

STATE OF WISCONSIN  
ARBITRATION AWARD

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In the Matter of the Interest Arbitration between :  
OSHKOSH AREA SCHOOL DISTRICT :  
and : Re: Case 44 No 54670  
OSHKOSH AREA NON-TEACHING EMPLOYEES ASSOCIATION : INT/ARB-8054  
: Decision No. 29221-A  
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APPEARANCES: For the District: Mr. William G. Bracken of Godfrey & Kahn, Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278.

For the Association: Mr. Andrew J. Phillips of Yates, Bauer, Kindt & Phillips, S.C. , P.O. Box 1338, Oshkosh, Wisconsin 54902-1338.

The Oshkosh Area Non-Teaching Employees Association represents a collective bargaining unit of custodians, maintenance, auxiliary service and clerical employees of the Oshkosh School District. At the time of the hearing there were 93 custodial/maintenance employees and 65 clerical employees in the unit. The parties have maintained collective bargaining relations for many years. Their most recent agreement expired on June 30, 1996. On March 29, 1996 they had exchanged initial proposals on matters to be included in a renewed agreement. They met to negotiate on three occasions after that and on November 27, 1996, the District filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of arbitration. A mediator employed by the Commission met twice with them, on November 7, 1996, and on October 9, 1997. After the latter meeting the parties submitted their final offers as well as a stipulation on matters that had been agreed upon and the mediator declared a deadlock. On November 5, 1997, the Commission declared an impasse within the meaning of Sec. 111.70(4)(cm)6 of the Wisconsin Statutes and submitted a panel of arbitrators to the parties. I was notified of my selection as arbitrator by letter from the Chairperson of the Commission dated February 17, 1998. A hearing was held in Oshkosh on June 24, 1998. The parties presented witnesses and written evidence and were given opportunities to cross examine one another's witnesses. A written record was kept. The parties had agreed to exchange briefs on July 31. Reply briefs were exchanged on August 17. The record is considered closed as of that date.

THE ISSUE

This is a proceeding where the arbitrator is required to choose one entire final offer or the other.

The final offers are appended to this document, the District's final offer as Addendum A and the Association's final offer as Addendum B.

Essentially the District is proposing across-the-board wage increases of 2 percent for the 1996-97

school year and 3.25 percent for the 1997-98 school year. In addition, the District would make a change in Article VIII, Work Schedule, of the labor agreement. At present the final paragraph of that article reads:

After August 31, 1994, if the Board adds up to two custodial positions, it reserves the right to assign said employees to a Monday through Saturday work schedule. These positions will be Fireman I.

The District would change that paragraph to read as follows:

The Board reserves the right to assign custodial/maintenance employees to a Monday through Saturday work schedule, consisting of 5 consecutive days.

The Association is proposing across-the-board wage increases of 3.0 percent for the 1996-97 school year and 2.8 percent for the 1997-98 school year. The Association makes no proposal concerning Article VIII.

#### POSITION OF THE DISTRICT

The parties agree that the primary comparables are Appleton, Fond du Lac, Kaukauna, Kimberly, Menasha, and Neenah. The District emphasizes data purporting to show that 1995 adjusted gross income per capita in Oshkosh (\$30,788) was 16 percent below the average of the comparable communities (\$36,547) and that 1995 average net income per tax return in Oshkosh (\$31,325) was approximately 15 percent below the average for those figures in the comparable communities (\$36,932). None of those other communities were reported to have per capita income figures as low as those reported for Oshkosh. In 1996-97 on an instructional cost basis Oshkosh spent \$4,111 per member. This was exceeded only by Neenah, which spent \$4,295. The average of the other five comparables was \$3943, 4 percent lower than the figure for Oshkosh. The District also emphasized Wisconsin Taxpayers Alliance data in an exhibit purporting to show that Winnebago County residents had the lowest per capita income in the three counties among which the comparable districts are located, the other two being Fond du Lac and Outagamie Counties. But since all of Neenah, and parts of Appleton and Menasha are also in Winnebago County, I have excluded these data from consideration. The same can be said for data the District introduced on county total net property and sales taxes.

Testimony by the District's Assistant Superintendent for Finance indicated that he expected a deficit in the 1998-99 budget of \$494,000. He testified that the District's reserve fund balance was currently about \$4,000,000 and that a reduction of \$494,000 plus the possible further expenditure of about \$90,000, if the Association's final offer were to be adopted in this proceeding, would possibly bring the fund down to less than the 5 percent of total annual expenditures that lenders judge adequate for the best bond rating. Figures introduced by the District indicated that the Oshkosh operating reserve fund percentage (5.9 in 1996-97) was smaller than any other among the comparables but Kaukauna (1.7 percent). All the others were between 10.3 and 15 percent.

The District emphasizes improvements of benefits included in the parties' tentative agreements. These include an improvement in the dollar amount of dental insurance as represented by increased current premiums as well as an increase in the District's contribution to employees' Wisconsin Retirement System accounts. This involved a change from a specified dollar amount to a percentage figure.

The District devotes several pages of its brief to the proposition that its final offer is in the best "interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." (Factor c. of 111.70(4)(cm), Wis. Stats.) Five 1993 and 1995 arbitration reports are quoted, illustrating that many arbitrators gave substantial weight to economic and fiscal factors even before the 1995 addition of factors requiring "greatest weight" and "greater weight."

Data presented by the District indicate that a comparison of other internal District settlements supports the District position in this proceeding. In the 1996-1998 period teachers received salary increases of 6.57 percent and a total package of 7.65 percent, paraprofessionals received salary increases of 4.46 percent, total package of 7.61 percent, administrators received 5.63 salary and 7.61 total package increases. The average increases in the other units have been 5.55 percent in salary and 7.62 percent total package. The District is offering a greater salary increase (6.72 percent) and a greater total package increase (9.26 percent) to this unit than the average or the figures for any of the other units. And although the Association's salary proposal is lower in the second year, its two year aggregate on salary is 7.27 percent and its total package 9.74 percent. The District argues that its own salary offer is a generous 1.27 percent higher than the average salary increase of the other units, the Association's final offer is unreasonable at 1.72 percent higher.

In addition, testimony indicated that the other units had cooperated in an attempt to lower health insurance costs by agreeing that new employees would be required to be covered by a lower cost policy that was introduced in the 1997-98 school year and that current employees could opt for it if they wished. The Association in this proceeding did not agree to what the other representatives had accepted.

The District believes that internal equity in settlements promotes morale in the entire body of employees. Although the District has had to depart somewhat from this in the present proceeding, it argues that its own proposed settlement will promote that objective better than that of the Association.

The Board asserts that nearly all the classifications in this unit have higher rates than their counterparts among the comparables. The Board presented elaborate tables comparing three clerical and six custodial/maintenance classifications for the base year, 1995-96, and for the two years of this prospective agreement (excluding the 1997-98 year for Fond du Lac, which was not settled at the time of the hearing). These figures purported to show the following differences between the Oshkosh rates and averages of the rates among the comparables (parentheses indicate instances where the Oshkosh rate is lower than the average):

Figures are maximum rates with longevity included. Annual dollars

	<u>1996-97</u>	<u>1997-98</u>
School Secretary	1,664	1,836
Office Technical	(134)	765
Account Clerk II	4,858	5,948
Fireman II	1,747	1,518
Fireman I	541	270
Building Custodian III	2,122	1,768
Building Custodian II	1,893	1,685
Maintenance Craftsman II	2,184	187
Janitor II	(187)	(187)

Because it finds that the total annual salaries of members of the Oshkosh unit are so much greater in almost all cases than annual salary figures for the comparable units, the District argues that its percentage wage increase figures are understandably smaller than the percentage figures for which the comparable districts settled. The average percentage increase per cell for custodial/maintenance classifications among the comparables for 1996-97 is 2.86 percent as compared with the District's offer of 2.0 and the Association's offer of 3.0. In 1997-98 the per cell increase for this group among the comparables was 3.5 percent while the final offer of the District is 3.25 and the final offer of the Association is 2.8.

Elsewhere the District argues that comparisons ought to be made in terms of the cost of the total package increase. The total package increase offered by the District in 1997-98 (4.3 percent) is .6 percent higher than the average package offer of the comparables. In 1997-98 the District offer of 5.0 percent is 1.1 percent higher than the average of the comparables. Thus the total District two year increase is shown to be substantially higher than the average total package increase of the comparables.

Another chart presented in the District's brief has figures purporting to show that even with smaller rate increases, if the District's final offer is adopted, all hourly rates among the classifications that have been compared will be higher at Oshkosh except the classification of Janitor II (9 cents lower than the average in 1997-98).

Rates for clerical and custodian/maintenance classifications for Fox Valley Technical College, City of Oshkosh, and Winnebago County were introduced. They purported to show that if the District's final offer is selected, the School Secretary rate will be \$0.99 higher than the average of seven rates selected as comparables and that in 1997-98 Building Custodian III, a representative classification, would be \$1.69 higher than an average of eight rates selected as comparables at Fox Valley, City of Oshkosh, and Winnebago County. Building Custodian II and Maintenance Craftsman II would also be selectively higher.

Comparisons were made in the School Secretary and several Custodian/Maintenance classifications with wage surveys made in the area in 1997. These generally showed area rates to be lower than the rates being offered by the District. The District also pointed out that there are hundreds of qualified applicants for these jobs every year and that turnover is very low, a circumstance indicating the perceived desirability of District employment and general satisfaction with employment conditions on the part of the current employees.

A considerable amount of cost-of-living data was introduced by the District. On this factor it was pointed out that in 1997-98 the District offer is 1.4 percent above the CPI increase whereas the Association final offer is only 1 percent above it. In any case, the two year cumulative offer of the District is well above the increase in the CPI.

There was a 10 percent increase in health insurance premium in 1996 and a 15 percent increase in 1997. This is all part of the cost of the new labor agreement and is all part of the benefits for employees in the unit. Other fringe benefits are very competitive with the comparables and in some instances, for instance, the allowance for accumulation of 190 sick days and the dental insurance plan, better than what is offered at the comparable districts.

The work schedule proposal and the District's position in its support are impelled by circumstances. The number of school and community events scheduled for weekends has increased greatly in the past few years. The cost of overtime work that can be saved by the District's proposal is estimated at about \$23,000. The District believes that its proposal represents a reasonable means of addressing the problem of Saturday overtime. At present it is necessary to assign custodial/maintenance staff for Saturday work on an overtime basis because the labor agreement specifies that "(t)he work schedule shall be Monday through Friday . . ." In the 1994-96 agreement the parties had negotiated a new paragraph stating:

After August 31, 1994, if the Board adds up to two custodial positions, it reserves the right to assign said employees to a Monday through Saturday work schedule. These positions will be Fireman I.

Adding that wording to the agreement demonstrates that the parties recognized the need in those earlier negotiations for scheduling Saturday work on a straight-time basis. But because of low turnover and lack of a need for recruiting in that classification, no new Fireman I positions have been created. As a result, the District believes that more flexibility is needed. Hence the current proposal to change the paragraph quoted above to this:

The Board reserves the right to assign custodial/maintenance employees to a Monday through Saturday work schedule, consisting of 5 consecutive days.

The District makes two specific proposals for how it would administer this new section of the labor agreement. First, instead of paying overtime to an individual custodian/maintenance person because of the need of his presence at a Saturday event, two individuals would be scheduled for Tuesday to Saturday

work, one at each of the two high schools. If they preferred, they could each take the Tuesday to Saturday work week in alternate weeks with another employee. The District asserts that this arrangement would have the advantage of leaving these employees free during part of their eight hours to perform work that could not be performed during the week because of the presence of students. Second, because individual custodians (about 25 of them) are now required to spend about an hour each Saturday checking their schools on an overtime basis, the District would assign two individuals, each to perform this work all day Saturday, thus relieving all the others from work that confines them to the city on Saturday but which lasts only a short time. The District sees other advantages to such a schedule from a safety and training standpoint. Therefore, by assigning only four individuals to a Tuesday to Saturday work week, the District could save a substantial amount of overtime pay while actually increasing the productivity of the work force.

The District argues that its higher wage increase proposal for the 1997-98 school year (3.25 percent as opposed to the Association's 2.8 percent) constitutes an appropriate *quid pro quo* for changing the work week of a limited number of employees. At the hearing, the District introduced exhibits purporting to show that Neenah, Kimberly, Fox Valley Technical School, Winnebago County, and the City of Oshkosh all have provisions allowing them the kind of flexibility that the District proposes here. In sum, the proposal is seen as increasing efficiency, saving on labor costs, improving safety, introducing cross training for the individuals who would encounter different heating systems in the schools they checked, and providing more free time for those employees on a Monday to Friday schedule who have been required to make a one hour check of their schools each Saturday.

POSITION OF THE ASSOCIATION

The Association agrees that the primary comparables are Appleton, Fond du Lac, Kaukauna, Kimberly, Menasha, and Neenah. In those comparisons the Association emphasizes the level of increases that have occurred in 1996-97 and 1997-98. An exhibit was presented that showed the following:

PERCENTAGE INCREASE IN TOP PAY STEP

<u>DISTRICT</u>	<u>1996-97</u>	<u>1997-98</u>	<u>CUM. INCR.</u>
Appleton	3.25	4.0	7.25
Fond du Lac	3.0	Not Settled	
Kaukauna	4.6	3.0	7.6 (Calendar years, 1997 and 1998)
Kimberly	3.5	3.5	7.0
Menasha	3.1	3.4	6.5
Neenah	1.7	3.2	4.9*
<b>Oshkosh (District)</b>	<b>2.0</b>	<b>3.25</b>	<b>5.25</b>
<b>(Association)</b>	<b>3.0</b>	<b>2.8</b>	<b>5.8</b>

\* Special salary supplement of 1 percent to be paid in June, 1998.

The Association asserts that an average of the cumulative percentage increases of the five comparable districts that have settled for 1996-97 and 1997-98 is 6.65 percent, a figure 1.4 percent higher than the District's offer and .85 percent higher than the Association's offer.

The Association presented figures purporting to show that the City of Oshkosh had raised rates 6.5

percent over the 1997 and 1998 two year period and that Winnebago County had raised the rates of courthouse employees by 6.0 percent in that period. These figures exceed both the District and the Association offers in this proceeding.

The Association rejects the internal comparisons on several grounds: (1) Salary increases for the teachers are restricted by the qualified economic offer legislation. (2) The paraprofessionals settlement targeted individual pay increases. (3) This year's low wage increase for paraprofessionals was a *quid pro quo* from the union for the new benefit of partially paid dental insurance. And (4) The Association asserts that historically there has never been a uniform pattern of internal settlement.

In the opinion of the Association it was not possible to make an accurate comparison of rates among the comparables because of the lack of many job descriptions. An attempt was made to achieve comparisons by listing top pay classifications among the comparables. My own judgment concerning these listings was that among the clericals Oshkosh rates are generally higher than the rates for clerical classifications among the comparables. The same could be said for the clerical comparisons with Winnebago County and the City of Oshkosh. Among the custodian/maintenance classifications judgments are harder to make. In these classifications the Oshkosh rates appear to be higher than those at Fond du Lac and Neenah and lower than rates at Kimberly and Kaukauna. The situation is mixed at Appleton and Menasha with the lowest rates at those two comparable districts being higher than the lowest rates at Oshkosh and the highest rates at Appleton and Menasha being lower than the highest rates at Oshkosh. (All comparisons of rates in Association exhibits are at the highest rate for the classification, although not including longevity.)

The Association does not suggest any great differentials in benefits among the primary comparables. Some of the comparable districts have one more holiday. All have either the same or slightly better employer contributions to the Wisconsin Retirement System. The 180 day accrual permitted for sick leave by the District is favorable in the comparisons, but some of the other districts provide an incentive to accumulate sick leave for some sort of payment at retirement. Many of the vacation benefits have different accrual periods, but the Oshkosh policy does not emerge unfavorably in the comparisons. The District's longevity policy is better than most of the comparables. The results are mixed again in comparing health insurance, with these employees contributing 5 percent of the cost of the premium. At three of the comparables the employer pays 100 percent, two of the comparables pay about the same and one pays a smaller percentage than the District. The District's dental insurance policy is equal to the best.

The Association's view is that the District has not shown an inability to pay the cost of the Association's final offer. It calculates its own two year offer to be \$75,313 higher than the District's final offer, although in its brief it seems willing to accept the District's lower estimate of \$65,544. The Association calculates that to be a difference of .55 percent over the two year period of the labor agreement. In the opinion of the Association the District in 1996-97 levied \$12,127 less than the allowable amount. This is an amount unnecessarily added to what the District has termed a deficit.

The Association argues that the District bases its unwillingness to pay on a prospective half million dollar deficit in 1997-98 that would reduce its fund balance below 5.0 percent and cause lending agencies to lower its excellent rating as a borrower. According to Association calculations, using District figures, the fund balance would still be higher than 5.0 percent. The Association pointed out during cross examination at the hearing that the budget figures presented in District Exhibit 62 were dated June 10, 1998, two weeks before the hearing, and had not previously been shown to the Association. The Association's argument appears to imply that these figures had been provided in order for the District to project an air of financial distress for the arbitration hearing. The Association argues that the figures are speculative as to their impact on the school year just beginning. The parties formulated their final offers in November, 1997, long before these figures were available. At that time the figures available to the parties were in the 1997-98 budget. The bargaining was over a prospective two year agreement running from July 1, 1996 to June 30, 1998.

## DISCUSSION

The statutory factor that is to be given "greatest weight" states the following:

In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

The relevant limitation in this proceeding, as referred to above, is the revenue limit imposed upon school districts by the legislature. Although the qualified economic offer does not apply to these employees, the revenue limits place a restriction on how much is available to be spent. Given a limited amount available, the Association naturally wants a larger amount spent upon wages and the District prefers to apply the difference between its offer and the Association offer on other objectives. At the hearing the Assistant Superintendent for Finance introduced a draft summary budget for 1998-99 showing that \$260,000 had been obligated from the 1997-98 budget and that there was a shortfall of \$494,000 in the 1998-99 budget. These sums, along with the estimated \$90,000 cost of accepting the Association final offer (\$65,000 agreed total package difference plus \$25,000 estimated savings in overtime payments), would have to be deducted from the 1998-99 undesignated fund balance. Although the District exhibit (D 16) had a typographical error, testimony indicated that the fund balance in 1997-98 was \$4.2 million.

In presenting a 1998-99 budget draft summary (Exhibit D 62) to support its position on the "greatest weight" factor the District has gone beyond the bounds of this proceeding. We are considering a two year agreement for 1996-97 and 1997-98. That period ended on June 30, 1998. The District has made decisions during the past year that may result in having to use \$494,000 from its undesignated fund balance during the coming school year. It may need to reallocate its funds because of this award, but that does not mean that an arbitrator must accept the District's offer. In this proceeding we are informed that in the 1997-98 budget there was an obligation of \$260,000 that must come out of the undesignated fund balance. The testimony of the Assistant Superintendent for Finance was very clear that the District needed to maintain that fund at not less than 5 percent of total expenditures in order to maintain a favorable loan rating. The fund stands at \$4.2 million. If \$260,000 and \$90,000 (the estimated additional amount the Association's final offer would cost) are deducted from that figure, bringing it down to \$3.85 million, it would still be 5.7 percent of the \$68,085,351 figure presented by the District as the total expenditure in the 1997-98 budget.

The District introduced several series of Wisconsin Taxpayers Alliance data. One series indicated that except for Kaukauna (1.7 percent) among the agreed comparables, fund balances at the other districts ranged from 10.3 percent at Neenah up to 15.0 percent at Appleton. No doubt the District would prefer to have more money in the undesignated fund, but its testimony and its argument emphasized keeping the fund above 5 percent so as to maintain its credit rating.

Other Wisconsin Taxpayers Alliance data included revenue sources (which did not appear to have any particular significance for this proceeding), adjusted gross income per capita (discussed below), and per member instructional expenditures. In reviewing the source of these last data, it appears to the arbitrator that the District has presented the wrong series. Instructional costs include teacher salaries and other instructional expenditures. The source of the data, School Facts 1997, however, states in its introduction on page vi that "comparative expenditures per pupil" is meant to facilitate interdistrict comparisons." That is because those data include other objectives of expenditures besides instruction, some of which are

directly relevant to this proceeding. The document gives a fuller explanation of this in its appendix. At any rate, in the "comparative expenditure per pupil" series Oshkosh, at \$5,968 in 1996-97, rather than being the second highest, as shown in the instructional series, is the lowest among the six comparable districts, which averaged \$6,249.

And although the District made no argument about another series of comparative data that it introduced in its Exhibit 65, those figures (from the Wisconsin Taxpayers Alliance) showed that in 1997 Oshkosh had the second lowest tax levy among the comparable districts. The Oshkosh tax rate was 7.74. Comparable figures were Appleton: 9.51, Fond du Lac: 8.47, Kaukauna: 8.42, Kimberly: 7.04, Menasha: 10.95, and Neenah: 9.50. Although these figures differ from the Department of Public Instruction levy figures presented by the Association, Oshkosh's rank among the comparables is the same.

The portion of the statute quoted above requires that the arbitrator "shall give an accounting of the consideration of this factor in the arbitrator's . . . decision." This is that accounting: Although the statute limits expenditures for teachers by the QEO, it does not limit expenditures on members of this collective bargaining unit. Although the statute limits revenues that may be collected, in this case the District has sufficient funds to cover the cost of either final offer. Based on the testimony presented by the District at the hearing, therefore, consideration of the "greatest weight" factor does not limit me from finding either for the District or the Association.

The next factor is the one to be given "greater weight." This states that:

In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

On this factor the Association's position is puzzling. The Association presented very little data at the hearing. That testimony indicated that, according to Wisconsin Department of Public Instruction data, in 1996-97 the Oshkosh cost per member was lower than five of the six comparable districts. The 1997-98 figures were estimates purporting to show that the Oshkosh figure was lower than four of the comparables. These data are evidently calculated in a different fashion from the data from the Wisconsin Taxpayers Alliance discussed above, but they are generally consistent. They appear to me to be more relevant to the "greatest weight" factor. From the same source comparable mill rates in property taxation were presented. In 1997 the Oshkosh rate was 10.37 while the other six districts averaged 10.89. In 1997 the Oshkosh rate was 9.46 while the average of the others was 10.23. The Association presented no argument in its initial brief to support its position on the "greater weight" factor. In its reply brief it argued (1) that the monetary difference between the parties (less than .01 percent of the total budgeted expenditure for 1997-98) is so small that the "greater weight" factor is not controlling; (2) that the District has not introduced data applicable to Oshkosh alone; that the data it did introduce made comparisons with the athletic conference school districts and that these data are not described nor contemplated in the description of this factor quoted above; and (3) (here I quote from the Association's reply brief): ". . . the Oshkosh area is not experiencing high unemployment, higher than normal inflation or any layoffs from large employers which would have a direct effect on the communities' economic condition and ability to pay taxes." and (4) (here I quote again from the reply brief): "Since the District failed to provide any information of this nature, it is safe to assume that there have been no economic down turns in the Oshkosh area which would have any bearing on these proceedings."



The Association's reply brief follows with a statement that "(t)he current economic conditions in the Oshkosh area, Fox River Valley area, State of Wisconsin and the nation are a matter of common knowledge. . . (and) economic conditions in Oshkosh, like other Wisconsin cities, have been favorable over the last few years showing low unemployment, inflation held in check, rising incomes and property values." Now this may all be true, but the only data introduced in this proceeding that partially backs it up was produced by the District (D 70) and applies only to the State of Wisconsin, not to any city or region of the state. The Association has provided little factual evidence to support its argument. Nor does the District exhibit cited refer to the "jurisdiction of the municipal employer," i.e., the Oshkosh School District.

On its part the District has provided the per capita income figures for 1995, from the Wisconsin Taxpayers Alliance. These data purported to show that the adjusted gross income per capita figure for Oshkosh in 1995 (\$30,788) was lower than any of the comparable cities, which ranged from \$32,850 at Kaukauna to \$42,477 at Appleton. The District also introduced average net income figures per taxable return from the Wisconsin Department of Revenue, showing comparable figures for the school districts in the athletic conference. In 1995 this figure for the Oshkosh area district was \$31,325, The next lowest was for Menasha at \$33,144. The others ranged upwards to Appleton at \$42,787. In 1996 the Wisconsin Department of Revenue reported \$32,431 for the Oshkosh area. The next lowest figure was \$33,963 for Kaukauna. The others ranged upwards to \$44,308 for Neenah. Oshkosh net income per return increased 3.5 percent from 1995 to 1996. The lowest change among the comparables was minus 1.7 percent for the same period for Appleton. The highest was an increase of 6.4 percent for Neenah.

I agree with the Association that the "greater weight" factor does not call for comparisons of this kind, but these comparisons are almost the only useful data that were provided in this proceeding in support of the "greater weight" factor. Although, as the Association states, current economic conditions in Oshkosh and the Fox River Valley may be common knowledge, I am required to base my analysis and my award upon the evidence provided by the parties to the dispute. Current economic conditions in the Oshkosh area, such as the unemployment rate, increases in the labor force, and the rate of increase in property values, were not furnished by either party. On the factor of "greater weight" the District has provided better data to support its position. Thus its position must be favored.

As to the other factors to be considered, the lawful authority of the municipal employer is not in question. (Factor a.)

The stipulations of the parties are noted. The parties agreed on a slight change in the way the employer contribution to the state retirement fund is calculated and an increase in the dollar amount the employer contributes to the dental plan. Although the differences are trivial, the stipulations favor the District. (Factor b.)

The interest and welfare of the public (Factor c.) no doubt would be improved by a wage increase and consequent expenditure of more funds in the community. But given the revenue restrictions, it would mean that the District would have to reduce spending in some other part of the budget. The influence of these final offers on the interest and welfare of the public can be argued either way. The part of this factor related to the financial ability of the District to meet the costs of the proposed settlement has been largely pre-empted by "7. 'Factor given greatest weight.'" I have stated above that the "Factor given greatest weight" does not limit me from finding either for the District or the Association. The same can be said for Factor c.

Factors d. and e. encompass comparisons with other employees performing similar services in the athletic conference and in the municipality. On these comparisons there is a familiar arbitral dispute about how to make the comparisons. The Association emphasizes comparisons of the percentage wage rate increases granted in the athletic conference districts in 1996-97 and 1997-98 and in the City of Oshkosh and in Winnebago County in 1997 and 1998. Except for the Neenah school district, all these rate increases exceed the District rate increase offer in this proceeding, as shown in a table above. On its part the District argues that the comparisons should be made with the cost of the total package and in this kind of comparison the District offer exceeds the comparables. It appears doubtful that the District could

have measured the total packages of the comparable districts with the same precision that it measured its own. I illustrate from District Exhibit 20: In comparing the 1996-97 settlements the District shows its own per cell increase as 2.0 percent and its total package increase as more than twice that figure, 4.3 percent. Yet it shows the Appleton per cell increase as 3.3 percent and its total package increase for custodians at 3.5 percent, for clericals at 3.28 percent. For Fond du Lac the per cell increase is 3.0 percent and the total package increase is 3.8 percent. Other comparisons are similar. For 1997-98 Oshkosh per cell increase is shown as 3.25 percent and the total package increase as 4.96 percent. For Appleton the figures are puzzling. Per cell increase for custodians is 4.0 percent and total package increase only 3.5 percent. For clericals 1.1 percent per cell increase yields 5.0 percent total package increase. An average of those total package increase figures may yield the same magnitude of differential between wage rate and total package increases that Oshkosh shows for itself. But if the employment figures are anything like the ones at Oshkosh, Appleton has fifty percent more custodian/maintenance personnel than clericals. A footnote notation that health insurance increases are not included can hardly explain why a 4.0 percent wage rate increase has resulted in a 3.5 percent total package increase for custodial employees at Appleton. For Menasha the District reports per cell increases of 3.25 to 3.4 percent increase for custodial employees, which yields a 3.42 percent total package increase. For clericals at Menasha the figures are 3.4 percent per cell increase and 4.0 total package increase. At Neenah the custodial employees received 3.20 per cell increase and 3.73 percent increase for total package. These data leave a strong inference that the District has not measured the total package increases of the comparables as carefully as it has measured its own. Yet the District argues in its brief: "The total package should receive the most weight in this proceeding. The District offer is 1.7 percent above the external settlement pattern." In view of the doubtful nature of the data presented by the District, the Association wage rate increase figures must be considered persuasive.

The District would emphasize a comparison of actual rates rather than increases in rates for the two year period for the reason that according to the District's comparisons its rates are generally higher than the rates in the comparable districts, thus obviating the need for percentage increases as high as those for the comparable districts. But although the District asserts that it was able to compare rates and classifications according to job descriptions, there were actually few job descriptions furnished by the comparable districts. For Appleton, for instance, the descriptions were in job postings dated 1995 and 1996. These and other brief descriptions from other comparable districts were not complete job descriptions. Further complicating the comparisons are the varying annual hours reported for the clericals. Some rates are reported in monthly figures, some are hourly. The District includes longevity in its figures, the Association does not. The District compared classifications in a self-serving manner. The Association compared only wage rates and in a manner that conflicted with District data. On the whole, the comparisons of both parties were hardly useful. After many hours of examining the District and Association data I am satisfied with the following generalizations: After all the increases for the two year period (except for Fond du Lac) clerical rates at Oshkosh are higher than clerical rates at Kaukauna, Menasha, and Neenah. At Appleton (and Fond du Lac in 1996-97) the clerical rates are higher at the lowest maximum level but lower at the highest maximum level than the rates at Oshkosh. Clericals are not organized at Kimberly and their rates appear to be set individually. I made an independent comparison of School Secretary rates. In this clerical classification I conclude that in 1997-98 Oshkosh rates are lower than Appleton (as well as Fond du Lac in 1996-97) but higher than Kaukauna, Menasha and Neenah. It is useless to try to compare Kimberly School Secretary rates.

Comparisons of custodian/maintenance rates have their own difficulties. Although they all work 2080 annual hours, it is not clear from some of the data where particular classifications are placed on the pay scale. My generalization is that Kaukauna rates and Kimberly rates (where custodians are organized) in these classifications are higher than Oshkosh rates, that Fond du Lac rates were lower in 1996-97, and that Appleton, Menasha, and Neenah rates were mixed, with all of those districts higher at the lower maximum levels and lower at the higher maximum levels. Since I was not satisfied with either the District's or the Association's comparisons, I have tried to compare three of the most common classifications. Janitor II is a common classification, a job where the incumbent reports to the principal but likely works with a head custodian. In this classification Oshkosh was lower than four of the comparables but higher than Neenah in 1997-98. Oshkosh was also higher than Fond du Lac in 1996-97. In the Building Custodian II classification, which is the head custodian position in many schools,

Oshkosh was higher than Appleton and Kaukauna (and Fond du Lac in 1996-97) but lower than Kimberly, Menasha, and Neenah. The highest occupied classification at Oshkosh is Maintenance Craftsman II. In this classification Oshkosh is higher than all the other highest classifications except Kaukauna (and also higher than the highest Fond du Lac classification in 1996-97). This generally confirms what I have said at the beginning of this paragraph. Oshkosh custodian/maintenance rates tend to be lower at the lower maximums and higher at the higher maximums. Oshkosh city, Winnebago County, and Fox Valley Center rates do not make appropriate comparisons. Although some of the job titles are the same, neither party made any attempt to compare job descriptions to ascertain the comparability of rates.

Thus the results on the level of wage rates are mixed. Oshkosh rates are not generally higher. They are lower at the maximums for the less skilled classifications and higher at the maximums of the more skilled classifications.

The District asserts that internal comparisons are important. Although the percentage wage and benefit increases for this unit are much higher than the settlements for teachers and paraprofessionals and also higher than increases granted to administrative personnel, this is true whether either of the final offers is adopted. The teachers accepted a 6.57 percent wage increase, the paraprofessionals 4.46 percent, and the administrators 5.63 percent. If those groups were to express injury at a 7.27 percent increase as proposed by the Association, they would probably feel almost as injured at a 6.72 percent increase as proposed by the District.

The Association's position on percentage increase must be favored. It is a toss-up between the two positions on the level of wage rates. There is little difference in terms of benefits. Although the District argues that the Association did not accept the same concession on health insurance coverage at a lesser cost that was accepted by the teachers, the paraprofessionals, and the administrators, the Assistant Superintendent for Finance testified that since the turnover in this unit is very low, there would not have been much saving. The District had received concessions from the other units that require new employees to take the lower cost insurance. He testified that it was not an issue in the bargaining with this unit. (T-52, lines 22 and 23.)

It might be more difficult to make a judgment between the final offers on Factors d. and e. if it were not for the District proposal on the work schedule. This part of the District's final offer colors the proceeding as it relates to the comparables. The District proposal would authorize it to assign any custodial/maintenance employee to a Tuesday to Saturday work week. There is no similar provision among any of the comparable districts.

At Appleton the labor agreement states:

The normal work week for custodians and engineers shall be a three-shift, eight-hour day, Monday through Friday, during the normal school year. Normal shift schedules are as follows: First shift/6:00 AM - 2:30 PM; second shift/2:00 PM - 10:30 PM; third shift/10:00 PM - 6:30 AM. Adjustments in shift times may be worked out between principals and staff. . .

The Fond du Lac provision is as follows:

The normal work day for custodial and maintenance employees shall consist of eight (8) hours per day, Monday through Friday, within one of the shifts listed. Other arrangements can be made when necessary to complete the work in a particular building. Lunch period will be one-half (1/2) hour all year round.

<u>Days</u>	<u>Shift</u>	<u>Hours</u>
		6:00 am - 4:00 pm

Afternoon/Evening	11:00 am - 9:00 pm
Evening/Night	3:00 pm - 1:00 am
Night/Early Morning	11:00 pm - 9:00 am

Neither party submitted a work schedule provision for Kaukauna. The closest wording covering Saturday work was in the article on wages:

All employees shall be paid double time for all hours worked on Sundays and 150% of shift rate for scheduled Saturday work when notified eight (8) hours prior or before completing the previous shift. . .

I interpret that to mean that the regular work schedule for employees is Monday to Friday. If the employee is not notified eight hours prior to completing the previous shift for Saturday work he would get call-in pay in addition to time and one-half for hours worked.

The work schedule at Kimberly provides that:

The District may assign no more than two (2) regular employees to a shift Wednesday through Sunday or Saturday through Wednesday as necessary. Hours will be determined based on scheduled activities and need. Every effort will be made to notify the weekend employees 48 hours in advance of any activities scheduled for each weekend. . .

The Menasha labor agreement does not contain specific wording on the days of the work week. The hours of work provision states:

The work week of regular full-time employees shall consist of the following:

40 hours per week to be worked in five (5) days for a period of time covering the school year calendar as approved by the Board of Education.

Both parties agreed in their briefs that Menasha has a Monday-Friday work schedule.

The Neenah agreement has no specific wording for the work week during the school year. In the Hours of Work article there is the following statement:

The present schedule of hours shall be maintained during the term of this Agreement unless modified by mutual agreement between the Association and the District.

The District added a post-hearing statement that the Neenah school district has two employees on an 11:00 p.m. to 7:00 a.m. schedule, one Sunday through Thursday and one Tuesday through Saturday. It was also said to have one employee on a day hours schedule Saturday to Wednesday. The Association objected to these assertions on grounds that it was hearsay evidence and not reflected in any written evidence from Neenah. I accept the evidence but comment that these appear to be *ad hominem* arrangements covered by the portion of the Neenah labor agreement quoted immediately above.

The District provided an exhibit (D 53) purporting to show that Fox Valley Technical College, Winnebago County, and City of Oshkosh all answered yes to a query as to whether they had a right to schedule Tuesday through Saturday work weeks for custodial/maintenance employees. But there was no evidence from labor agreements, no indication of whether such authority is limited to two or three positions, as it is at Kimberly and Neenah, whether such arrangements are effective only with agreement of the union, as appears to be the case at Neenah, and no job descriptions to show that the employees in question do the same kind of work. This is not probative evidence of a condition of employment.

Indeed, there is no evidence at all among the comparables that any other employer has the blanket

authority to assign Tuesday to Saturday work weeks to any of their custodial/maintenance employees, as thus District is proposing to gain in its final offer. For this reason the evidence weighs heavily in favor of the Association on factors d. and e.

Factor f. calls for comparisons with conditions in private employment in the community and in comparable communities. The District introduced some Department of Workforce Development 1997 wage rate data for some of the job titles in private employment. One survey covered Waupaca, Outagamie and Calumet Counties, the other Winnebago, Green Lake, and Fond du Lac Counties. In Exhibit D 61 the District showed that 148 of the 158 employees lived in Winnebago County, 6 lived in Fond du Lac and Outagamie Counties, and 4 were indeterminate as to what counties they lived in. The domicile statistics imply that most of the employees in this collective bargaining unit do not seek employment over a wide geographic area. The wage rates in Calumet, Green, and Waupaca Counties no doubt dilute the level of rates in the other three counties. Although Factor f. requires that I consider comparisons with Oshkosh and comparable communities, in terms of wage rates Calumet, Green, and Waupaca Counties are not "comparable communities" and the rates presented in D 61 are not useful for making comparisons in this proceeding.

Both parties introduced cost-of-living data (Factor g.). Both final offers are higher than Consumer Price Index figures for the period of the labor agreement. This factor played no part in either party's consideration in making up their final offers.

Factor h. calls for consideration of overall compensation and benefits received by the employees. Because the difference between the offers as to wage rates increases is slight, as are the provisions in the stipulations of the parties, this factor does not need consideration on that score. As it may relate to the District proposal on work week, it is discussed below.

Although the Association sent me a letter dated September 11, 1998, concerning a Wisconsin Retirement Board reduction in employer and employee contributions to its fund, I do not believe that it is the kind of change that should be taken into consideration, since it will affect costs six months after the expiration of the two year agreement in this proceeding. I do not know of any other changes in "the foregoing circumstances during the pendency of the arbitration proceedings" that would affect this award (Factor i.). I have already given my reasons for not considering the data in the District's 1998-99 draft summary budget.

As to "such other factors. . .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 . . ." (Factor j.) I have several comments.

The District proposal that "The Board reserves the right to assign custodial/maintenance employees to a Monday through Saturday work schedule, consisting of 5 consecutive days" is a provision that it could never get in the labor agreement through voluntary collective bargaining. It would give the District *carte blanche* to assign anyone to a Tuesday to Saturday work week. The District argues that it was not able to get the Association to talk about such a provision in the bargaining. But there was already a provision in the existing agreement that allowed the District to assign two employees to a Tuesday to Saturday work week. The District never put it in practice. But since the Association had already made this concession in the previous agreement, and it had never been applied, there was no need for it to agree to discuss the matter in the bargaining over this agreement. At the hearing the District provided a reasonable explanation of the need for a Tuesday to Saturday work week. School and community events on Saturday have increased over the years as has the amount paid in overtime premium. Having some employees work at straight time on Saturdays would reduce what appears to the District as unnecessary premium payments. The District might have proposed that two additional employees work a Tuesday to Saturday schedule in the manner its witness described at the hearing. Instead, it proposed to reserve the right to make such an assignment to any custodial/maintenance employee.

As indicated in the previous paragraph, in testimony at the hearing a District supervisor described how the language may be applied. He stated that four employees might be assigned to Tuesday-Saturday work,

one at each of the two high schools and one at the elementary and middle schools north of the river and one at those schools south of the river. But he did not testify that he had obtained employee consent to such an arrangement. The District does not know whether there would be grievances filed based on affected employees' beliefs that the new paragraph conflicts with paragraphs 1, 3, and 4 of the article. The District does not know whether its new authority to make these assignments would result in more employee turnover. The District does not know whether assignment of high school head custodians to Tuesday-Saturday work may result in calling these skilled employees in for Monday overtime. There are no other districts or jurisdictions among the comparables that have a provision anything like this one. The Neenah and Kimberly agreements allow some variations in the general Monday-Friday work week, but none of the others has any provision at all that varies from the Monday-Friday work week schedule

The District opines that it would make limited use of its new authority. But the Association rightly argues that there is no guarantee that this will happen. The plain wording gives the District authority to make such assignments in any way it wants. The Association points out in its brief that this arbitrator qualified a final offer in a case like this by saying that the employer's final offer was to be adopted and interpreted in accordance with the employer's testimony at the hearing. In that case the union petitioned to have the award vacated on grounds that it did not constitute a final determination of the proceeding. The court agreed and the award was vacated. That decision forecloses any such wording in the award in this case. (La Crosse Professional Police Association v. City of La Crosse, District 4, Case No. 96-2741, Trial Court Case No. 95 CV 510, order affirmed by the Supreme Court, September 3, 1997).

The District argues that its 3.25 percent offer for 1997-98 as opposed to the Association's 2.8 percent offer is a *quid pro quo* in exchange for the change in the work week schedule. But since the District's offer for 1996-97 is only 2.0 percent as compared with the Association's 3.0 percent offer, making a total of 5.25 percent for the District as opposed to the Association's 5.8 percent, the *quid pro quo* argument fails. The arbitrator agrees with the Association position that since the work week proposal is unreasonable, there is no basis for a *quid pro quo*

In this case I must give greatest weight to the state legislation restricting District expenditures and revenues that may be collected. I have explained above why I do not think the "greatest weight" dictates my award one way or the other. As to the factor given "greater weight," I must favor the District for the reason that the Association provided little useful data concerning economic conditions in the jurisdiction of the employer while the District did. However, the "greater weight" factor, along with the stipulations factor (b.), which does not carry much weight, together cannot overcome the consideration that must be given to Factors d., e., and j.

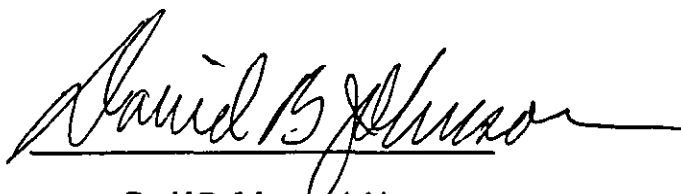
On the wage increases the Association's position is favored. But in terms of "... hours and conditions of employment of the municipal employes involved in the arbitration proceedings," the unconstrained nature of the District's work week proposal makes it the most important issue in this proceeding. While the "greater weight" factor may outweigh any one of the a. through j. factors by itself, it cannot overcome the combined weight of Factors d., e., and j., all of which weigh heavily in favor of choosing the Association's final offer.

AWARD

The Association's final offer is accepted and shall be made effective in the parties' 1996-98 agreement.

Dated: September 16, 1998

at Madison, Wisconsin



David B. Johnson, Arbitrator

ADDENDUM A

OSHKOSH AREA SCHOOL DISTRICT

October 10, 1997

Note: All provisions of the previous contract shall continue in the new contract except for any tentative agreements reached and the final offer below:

1. Wage Increase -  
1996-97 2% across-the-board base wage rate increase  
1997-98 3.25% across-the-board base wage rate increase

2. Article VIII - Work Schedule

Change the last paragraph to read: The Board reserves the right to assign custodial/maintenance employees to a Monday through Saturday work schedule,

consisting of 5 consecutive days.

BH  
10/10/97

1.05 316

JUN 16 1997

**NON-TEACHING EMPLOYEES ASSOCIATION FINAL OFFER  
TO THE OSHKOSH AREA SCHOOL DISTRICT**

All provisions of the previous Collective Bargaining Agreement shall continue in the successor agreement except for the tentative agreements reached (see attached) and the final offer below:

1. Wage Schedule.

1996-1997 3.0% wage increase across the board on each step of the salary grid  
1997-1998 2.8% wage increase across the board on each step of the salary grid

2. All wage and benefit provisions impacted by this offer shall be retroactive to July 1, 1996.

This final offer is submitted on behalf of the Non-Teaching Employees Association and is dated this 13th day of June, 1997.

By:   
ANDREW J. PHILLIPS