral Point's wages with the nine comparable school districts selected above.

The District admits that at the lower levels the wages offered by Mineral Point do not compare favorably with the comparables, but it contends that this disparity is somehow mitigated by the expansive longevity benefits provided to employees when they have completed the twelfth step on the Employee Placement Matrix. The arbitrator has examined the District's wage exhibits very carefully particularly in light of its longevity argument. Board Ex. 2 represents how present employees will be placed on the matrix for 1996-97. To illustrate:

Step	Number of Employees
0	0
1	0
2	4
3	2
4	12
5	2
6	0
7	2
8	0
9	0
10	4
11	5
12	0
L	15

The data show that of 46 employees, 15 receive longevity pay. The District's argument that both offers create a position in which employees outdistance those in the comparables may be correct in terms of the most senior employees, but ignores the fact that the comparable ranks for the remaining work force do not change significantly during the first year of the contract. For purposes of this analysis it is necessary to utilize the District's data (which includes a greater number of districts than selected by the arbitrator as appropriate comparables).

For the second year of the contract, 1997-98, considering longevity, with the District's offer of $0.25 per cell and the Union's $0.20, there is no change in rank in the following categories: Aides remain 1st; Head Cooks, no comparables; Custodial Personnel remain 1st; Secretarial Personnel, remain 2nd; Cooks remain 1st. The arbitrator is not persuaded that the District's argument regarding longevity carries sufficient weight to reach a conclusion that its offer is more reasonable than that of the Union. In this unusual case, both parties have offered the same wage increase for the first year of the contract while the Employer has offered a higher cents per cell increase in the second year. The District's argument that its offer of $0.25 per cell in the second year as a quid pro quo has already been rejected.

The Union's contention that its offer of a lower increase than the District for 1997-98 was its attempt to "buy" an increase in its retirement

plan is not supported by the evidence. As discussed earlier, it is necessary for the parties to have reached a meeting of the minds when a quid pro quo is offered--none was reached in the matter of the expanded subcontracting authority by the District and the record does not show that one was reached in the Union's purported retirement buy-out.

The District's salary offer is estimated to be 4.07% for the first year and the Union's is 4.22%. For the second year, the District's offer is 4.40% and the Union's is 4.05%. Thus, the Union's offer is just 0.15% higher in the first year, while the District's offer is 0.35% in the second year. The differences in these offers, taken alone, are not sufficient to make a determination as to which is more reasonable. Thus the selection of the salary offer of the District or the Union will be determined by which of the parties' final offers is chosen.

Retirement: The present retirement contribution made by the Employer is 11.00% per year. The Union seeks an increase to 11.50% in the second year of the contract. Table III represents the employer contribution for the two years of the proposed contract for each of the comparables.

Table III

Retirement

DISTRICTS	EMPLOYER CONTRIBUTION 1996-1997	EMPLOYER CONTRIBUTION 1997-1998
BOSCOBEL	9.50%	10.75%
DARLINGTON	13.00%	---
DODGEVILLE	8.00%	8.50%
IOWA GRANT	12.40%	---
PLATTEVILLE	12.80%	---
PRAIRIE DU CHIEN	12.90%	Full (more than 12.90%)*
RICHLAND CENTER	12.90%	---
RIVERDALE	12.50%	---
SOUTHWESTERN	09.625%	10.75%
Median	12.50	10.75%
MINERAL POINT: Union District	11.00% 11.00%	11.50% 11.00%
Deviation (+/-):Union District	- 1.25% - 1.25%	+ 0.75% + 0.25%

*For purposes of calculating the median, 12.90% will be used.

Inspection of these data indicate that for the 1996-97 contract year, no change in the amount of employer contribution to the retirement fund is proposed; it stays at 11.00%. The range of comparables is 8.00% in Darlington to a high of 13.00% in Darlington; the median is 12.50%. Mineral Point's 11.00% contribution falls below the median by 1.25%. In terms of ranking in a field of ten, Mineral Point is fourth from the bottom. For 1997-98, there is data for only four districts: Boscobel, Dodgeville, Prairie du Chien and Southwestern. The arbitrator is reluctant to give much weight to so small a sample in her selection of the parties' final offer on retirement for the second year of the contract. The differences between the parties' final offers is relatively small, only one-half of one percent; both Union and Board offers are greater than the few comparables.

The evidence is clear that Mineral Point is below average in the athletic conference in retirement contributions. The Union has made a relatively modest proposal to increase its position in the second year of the contract which, while an improvement, will not reach the average for 1996-97. Further, the Union points to an internal comparable, i.e., other Mineral Point employees who are funded at 12.4%.

The District argues that the Union presented no evidence regarding an internal comparable in these proceedings. The arbitrator finds no such data in Union Amended Ex. 7 and agrees that it would be improper to consider the Union's assertion that other Mineral Point employees receive a greater benefit without a firmer foundation. No weight will be accorded therefore to an internal comparison.

Insofar as the comparables noted above, the Union's final offer appears to be a reasonable attempt to reach equity with its peers, the unionized school districts. The 0.50% increase which it is seeking has been deferred to the second year of the contract. Although the Union claims that its lesser wage offer in the second year was an attempt to buy the increase in retirement contribution, the arbitrator has determined that no quid pro quo existed because there was no meeting of the minds. Nonetheless, the arbitrator concludes what where the comparables are as compelling in showing the inequitable position of the Union, a quid pro quo is not necessary.

It is therefore held that the final offer of the Union on retirement contributions to be made by the District is the more reasonable and it is, therefore, adopted by the arbitrator.

Dental/vision insurance: Mineral Point is the only one of the comparable school districts to offer a specific contribution for vision coverage; Dodgeville and Platteville include coverage in their health insurance plans.

A direct comparison of Mineral Point's costs for both dental and vision insurance with school districts whose costs for dental insurance only are provided, i.e., Dodgeville, Platteville, Prairie du Chien, and Richland

Center, is not feasible.

The Union, in Amended Ex. 6, includes in its list of comparables the Mineral Point Teachers to show that these employees receive a greater benefit than the support personnel, e.g., Vision and Dental: $625 Family; $340 Single. This information was presented during the hearing (Union Ex. 6 and support document with information provided by Marsha Kjelland, District Bookkeeper) and was admitted into evidence without objection. It is therefore appropriate to consider this internal comparable.

Turning to the nine external comparables, however, a different picture emerges. The Union has admitted that five of the nine unionized school districts do not provide either vision or dental insurance (Boscobel, Darlington, Iowa Grant, Riverdale, and Southwestern).

Payments for dental insurance in the four comparables which provide such coverage are as follows:

Table IV

Dental Insurance

DISTRICT	FAMILY PLAN	SINGLE PLAN
DODGEVILLE	$ 624.24	$ 251.52
PLATTEVILLE	594.00	152.72
PRAIRIE DU CHIEN	516.12	219.12
RICHLAND CENTER	572.64	231.60
Median	583.06	225.36
MINERAL POINT: UNION	550.00	315.00
MINERAL POINT: DISTRICT	500.00	300.00
Deviation (+/-): Union	- 33.06	+ 89.64
Deviation (+/-): District	- 83.06	+ 74.64

The data show that the median for the family plan exceeds both the Union's and the District's offer on family plan coverage. For the single plan, Mineral Point is above the median in both offers.

There is a significant difference in the amount of coverage offered the teachers than the support staff. However, the arbitrator is reluctant to place great weight on this finding since there is no evidence in the record which would provide the bargaining history which led to this level of insurance coverage. The teachers could well have been involved in concessions, trade-offs, or other bargaining strategies which resulted in the agreement on insurance; it also may have been the result also of an arbitrator's award. Because of these factors, the arbitrator must decline to base her decision on the internal comparable proposed by the Union.

The data indicate that Mineral Point provides better single coverage and less family coverage than the comparables. The Union has shown no compelling need for the change and the $50.00 difference in family plan contribution does not seem a significant factor when balanced with the more advantageous $70.00 payment for the single members of the bargaining unit. The Union has not indicated that it proposed any quid pro quo for the change. The arbitrator therefore concludes that the status quo proposed by the District is more appropriate and will therefore adopt it.

Other arguments: The district contends that the cost of living indices support the District's proposal. Such indices have been used in comparing final offers where there is a lack of comparable settlement information. The District recognizes that is not the case in the first year of the contract, but points out that there are fewer settled agreements in the second year.

The total package offer of the Union for 1996-97 is 4.29%; the District's is 3.97%. The consumer price index for urban wage earners and clerical workers from February 1995 to February 1996 showed an increase of 2.6% for the U.S. and 3.2% for both small metro and nonmetro areas. The increase for government employees in similar positions falls in the 2.8% - 2.5% range for the year ending June 1996. For all compensation, government employees in schools received increases of 3.1% and 2.9%.

The District concedes that both parties' offers fall above the CPI.

Based upon the District's figures, for 1996-97, the difference between the Union's offer of 4.29% and the District's 3.97% is 0.32%. The offers are virtually identical for 1997-98, Union 4.57% versus the District's 4.50%. Because both offers differ so slightly, and both are above the CPI, the arbitrator places little weight on this factor.

The arbitrator discussed the District's argument regarding its inability to pay for the Union's demands without a quid pro quo in the section on subcontracting above. Admittedly, agricultural communities have suffered economic setbacks over the past several years and this has an effect on the health and viability of communities. Nevertheless, the District went to the voters of the community and received authority to build a new school. The costs related to the operation of the District's schools are important as well and if economies, other than subcontracting its bus service, cannot be found, the administration may find it necessary to seek a solution through other means available.

V. CONCLUSIONS

The arbitrator has made the following findings on the final offers of the parties:

1. COMPARABLES: The Union's proposed comparables comprised of nine unionized school districts are adopted.

2. SUBCONTRACTING: The final offer of the Union to retain the status quo is deemed to be preferable.

3. SALARY: Neither of the parties' final offers on salary is deemed to be preferable.

4. RETIREMENT: The final offer of the Union on contributions to the retirement fund is deemed to be preferable.

5. DENTAL/VISION INSURANCE: The final offer of the District to retain the status quo on contribution to the dental/vision insurance is deemed to be preferable.

Having selected the Union's proposed comparables for purposes of

analysis in this case, the arbitrator finds the Union's final offer on subcontracting and retirement to be the more reasonable. The District's final offer on dental and vision insurance was preferred. Neither party prevailed on the issue of salary. In conclusion, the arbitrator finds the issue of subcontracting and the corresponding final offers to be of greatest import in this arbitration. The Union has prevailed in that matter, and therefore, the arbitrator finds that the Union's final offer is the more reasonable.

VI. AWARD

Based upon the discussion above, the final offer of the Union shall be adopted and incorporated in the parties' Collective Bargaining Agreement for 1996-98.

Dated this 14th day of July, 1997 at Milwaukee, Wisconsin.

Rose Marie Baron

Rose Marie Baron, Arbitrator