RECEIVED
AUG 15 1995
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of: NECEDAH AREA SUPPORT PERSONNEL To Initiate Arbitration Between Said Petitioner and NECEDAH AREA SCHOOL DISTRICT	Case 13 Case 51356 INT/ARB-7374 Decision No. 28259-A Sherwood Malamud Arbitrator Heard: 5/2/95 Record Closed: 6/13/95 Award Issued: 8/14/95

APPEARANCES:

Gerald Roethel, Executive Director, Coulee Region United Educators, 2020 Caroline Street, P.O. Box 684, LaCrosse, Wisconsin 54602-0684, appearing on behalf of the Union.

Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, and Bryan Rach, WASB Membership Consultant, 122 W. Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On February 20, 1995, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between Necedah Area Support Personnel, hereinafter the Union or the Association, and Necedah Area School District, hereinafter the Employer or the District. Hearing in the matter was held on May 2, 1995, at the Administrative Offices of the District in Necedah, Wisconsin, at which time the parties presented testimony and documentary evidence. Initial briefs were exchanged by the Arbitrator on June 5, 1995, and reply briefs were exchanged on June 13, 1995 at which time the record in the matter was closed. Based upon a review of the evidence, testimony and arguments presented by the parties, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

STATEMENT OF THE ISSUES

The parties executed a stipulation of agreed-upon items covering most of the changes for inclusion in the Successor Agreement covering the 1994-95 and 1995-96 school years. The following are the issues outstanding.

Wages

The Union proposes a 25 cent per hour across-the-board for each of the two years of the Agreement.

The Employer proposes a 22 cent per hour increase for the 1994-95 school year, and a 19 cent per hour increase for the 1995-96 school year.

Health Insurance

The Union proposes to increase the Employer contribution for the health and hospitalization indemnity plan and the HMO plan by 1% in each of the two years of the Agreement. The Employer contribution for the indemnity plan would increase from 80% to 81% in the first year of the Agreement, and in the second year, it would increase from 81 to 82% under the Union's proposal. The Union proposes that the Employer's contribution to the HMO plan increase from 88 to 89% in the first year of the Agreement; similarly, it increase from 89 to 90% in the second year of the Agreement.

The Employer proposes no increase in the Employer contribution towards either the health and hospitalization indemnity plan or the HMO plan in the first year of the Agreement. However, in the second year of the Agreement, the Employer proposes to increase its contribution for both plans by 2%.

Health Insurance-Rounding Down

The Association proposes the elimination of the rounding down to the nearest ten dollar provision that appears in Article XVIII of the expired Agreement. The language at issue reads as follows:

> . . . the school board will pay the stated dollar amounts equal to [80%] of the single and family premium <u>rounded down to the next lower $10</u>.

The underlined language would be deleted under the Union's proposal.

The Employer proposes to keep the <u>status quo</u> by continuing the rounding down provision in the successor Agreement.

STATUTORY CRITERIA

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

> 7.Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a.The lawful authority of the municipal employer.
>
> b.Stipulations of the parties.
>
> c.The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> d.Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e.Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
>
> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
>
> g.The average consumer prices for goods and services, commonly known as the cost-of-living.
>
> h.The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
>
> i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
>
> j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the

parties, in the public service or in private employment.

BACKGROUND

The Necedah Area School District is one of eight schools that comprise the Scenic Bluffs Athletic Conference. There are approximately 37 full-time equivalent positions in this bargaining unit; 29 individuals fill these positions, 8 employees each work in 2 capacities. The unit is comprised of building secretaries, custodians, teacher aides, cooks, head cook, and bus drivers. There are 9 Bus Drivers, 3 secretaries; 5 custodians, 1 cook and 3 cook helpers, and 9 aides.

Comparability is an issue in this case. The Union draws an arc equal to the distance from Necedah to Bangor, the latter is the farthest from Necedah. In that arc, the Union identifies 14 school districts in addition to those in the Scenic Bluffs Athletic Conference that it attempts to use as a secondary comparability group.

There are only five year-round employees in this unit. Those employees are custodians and secretaries.

The Employer and Union computation of wage and total compensation increases differ slightly for each year of the two-year agreement. The Employer includes compensation paid in recognition of additional training and the 10 cent per hour premium paid to EEN aides in its computations. The difference between the parties in terms of the calculation of the percentage increases is not significant. The Association calculates that its first year proposal provides a total package increase of 4.69%; its second year proposal, a 4.76% total package increase.

The Employer calculates that the Union's wage proposal generates an increase of 4.11% for the 1994-95 school year and a 4.12% increase for the 1995-96 school year. The Employer calculates that its wage increase amounts to 3.74% for the 1994-95 school year, and 3.42% increase for the 1995-96 school year. The Employer calculates that the total package increase it proposes is 4% for the first year and 4.31% in the second year.

It calculates the total package increase generated by the Union's proposal as 4.55% in 1994-95 and 4.84% in 1995-96.

The difference between the parties' total package proposals stated in a dollar amount over the two years of the Successor Agreement totals $5,651.[1]

DISCUSSION

Introduction

In the discussion that follows, the Arbitrator references the arguments of the parties on each of the issues. The 82 pages of briefs and reply briefs were fully considered by the Arbitrator in the determination of this dispute.

Comparability

Both the Employer and the Union agree that the Scenic Bluffs Athletic Conference schools serve as comparables to Necedah's support staff. Although it provides data concerning the non-organized districts of Cashton and Norwalk-Ontario, it argues that data should receive less weight than wage levels paid by comparable employers whose support personnel are organized. The Employer and the Union agree that the contiguous school districts of Pittsville, Nekoosa, Tomah and Adams-Friendship[2], and Tomah serve as comparables, although the Union places these schools in its more extensive secondary comparability pool. The Employer suggests that the contiguous school districts, Pittsville, Adams-Friendship, Nekoosa, and Tomah may be included together with the Scenic Bluffs Athletic Conference Districts for comparability purposes.

---

[1]At the end of the hearing, the Arbitrator provided the parties with an opportunity to resolve their differences. Shortly before the submission of their initial briefs, the Arbitrator was advised that the Arbitrator would have to determine this matter.

[2]The Employer identifies the contiguous school district of Adams-Friendship as a comparable. The Association believes that the support personnel of that district are not organized. However, those employees are represented by a local of District Council 40, AFSCME. The Association does not object to the inclusion of Adams-Friendship as a comparable.

In addition to the contiguous Districts, the Union includes the following Districts in its secondary comparability pool: Black River Falls, Granton, Stevens Point, Tri-County, Wautoma and Westby. The Union proposes the non-Scenic Bluffs Athletic Conference schools as secondary comparables in this case.

The Union notes the difficulty of comparing the wage levels paid to the various classifications that comprise a unit of support personnel of a school district. The Union notes that the salary schedules among support personnel vary considerably. Some have three or four step schedules, with or without longevity; others have extended schedules, such as the one in Necedah. For that reason, the Union develops an extensive list of secondary comparables to assist and to provide sufficient data on which an arbitration award may be based.

For its part, the Employer argues that a secondary group of comparables is unnecessary. There is sufficient data from the seven Scenic Bluffs Athletic Conference schools and the four additional contiguous districts on which the Arbitrator may base an award.

The Arbitrator reviewed Board Exhibit #60 which details the size and economic resources available to the list of secondary comparables proposed by the Union. Necedah has a student population of 616 students and a full-time equivalency teacher staff of 43.5 teachers. Black River Falls, has a student population of 1,888 students and an FTE teacher staff of 113.6. Stevens Point has a student population of 8,444 students with an FTE teacher workforce of 484.5.

Although a number of the secondary comparables are similar in size to Necedah, the Arbitrator finds that the use of secondary comparables serves no purpose in this case. Some of the secondary comparables are much larger than Necedah. Port Edwards has a greater economic base than Necedah to support its educational program. The Scenic Bluffs Athletic Conference together with the four contiguous school districts of Adams-Friendship, Nekoosa, Pittsville, and Tomah are the districts used by the Arbitrator to serve as a basis for the determination of this dispute. They are geographically proximate to each other to form a labor market for non-professional personnel. These districts fall in a suitable range of size and

economic resources. The Arbitrator concludes these districts are appropriate comparables to Necedah.

The Union takes the position that the non-organized Districts of Cashton and Norwalk-Ontario be considered as comparables, but be given less weight. Where there are sufficient number of comparable employers that establish the market for wages and working conditions, this Arbitrator ignores the data from non-organized units.[3] However, it is difficult to give non-organized units some but less weight in a dispute over wages and health insurance. In the analysis below, Cashton and Norwalk-Ontario are included in the analysis.

WAGES

The Arbitrator uses four major classifications of employees as the basis for comparison between the rates paid by Necedah and those paid by comparable school districts: secretary, aides, cooks, and custodians. The parties did provide data concerning the head cook, various classifications of aides, such as, teacher aides, exceptional education aides, and "general" aides, in the data presented to the Arbitrator at the hearing. Bus drivers comprise a substantial percentage of the employees in this unit, as well as, in comparable units. However, the rates paid to bus drivers vary greatly. Some districts pay their bus drivers by the hour, by the route, or by the month. Necedah employs a formula for projecting the hourly rate into a monthly compensation figure. The Arbitrator concludes that it is too difficult to compare the rates paid to bus drivers. This difficulty is demonstrated, in part, in Chart 1 below. The Chart does not show route rates and rates for driving for special events. The focus of the dispute is not the rates of any particular classification, but the general increase provided to all employees in the unit.

---

[3]See, this Arbitrator's recent Award in Langlade County, Dec. No. 21806-A (3/95) in which the labor market for certain employee classifications was dominated by Employers whose employees were not organized. The Arbitrator used these Employers as comparables.

CHART 1

1993-94 WAGE RANGES SCENIC BLUFFS ATHLETIC CONFERENCE

	Secretary	Aides	Cooks	Custodians	Bus Drivers
Bangor	6.50-8.50	5.50-7.50	5.50-7.50	6.50-8.50	9.25-9.75
Cashton(not organized)	6.66	5.91	8.02	8.14	14.90
E-K-W	7.25-8.75	6.01-7.26	4.93-6.62	6.28-7.73	
Hillsboro	6.36-7.00	5.44-5.99	6.14-6.75	6.60-7.27	15.28
New Lisbon	6.69-7.98	6.69-7.98	6.69-7.98	6.69-7.98	8.88-10.42
Norwalk-Ontario (not organized)	7.40	7.25	6.85	6.65-7.79	686.92-699.16 per month
Wonewoc-Union Center	8.70-9.70	6.50-7.06	6.18-7.18	7.41-8.41	8.88-10.41
Average-@ top	8.00	6.99	7.27	8.12	
Necedah	6.35 -8.00	6.23-7.87	6.23-7.87	7.62-9.26	608.29 /month
Diff. from avg. @ Step 7	-.99	-.10	-.55	+.16	
Necedah Top @ Step 20	8.00	6.23-7.87	6.06-7.71	7.62-9.26	555.45
Diff. from avg. @ Step 20	8.00@ avg.	+.88	+.44	+1.14	

CHART 2

1994-95 RATES @ TOP STEP SCENIC BLUFFS ATHLETIC CONFERENCE

	Secretary	Aides	Cooks	Custodians
Bangor	8.80	7.80	7.80	8.80
Cashton	6.88	6,09	8.26	9.47
E-K-W	9.10	7.61	6.97	8.08
Hillsboro	7.37	6.36	7.12	7.64
New Lisbon				
Norwalk	7.55	No rate	7.00	7.84
Wonewoc-Union Center	10.38	8.17	7.84	9.09
Average	8.35	7.21	7.50	8.49
Necedah Bd. @ STEP 7	7.23	7.11	6.94	8.50
Bd. Diff from avg. @ STEP 7	-1.12	-.10	-.56	+.01
Bd. Rate & Diff from avg. @ STEP 20	8.22 (-.13)	8.09 (+.98)	7.93 (+.99)	9.48 (+.99)
Necedah Assoc. @ Step 7	7.26	7.14	6.97	8.53
Assoc Diff from avg. @ Step 7	-1.09	-.07	-.53	+.04
Assoc Rate Diff from avg. @ Step 20	8.25 (-.10)	8.12 (+1.11)	7.96 (+.46)	9.51 (+1.02)

Chart 1 sets out the 1993-94 range of wages paid by comparable employers to the four classifications contrasted herein. Some of the rates paid to bus drivers are listed, as noted above. The rates reflected in Chart 1 for the base year, 1993-94, are the hire, step 7 and the top, 20-year rate. The Necedah School District wage schedule is uncapped. The wage schedule contained in the expired Agreement and continued in the Successor Agreement, provides a step increase at each of the first 12 steps of the salary schedule. The schedule indicates a step is paid every other year to employees who remain in the District. By agreement of the Union and the Employer, solely for purposes of comparison in bargaining, the parties top out the Necedah schedule at the 20-year level. The Necedah wage schedule is similar to the Wonewoc-Union Center wage schedule in this regard. Since the wage schedule is uncapped and since two of the three secretaries in this unit have been employed by the District for in excess of 20 years, the top wage reflected in Chart 1 and 2, are at the 20-year step. The charts note the wage levels paid for each of the four benchmark classifications contrasted in this Award at step 7 of the Necedah wage schedule. The Arbitrator has selected step 7 as a basis for comparison, because some of the comparable school districts' wage schedules terminate at that level (6 steps + the hire rate). The Employer sets out the Step 5 rates in its analysis. The Arbitrator considered the step 5 wage rates paid by Necedah, as well.

The non-organized units in Cashton and Norwalk-Ontario do not have hire rates, as such. Table 1 in the Employer's brief demonstrates that the rates at this benchmark for the four classifications are: 32 cents above the average for custodian; 9 cents above the average for cook; 8 cents above the average for aide; but $1.00 below the average for secretary.

Chart 1 demonstrates that the Employer wage rates are below average at step 7. However, the wage levels paid to employees with many years of service in the District, exceeds the top rates paid by comparable employers whose schedules top out at a fifth or seventh step.

Chart 1 demonstrates that in the base year, the 1993-94 school year, the top rate paid to secretaries in Necedah at step 20 equaled the average paid by comparable employers whose schedules top out at step 5 or 7. In the other classifications of aides, the Necedah top 20-year rate was 88 cents

above the average of the comparables. In the cooks classification, the top 20-year rate exceeded the top of the comparables by 44 cents. The top rate, the 20-year rate for custodians was $1.14 above what comparable employers pay to their custodians. The long-term employees have an opportunity to earn rates of pay well above the top rate paid by comparable employers.

For the first year of the successor Agreement, the 1994-95 school year, Chart 2 demonstrates that New Lisbon was not settled at the time hearing in this matter was held. Nekoosa does not have an established rate for custodians for the 1993-94 and 1994-95 school years. The cooks classification does not appear in Adams-Friendship for the 1993-94 school year, although a rate does appear for that classification for the 1994-95 school year. The contiguous school districts have all settled for the 1994-95 school year as have six of the seven school districts in the Scenic Bluffs Athletic Conference.

The evidence establishes that for the 1994-95 school year, under the Employer's offer the rates are well below average at steps 5 and 7 as contrasted to the Scenic Bluffs Athletic Conference schools. At the recruiting hire rate, with the exception of secretary, the Employer's proposed rates are close to or above the average. At the top rate, the rate paid to secretaries is 10 cents below the average even at the 20-year step of the Necedah secretary under the Association offer, and 13 cents below the average at the Employer offer.

The difference between the proposed increases of the Union and the Employer for the 1994-95 school year amounts to 3 cents per hour. The Union proposal is preferred at steps 5 and step 7. The Employer's rate is preferred at the top of the schedule, and at the hire rate where it closely approximates the average (with the exception of the secretary classification)[4]. The Union argues that its proposal favors long-term employees. However, long-term employee rates are favored through a percentage across-the-board. A flat cents per hour across the board favors

---

[4]Neither the association nor the Employer make any proposal to specifically address the secretary rates. The difference between the two proposals in the first year of the Agreement is the 3 cent differential.

employees lower on the wage schedule. Both the Employer and the Union proposals are similar, in this regard.

When the average wage level for the 1994-95 school year, inclusive of the contiguous schools is contrasted to the rates paid by Necedah School District, even at the top of the wage schedule, the disparity between the rates paid by the comparables and this Employer at the various classifications, other than secretary, is prominent. The top teacher aide rate in this same comparability grouping of all the comparable districts is $7.67 for teacher aides. The Association rate at step 20 is $8.12. It is $8.09 under the Employer's proposal. The average rate for cooks is $7.62 including the contiguous school districts, as contrasted to $7.50, the average among the Scenic Bluffs Athletic Conference schools. Under the District proposal, it is $7.93, and under the Association offer it is $7.96. Similarly, the average rate paid to custodians by comparable employers in the Scenic Bluffs Athletic Conference is $8.49; it is $8.71 when the contiguous school districts are included in the comparability grouping. Under the District offer @ step 20, it is $9.48, and under the Union offer, it is $9.51.

The comparability data demonstrates that the lower increase, albeit only 3 cents per hour is preferred at the rates paid at the top of the schedule, when Necedah is contrasted to comparable school districts, be they the Scenic Bluffs Athletic Conference schools or those schools together with the four additional contiguous school districts. However, at mid-schedule steps 5 and 7 rates, the higher rates, albeit only 3 cents per hour, are preferred because they are below but closer to the average rate paid by comparable employers in the Scenic Bluffs Athletic Conference and the four contiguous school districts. The Employer proposal is at the average at the bottom and top of the schedule. The Arbitrator concludes that this data suggests that the Employer proposal on the comparability factor, "d" concerning the wage levels paid in the first year of the successor Agreement is slightly preferred.

There is a second dimension to the wage issue. In addition to the wage level, the rates paid by comparable employers to employees in similar classifications, the second dimension to the wage issue is the size of the increase, the year-to-year change generated by each proposal. The

Association proposes across-the-board 25 cent increases in both years of the Agreement. The District proposes an increase of 22 cents for the 1994-95 school year, and an increase of 19 cents for the 1995-96 school year. Board Exhibit #30 provides an excellent wage comparison at each of the classifications. Association Exhibits #9-50 also detail the cents per hour and percentage increases at the various classifications. Among the comparables, Pittsville, Cashton and Norwalk-Ontario provide increases lower than that proposed by the Employer, here. For the 1994-95 school year, the average increase among the Scenic Bluffs Athletic Conference schools is 29 cents. The Board and Union exhibits suggest that the increase provided at the four classifications analyzed, including Adams-Friendship, Nekoosa, Pittsville, and Tomah, more closely approximate 31 cents than the 22 cents offered by the Employer, here for the 1994-95 school year. The Union proposal on the comparability factor, "d" concerning this dimension of the wage issue is preferred.

Total Compensation and Stipulations of the Parties

The thrust of the Employer's argument is that 22 cents and 19 cents per hour together with a 2% increase in Employer contribution towards health insurance under the indemnity or the HMO plan, and the inclusion of a new benefit, long-term disability insurance are sufficient improvements for one contract.

Total compensation is a key factor in the determination of a wage and health insurance contribution dispute. The wage level comparisons discussed above demonstrate that the salary levels paid to the various classifications by this Employer only exceed the average for employees who have been with the district in excess of 20 years. Six employees, two of the three secretaries, one cook, one cook helper, one aide and one bus driver, have all been with the district 20 or more years. Six employees have been with the district between 10-20 years; one custodian, 3 aides, and 2 bus drivers. These senior employees comprise one-third of this unit. Their pay rates are at or above the average.

The Union argues that its proposal treats experienced personnel more fairly. However, neither the Employer nor the Union propose altering the salary structure. Normally a percent across-the-board increase rather than

cents per hour across-the-board increase favors senior employees over those in the early years of their employment with an employer. In the context of the total compensation factor, the wage portion of this dispute between these parties reflects nothing more than the 3 cent difference in the first year and 6 cent per hour difference in the second year. However, in the area of health insurance, total compensation favors the Association proposal. With the exception of the support personnel of the non-organized Norwalk-Ontario School District, all the other Scenic Bluffs Athletic Conference schools pay 100% for health insurance for their full-time employees. Norwalk-Ontario pays 90%.

The four contiguous school districts pay a percentage of the health insurance premium greater than that paid by this Employer. In Adams-Friendship, the employer pays 90% of the family premium. In Nekoosa the employer pays 87.5%. In Pittsville, 90%; in Tomah, 82.5%. However, as Board Exhibit 32 demonstrates, health insurance is available in Necedah to regular full-time employees. Other districts, such as Bangor, EKW, Wonewoc-Union Center, Nekoosa, Pittsville, and Tomah, make it available to some part-time employees. The extent of the employer contribution for part-timers for family coverage may vary from payment of the amount of the single premium, such as in Tomah, to proration for employees who work a particular number of hours per week during the school year, such as in Adams-Friendship.

The cost of the indemnity family premium in Necedah approximates the premium level of other Scenic Bluffs Athletic Conference schools. In Necedah, it is $467.34 per month. However, of the 11 comparable school districts, five, Cashton, EKW, Hillsboro, Pittsville and Tomah, pay premiums less than Necedah for the indemnity plan. The rate paid by Necedah for its indemnity plan is at the median of the rates paid by the comparables.

This Employer will pay 90% under its proposal in the second year of the Agreement for the HMO plan and 82% of the premium for the indemnity plan in effect. In the 1993-94 school year, the base year, 11 employees were covered under the HMO plan. The family premium for the HMO plan for 1994-95 is $435.50. Only Cashton and Tomah pay a lower premium for health insurance.

All the comparable districts do not offer dental, life, or long-term disability insurance. There is no pattern of fringe benefits provided to support personnel. In this Successor Agreement, employees in this unit will obtain long-term disability insurance.

The above analysis suggests that the total compensation provided by Necedah is somewhat less than that afforded employees in other comparable districts. This is particularly so with regard to the ability of part-time employees to participate in the District's health insurance program. This criterion provides some support to the acceptance of the Union's final offer.

Cost-of-Living

The Arbitrator uses the total compensation percentage increases rather than wage percentage increases as the basis for measuring the increases provided under the parties' final offers by the Consumer Price Index. The CPI is based on a market basket approach in which a number of items are identified and the increase in those costs are tracked. Most importantly, the increase in medical care and housing as well as food, apparel and transportation all are identified in the increase in the CPI. Total compensation takes into account the wages that employees use to purchase items such as food, housing, apparel and transportation. It also includes medical care, the costs of which are insulated through health insurance, a benefit provided by the Employer.

The Union strenuously argues that the pattern of settlement among comparable schools should be the measure of the cost-of-living. In this regard, the Union quotes from many arbitral awards. Many of the awards cited are taken from the portion of the award in which the arbitrator selects the final offer for inclusion in a successor Agreement. The discussion goes to the weighing process and the weight afforded cost-of-living as contrasted to the comparability data. Other citations and extensive quotes included in the Union's briefs rely on Arbitrator Mueller's award in North Central VTAE, Dec. No. 18070-A, 1/81, in which he observed that:

> In the considered judgment of the undersigned, the more relevant reflection of the impact of inflation upon employees in a given area of the county is more

> accurately reflected by the level of contract settlements that evolve during the period under consideration. It follows then that one must examine the level of settlements that have resulted in other VTAE districts involving comparable employees in other public sector employment groups in the geographic area and such other settlement levels as normally and historically taken into consideration as expressed by factor h of the statutes.

The Union goes on to quote from Arbitrator Mueller's award in Kewaskum School District, Dec. No. 17981-A, 2/81, on this very same issue. The Union includes extensive quotes from other prominent arbitrators who have adopted Arbitrator Mueller's approach in the analysis of the cost-of-living criterion.

This Arbitrator finds that it is duplicative to consider the settlement pattern in the analysis of the wage issue under the comparability criteria and again to review the same evidence and data concerning those settlements under the cost-of-living criterion. Instead, this Arbitrator contrasts the total compensation percentage increase generated by each offer to the percentage change in the appropriate Consumer Price Index. Here, the Non-Metro Urban Index is the appropriate index for this case. The increase in percentage in the prior year, the 1993-94 school year, is the increase used to establish the amount of the increase for the 1994-95 school year. In this regard, the Non-Metro Urban Wage Earner and Clerical Worker Index change for the 1993-94 school year was 3.4%.

For the 1995-96 school year, the increase in the cost-of-living over the 1994-95 school year provides the measure of the increase in total compensation provided to employees for the 1995-96 school year. The increase in the Non-Metro Urban Wage Earner and Clerical Workers Index from July 1994 through June 1995 was 3.8%. The Employer's calculations of the total compensation increases, because they include some premiums paid to some of the employees, are lower than those generated by the Association in its calculations. The total compensation increase for the 1994-95 school year is 4% for the Employer and 4.55% for the Union. In the second year, the total package increase is 4.31% for the Employer and 4.84% for the Union. Since the Employer's total compensation increase is

closer to the CPI in each of the two years of the Agreement, the Employer's proposal under this criterion is preferred.

The Employer introduced the document entitled News issued by the Bureau of Labor Statistics of the United States Department of Labor. This periodical provides data concerning settlements on a nationwide basis on wage increases obtained in the public and private sectors by teachers, administrators, and service employees in education. The March 17, 1995, document indicates that the increase in wage rates for each year of a contract reached in 1994 was 3.3%.

The Union argues that this data should be given little weight. It focuses on wages and is too far from the focus of this dispute. The Arbitrator gives this data some weight, although the Union's arguments are well taken and go to the weight afforded this data. However, it is instructive that it closely approximates the outcome suggested by the Consumer Price Index data.

Interest and Welfare of the Public

The Union makes much of the fact that the Employer approved expenditures for certain items, such as laser discs and other expensive items to expend an apparent surplus of $200,000. Ability to pay is not an issue. It does not follow that because the Employer spends money on needed equipment, it should expend larger sums for wages. The Board determines what expenditures on equipment are necessary. Within the confines of the parties final offers by employing the statutory criteria, the Arbitrator will select the final offer for inclusion in the parties' successor Agreement.

The Employer argues that the addition of the long-term disability insurance benefits, improvement in fair share deduction language and improvement in an existing early retirement benefit are sufficient for one contract. The Employer argues that its political decision to draw the line was appropriate and is in the best interest of the public.

The Arbitrator finds this criterion provides no basis for distinguishing between the offers of the parties. Similarly, the criteria, the lawful authority

of the employer and changes in the foregoing, do not provide a basis for distinguishing between the final offers of the parties.

HEALTH INSURANCE AND HEALTH INSURANCE ROUND DOWN

In the context of this dispute that is resolved in the summer of 1995, there is little difference between the offers of the parties on health insurance. The Union proposes an increase in the Employer contribution of 1% in the first year and an additional 1% in the second year for the two plans maintained by this Employer. The Employer proposes a 2% increase in its contribution for both plans in the second year of the Agreement. This Award will issue at the beginning of the second year of the Agreement. The difference between these two offers centers on the Union's proposal to delete from the Agreement the round down provision quoted above.

The Employer argues that a traditional status quo-quid pro quo analysis should be employed by the Arbitrator in weighing the Union's proposal for change. This Arbitrator follows a simple formula to determine whether a change of the status quo is justified, one which mirrors what the parties do in their negotiations when they do not proceed to arbitration and in effect change the status quo voluntarily. The party proposing the change must demonstrate a need for the change. In this regard, evidence concerning what comparable employers do with the particular proposal may be persuasive. However, it is not necessarily determinative of the issue. Normally, contract terms become the status quo as a result of some prior exchange. An Arbitrator must be careful to avoid obliterating or reversing prior agreements simply because other comparable employers do not respond in a similar fashion to a particular set of circumstances.

Another factor required by the Arbitrator where one side proposes a change to the status quo is provision of some quid pro quo for the change. It is difficult for arbitrators to determine the sufficiency of a quid pro quo when that quid pro quo is sufficient to be identifiable as something of value offered for the change proposed.

Here, the Union does not argue that it has offered any quid pro quo for the change which it demands. It asks that the round down be deleted from

the Agreement, principally because no other comparable has such a provision.

In the analysis of the Total Compensation criterion, this Arbitrator compares the dollar cost and percentage contribution and extent of availability of the health insurance benefit in Necedah to the comparables. In Necedah the dollar cost of the indemnity plan is at the mid-point of the comparables. Most employees participate in the HMO plan, as a result this Employer's dollar cost for this benefit is substantially lower than the comparables. The percentage of contribution is lower than most of the comparables. The benefit in Necedah is available to "full" time employees; it is not available to part-time employees. The Union emphasizes that no other employer has this round down provision.

When this provision is considered in the context of the totality of the health insurance benefit, the Arbitrator concludes that the Union's argument has great force. This is not a case in which the Employer is contending with one of the most expensive health insurance programs and the parties employ the round down provision to temper the burden of those costs. The reverse appears to be the case, here. Nonetheless, this Arbitrator is wary of making a change simply because no one else has the provision that is at issue. There is no evidence in this record to suggest how this round down came to be included in the Agreement. The Arbitrator finds that the absence of any quid pro quo or any information as to how the round down provision came to be included in the Agreement weighs against the adoption of this Union proposal. However, the Arbitrator finds equally persuasive the Union's evidence that in the context of the health insurance benefit as it is provided in Necedah, this round down provision should be deleted. The two countervailing forces offset each other. Consequently, the Arbitrator finds that the Union proposal for change will be determined on the basis of the wage issue.

SELECTION OF THE FINAL OFFER

The final offers of both the Employer and the Union are fair and reasonable. When those offers are viewed in the context of the totality of all that has occurred in these negotiations between these parties as reflected by the stipulations of the agreed-upon items, either final offer is well justified.

The Employer's refusal to go any further in its negotiations with the Union is understandable, in light of its agreement to a long-term disability insurance benefit, changes in fair share and an existing early retirement program.

Similarly, the Union proposal is reasonable in the context of its agreement to lower the period for layoff from 45 to 30 days and to language that provides the Employer greater control of sick leave usage.

In the above discussion, the Arbitrator determines that the wage rates—the levels paid to the various classifications of employees—exceed the average for employees with long service with the District. At the hire rates, the Employer's proposal more closely approximates the average paid by comparable employers. The Union's proposal is preferred at the mid-schedule steps 5 and 7 of the wage schedule, where the rates under either offer well below average. In one classification, the secretary, the rates are not competitive. On this dimension of the wage issue, the Arbitrator concludes that the Employer's offer is slightly preferred.

In measuring increases among support personnel, it is important to avoid overemphasizing percentage increases for part-time employees who may or may not work many hours in a year. The cents per hour increase provides a better measure of the size of the change from year-to-year afforded by comparable employers to their employees. The cents per hour increase provided by comparables to their employees are much greater than those provided under the first year of the Employer's offer. The Union's offer more closely approximates, but is below the increase provided by comparable employers to their employees for the 1994-95 school year. In this regard, the Arbitrator concludes that the Union's final offer on this dimension of the wage issue, the amount of the year-to-year increase is clearly preferred over the Employer's final offer for the 1994-95 school year.

The total compensation criterion supports the inclusion of the Union offer in the successor Agreement.

The application of the cost-of-living criterion to the total package percentage increases afforded by the parties' final offers for the 1994-95

school year supports the Employer's offer. The data concerning the wage increases afforded to employees, such as support personnel, are reflected in the Bureau of Labor Statistics data. The wage increases afforded by the Employer's proposal are 3.74% for the 1994-95 school year and 3.42% for the 1995-96 school year. It exceeds the increases provided to service employees as reflected in the national statistics introduced into evidence by the Employer. However, the Employer relies upon Board Exhibit #52 and the Bureau of Labor Statistics' data as evidence of other public sector settlements. This data suggests that settlements range from 2 to 3.4%. The Arbitrator would give this evidence some weight were it supplementing data concerning the local economy. However, the Arbitrator finds that this data should be given little weight in considering either factor "e" or "f" of the comparability factors. Accordingly, the Arbitrator concludes that these two factors provide no basis for distinguishing between the final offers of the parties. Other city, county and public sector settlements in the area would be afforded greater weight than the Bureau of Labor Statistics' data. This evidence was not put into the record.

The Union placed in evidence newspaper articles, even photographs, of businesses and new construction in the Necedah Area School District to demonstrate that Necedah is economically healthy. The Arbitrator gives this evidence little weight. Again, ability to pay is not an issue in a case in which there is so little difference between the final offers of the parties.

To summarize, on the wage issue, the Arbitrator concludes that the comparability factors "e" and "f", public and private sector comparisons provide no basis for distinguishing between the final offers of the parties. Comparability factor "d" slightly favors the Union position. Although the Arbitrator provides greater weight to wage levels than to increases provided year-to- year, the Union offer on the wage increase dimension of the wage issue is clearly preferred; whereas, the Employer offer on the wage level dimension is slightly preferred. The total compensation criterion, the Arbitrator concludes, supports the Union final offer. The cost-of-living criterion favors the Employer offer for 1994-95. For the first year of the Agreement, the Arbitrator concludes that on the wage issue, the statutory factors serve to slightly favor inclusion of the Union final offer.

For the second year of the Agreement, there are no settlements, except for Elroy-Kendall-Wilton and Adams-Friendship. Accordingly, the Arbitrator provides substantial weight to the cost-of-living criterion in this analysis. The Employer's offer, the lower offer, is preferred.

As noted above, the health insurance issue-round down proposal of the Union is the subject of equally countervailing arguments. The adoption of either the Union's proposal for change or the Employer's proposal to retain the status quo is dependent upon the wage issue.

The first year of a multi-year agreement should be accorded greater weight than the second or third year of an agreement. The first year's increases are reflected in and built upon in the later year(s) of the agreement. In the above analysis, the Arbitrator finds that the Union's offer is slightly preferred in the first year. The Employer's final offer is preferred in the second year. The Union proposes a 25 cent increase in the second year as contrasted to the Employer's proposed 19 cent increase. However, the trend in the cost-of-living from 1993-94 and from 1994-95 is upward, 3.4% in the first year and 3.8% in the second. Although the Employer's offer more closely approximates the increase in the cost-of-living, the Union's final offer exceeds the increase in the cost of living by 1 percent.

In the context of this dispute, the Arbitrator concludes that the Union's first year proposal, although only slightly preferred over that of the Employer's, provides the narrowest margin of preference for the inclusion of the Union's final offer over the Employer's in the Successor Agreement.

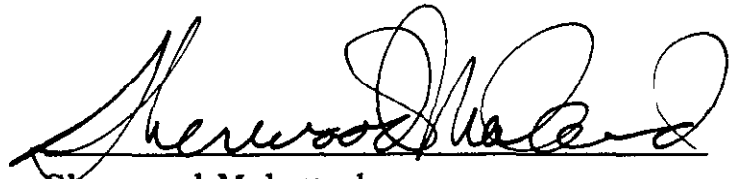
On the basis of the above Discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of Necedah Area Support Personnel which, together with the stipulations of the parties, are to be included in the Collective Bargaining Agreement between the Necedah Area School District

and the Necedah Area Support Personnel for an agreement effective July 1, 1994, through June 30, 1996.

Dated at Madison, Wisconsin, this 14th day of August, 1995.



Sherwood Malamud
Arbitrator