STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
CAMPBELLSPORT EDUCATION ASSOCIATION	Case 16 No. 47501 INT/ARB-6481
To Initiate Arbitration Between Said Petitioner and	Decision No. 27578-B
CAMPBELLSPORT SCHOOL DISTRICT	

Appearances:
Mr. Anthony L. Sheehan, Staff Counsel, and Ms. Chris Galinat, Associate Counse
Winnebagoland UniServ, P.O. Box 1195, Fond du Lac, Wisconsin 54936-1195, for the Association.
Godfrey & Kahn, S.C., by Mr. John E. Thiel, 219 Washington Avenue, P.O. Box 12

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 9, 1993, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration in the above matter. Pursuant to that Order, the parties selected Gil Vernon as the interest arbitrator who would determine which party's final offer should be selected as to certain disputed provisions of a July 1, 1992 - June 30, 1994 contract. As of August 12, 1993, the effective date of 1993 Wisconsin Act 16, no arbitration award had been issued.

Pursuant to nonstatutory provision Section 9120 (2x) of 1993 Wisconsin Act 16, on August 13, 1993, the Commission sought the parties' positions as to how Act 16 impacted upon their pending interest arbitration proceeding. The parties filed position statements which reflected a disagreement between them as to the impact of Act 16 on the interest arbitration proceeding. Based upon the parties' disagreement, the Commission advised the parties by letter that a hearing would be conducted to provide a factual record upon which the impact of Act 16 could be determined.

The parties then engaged in an unsuccessful effort to voluntarily reach agreement on a new contract. Hearing was ultimately held on February 22, 1994, in Campbellsport, Wisconsin before Examiner Peter G. Davis. The parties thereafter filed written argument, the last of which was received April 15, 1994.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Campbellsport School District, herein the District, is a municipal employer having its principal offices at 114 Sheboygan Street, Campbellsport, Wisconsin.

2. Campbellsport Education Association, herein the Association, is a labor organization functioning as the collective bargaining representative of certain school district professional employes of the District. The Association has its principal offices at P.O. Box 1195, Fond du Lac, Wisconsin.

3. The District and the Association were unable to reach voluntary agreement on a July 1, 1992 - June 30, 1994 contract covering the wages, hours and conditions of employment of the school district professional employes employed by the District and represented by the Association. Pursuant to Sec. 111.70(4)(cm)6, Stats., by March 1, 1993, the District and the Association submitted final offers on all unresolved issues for the 1992-1994 contract to the Wisconsin Employment Relations Commission. Pursuant to a March 9, 1993 Order from the Commission, the parties proceeded to select interest arbitrator Gil Vernon who was subsequently appointed by the Commission to resolve the contract impasse through selection of the final offer of the Association or the final offer of the District. As of August 12, 1993, the interest arbitrator had not issued an award.

4. The parties' 1990-1992 collective bargaining agreement contained the following health insurance provision:

> B. Insurance
>
> 1. The board shall pay the full premium for single and family health insurance. For 1990-91, the district will pay up to $130.98 per month for a single premium and up to $348.70 per month towards a family premium. The Board shall notify the CEA of any proposed change in the insurance carrier. The CEA shall have the opportunity to discuss the change and to make recommendations. In the event the Board determines it will change insurance carriers, coverages of the new plan(s) shall be governed by paragraph 2 of this Article.
>
> 2. The School Board shall make final disposition of the carrier. The coverage shall be equivalent in the case of a change in carrier.

3. Teachers not under contract for the ensuing year will have insurance paid to the end of the month in which the teacher worked. For staff members under contract for the ensuing year, the type of coverage in effect on April 30 will remain in effect until the new contract takes effect on September 1, or thereabouts. Staff members will request a family plan or a single plan if insurance shall be furnished by the District. Upon request, the family plan will be furnished to all staff members who are a spouse of a family unit. The family plan will not be furnished for a single employee who is covering persons other than his spouse and/or his children.

4. The Board will pay 100% of the premium cost for long-term disability coverage for full-time staff with a monthly benefit of 90% of monthly salary up to $3,600 per month following 60 days of disability. Benefit levels shall be equal to or better than those contained in the WEA Insurance Trust's long-term disability plan.

5. The board shall pay the full premium for single and family dental insurance. For 1990-91, the District will pay up to $9.04 per month towards a single premium and $37.27 per month for a family premium.

6. For 1991-92, the amounts in paragraphs 1 and 5 will be changed to reflect the actual premium amount.

7. For the duration of this collective bargaining agreement, the health insurance plan referenced in paragraph 1, above, shall have a $5 generic/$10 brand name prescription drug card. Unless otherwise agreed upon, the prescription drug card shall expire on June 30, 1992, and prescription drugs as of July 1, 1992, will revert to being paid under the health plan.

5. The District's final offer as to health insurance for the 1992-1994 contract provided in pertinent part:

The Campbellsport School Board agrees to the language that exists in the present 1990-1992 Teacher Master Agreement except for the following changes:

. . .

6. Article VI - **Other Provisions - MODIFY** Section H -Modify existing health plan pursuant to Attachment A.

MODIFY Article VI - Section (H)(1) to read:

1. The board shall pay the full premium for single and family health insurance through February 28, 1993. Effective March 1, 1993, the District will pay up to $177.10 per month or 90% whichever is greater for a single premium and up to $470.91 per month or 90% whichever is greater for a family premium. The Board shall notify the CEA of any proposed change in the insurance carrier. The CEA shall have the opportunity to discuss the change and to make recommendations. In the event the Board determines it will change insurance carriers, coverages of the new plan(s) shall be governed by paragraph 2 of this Article.

The Association's final offer as to health insurance for the 1992-1994 contract provided in pertinent part:

Article VI, H. Insurance

1. **Change** "1990-91" to "1992-93."

   Replace "130.98" and "$348.70" with actual dollar amounts for 1992-93.

2. **Change** second sentence to read, "Effective March 1, 1993, the coverage shall be equivalent to that specified in Appendix C."

5. **Change** "1990-91" to "1992-93".

   Replace "$9.04" and "$37.27" with actual dollar amounts for 1992-93.

6. **Change** "1991-92" to "1993-94."

7. **Delete** existing paragraph and replace with the following paragraph.

   Teachers with fifteen (15) years in the District who retire at age fifty-five (55) or later shall remain covered under the health and dental insurance plans at age sixty-

five (65) provided they remit to the District the monthly premiums and provided the carrier permits such continuation of benefits.

On April 2, 1993, the monthly single and family health insurance premiums were $177.10 and $470.91, respectively. Effective July 1, 1993, the premiums increased to $201.14 and $485.54, respectively.

6. If the Interest Arbitrator were to select the Association's final offer, the District's final offer would not maintain all health insurance fringe benefits and the District's percentage contribution toward same which were in effect on April 2, 1993.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The District's final offer for the period July 1, 1993 - June 30, 1994 is not a qualified economic offer within the meaning of Sec. 111.70(1)(nc), Stats., and nonstatutory provision Section 9120(2x) of 1993 Wisconsin Act 16.

2. Because the District's final offer for the period July 1, 1993 - June 30, 1994 is not a qualified economic offer, all matters submitted to arbitration pursuant to Sec. 111.70(4)(cm), 1991, Stats., continue to be subject to arbitration.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

Interest Arbitrator Gil Vernon shall proceed to issue an award in which he selects the final offer of the District or the final offer of the Association as to the contract period of July 1, 1992 - June 30, 1994.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of August, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

CAMPBELLSPORT SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BACKGROUND

As reflected in our Findings of Fact, when 1993 Wisconsin Act 16 became effective on August 12, 1993, the parties had not yet received an interest arbitration award which would have established disputed terms of a 1992-1994 collective bargaining agreement. On August 13, 1993, the Commission directed the following letter to the parties:

> The amended interest-arbitration law provides:
>
> > "(2x) PENDING ARBITRATIONS. As soon as possible after the effective date of this subsection, the employment relations commission shall determine for each collective bargaining unit in which it has closed an investigation under section 111.70(4)(cm)6, 1991, stats., but for which no arbitration award has been issued on that effective date whether any matters subject to arbitration under section 111.70(4)(cm), 1991 stats., are no longer subject to arbitration under section 111.70(4)(cm) of the statutes, as affected by this act. If the commission determines that any dispute or portion of a dispute which was submitted to arbitration before the effective date of this subsection is no longer subject to arbitration on that effective date, it shall immediately notify the arbitrator or arbitration panel members of its finding in writing and shall order the arbitrator or panel members to terminate the arbitration with respect to that dispute or portion of that dispute which is no longer subject to arbitration. The parties shall reimburse the arbitrator or arbitration panel members for all costs incurred in conducting the arbitration prior to the date of the notice, but are not liable for any costs incurred to arbitrate any dispute or portion of a dispute that is not subject to arbitration under section 111.70(4)(cm) of the statutes, as affected by this act, on or after the date of any notice by the commission to that effect.

The amended law is now in effect and, to our knowledge, no award has been issued in your case.

If we are correct that no award has been issued, kindly file a written position statement on or before Friday, September 3, 1993, as to how, if at all, you believe the amended law affects your case.

By letter dated August 27, 1993, the District responded as follows:

Pursuant to your letter dated August 13, 1993, the following summarizes the Board's position relative to the impact of the amended law on the pending dispute at the Campbellsport School District.

Section 111.70 (4) (5s) states:

> In a collective bargaining unit consisting of school district professional employees, <u>if the municipal employer submits a qualified economic offer applicable to any period beginning on or after July 1, 1993, no economic issues are subject to interest arbitration under subd. 6 for that period.</u> In such a collective bargaining unit, economic issues concerning the wages, hours or conditions of employment of the professional school employes in the unit for <u>any period prior to July 1, 1993, are subject to interest arbitration under subd 6 for that period.</u> In such a collective bargaining unit, noneconomic issues applicable to any period on or after July 1, 1993, are subject to interest arbitration after the parties have reached agreement and stipulate to agreement on all economic issues concerning the wages, hours or conditions of employment of the professional school district employes in the unit for that period. (emphasis added)

Based on the aforementioned language, it is the Board's position that Arbitrator Vernon has jurisdiction to render a decision for the 1992-93 contract year only. All language issues between the two parties occur in the 1992-93 contract year therefore, the only economic issue of salary increases are in dispute for the 1993-94 contract year. Enclosed for your review is the total package consisting of the Board's offer. The first option provides the costing of the Board's offer in the event the Board's 1992-93 is awarded and the second option is the Board's cost if the Union's offer is awarded in 1992-93. In each case, the Board's offer generates a salary increase of 5.5%

and a total package cost of 4.01% to 4.42%. Because there are no language disputes and the Board's offer meets the definition of a qualified economic offer for 1993-94, regardless of the outcome of Arbitrator Vernon's award for 1992-93, it is the Board's position that 1993-94 is not subject to interest arbitration therefore, Arbitrator Vernon has no arbitral authority to rule on the contract year 1993-94 and should return the matter back to the parties for resolution. It is our further understanding that the parties must also consider offers for the 1994-95 year to adhere to the statutory requirement.

In conclusion, based on the language contained in 111.70(4)(5s), it is the District's position that the Arbitrator must render a decision for the first year of the contract (1992-93) and that the last two years of the contract (1993-95) should be remanded back to the parties for resolution.

If we can provide any additional information, please let me know.

By letter dated September 2, 1993, the Association responded as follows:

Please accept this letter as the Association's response to your August 13, 1993, letter regarding the potential impact of 1993 Wisconsin Act 16 (SB-44) on the above-referenced case.

Although pending arbitration is for a two-year period, 1992-93 and 1993-94, it has been bargained as a unitary package. Therefore, it is our position that the Commission should first determine if the Employer's final offer as a two-year package meets the qualified economic offer standard.

If the Employer has made a qualified economic offer, the two-year proposal should be severed and the first year (1992-93) can proceed through the interest-arbitration procedure in effect prior to the amended law. The second year (1993-94) is subject to the provisions of 1993 Wisconsin Act 16 and is no longer subject to arbitration under 111.70(4)(cm).

If the Employer has failed to make a qualified economic offer, the entire two-year agreement is subject to arbitration.

In the instant case the Employer has failed to make a qualified economic offer. The Employer offer for 1993-94 does not maintain the existing (1992-93) percentage

contribution for health insurance.

The Employers final offer is enclosed. The Employers health insurance proposal is stated below:

Modify Article VI -- Section (H) (1) to read:

> 1. Effective November 1, 1992, the District will pay up to $177.10 per month or 90% whichever is greater for a single premium and up to $470.91 per month or 90% whichever is greater for a family premium. The Board shall notify the CEA of any proposed change in the insurance carrier. The CEA shall have the opportunity to discuss the change and to made (sic) recommendations. In the event the Board determines it will change insurance carriers, coverages of the new plan(s) shall be governed by Paragraph 2 of this Article.

For 1992-93 the health insurance premiums were $177.10/month single and $470.91/month family. Under the Employer's offer the District paid 100% of the insurance premiums for the 1992-93 contract term.

For the 1993-94 the health insurance premiums are $201.14/month single and $485.54/month family. Under the Employer's offer teachers with single coverage will pay $20.11/month or 10% of the premium. The Employer will contribute 90% of the single premium. Under the Employer's offer teachers with family coverage will pay $14.63/month or 3.1% of the premium. The Employer will contribute 96.9% of the family premium.

Please contact me if you require additional information.

By letter dated September 21, 1993, the Commission advised the parties as to how it would proceed to determine whether all or a portion of the matters pending before the interest arbitrator remained subject to arbitration. The Commission's letter stated in pertinent part:

> Nonstatutory provision (2x) of 1993 Wisconsin Act 16 directs the Commission to determine whether your dispute or a portion of your dispute is no longer subject to arbitration. We write to tell you how the Commission will proceed to make this determination.
>
> From its review of Secs. 111.70(1)(nc)1 and 111.70(4)(cm)5s, Stats., the Commission is satisfied that all portions of your dispute pertaining to the contract period prior to July 1, 1993 remain subject to

arbitration without regard to limitations imposed by Sec. 111.70(4)(cm)5s, Stats. Thus, that portion of your dispute is unaffected by the new law.

However, a review of the same statutory provisions satisfies the Commission that the economic portion of your dispute pertaining to the contract period commencing July 1, 1993 remains subject to arbitration only if the District's existing offer is not a "qualified economic offer" as that term is defined in Sec. 111.70(1)(nc), Stats. If the District has not made a "qualified economic offer" for the post-June 30, 1993 period, your dispute continues to be subject to arbitration in its entirety. If the District has submitted a "qualified economic offer," economic issues are no longer subject to arbitration for the post-June 30, 1993 period.

When reaching the foregoing conclusions, the Commission considered whether nonstatutory provision (2xg) of 1993 Wisconsin Act 16 mandated that you each be given the opportunity to supplement your existing offers so as to extend them to June 30, 1995. The Commission also considered whether you should be given the opportunity to amend your existing offers because a portion of the period they cover (post-June 30, 1993) is now governed by a statute which did not exist at the time your investigation was closed. Lastly, the Commission has considered whether your arbitration should be allowed to proceed under the law which governed your dispute at the time the investigation was closed without regard to 1993 Wisconsin Act 16. The Commission rejected each of these alternatives because (2x) clearly expresses a legislative intent that:

(1) 1993 Wisconsin Act 16 applies to your dispute, and

(2) your existing offers form a valid and exclusive basis for determining whether and how your arbitration dispute can proceed.

The question of whether the District's existing offer is a "qualified economic offer" for the period commencing July 1, 1993 will be answered by:

(1) establishing the total cost of compensation and fringe benefits provided to employes represented by the Union on the 90th day prior to July 1, 1993, and

(2) determining whether the District has met its obligations under Sec. 111.70(1)(nc), Stats., as to said compensation and fringe benefits.

We acknowledge that the "base" comparison point (the 90th day prior to July 1, 1993) for the purpose of the "qualified economic offer" determination is not one specified in either Sec. 111.70(1)(nc), Stats. or Sec. 111.70(4)(cm)8s, Stats. However, we are confronted with an arbitration dispute in which the parties had the unrestricted right to bargain/arbitrate changes in fringe benefits and the employer cost thereof for the contract period prior to July 1, 1993. In such circumstances, we have concluded that the presence or absence of a "qualified economic offer" for the post- June 30, 1993 period can be measured in a manner most consistent with legislative intent by using the wages and fringes which the arbitrator will establish for the pre-July 30, 1993 period. If we were to have used "basepoints" in the contract preceding the one you are arbitrating, (as set forth in Secs. 111.70(1)(nc) and 111.70(4)(cm)8s, Stats, your right to bargain/arbitrate changes in fringe benefits and the employer cost thereof for the pre-July 1, 1993 period would be compromised.

Literal application of Secs. 111.70(1)(nc) and 111.70(4)(cm)8s, Stats., to your arbitration dispute would mean that the fringe benefits and the employer cost thereof you had the opportunity to bargain/arbitrate for the pre-July 1, 1993 period would not necessarily be the fringe benefits and employer cost thereof which the District would be obligated to maintain for the purposes of a "qualified economic offer." We are persuaded that such a result would be contrary to the legislative intent of having the wages and fringe benefits in effect for the period prior to the effective date of a "qualified economic offer" be the wages and fringe benefits by which the existence of such an "offer" is determined.

Given the foregoing, we ask you to advise us, on or before October 13, 1993, as to whether you believe the District's existing offer for the post-June 30, 1993 period is a "qualified economic offer." If you do not agree, we will conduct a hearing to provide a record upon which we will make that determination.

By letter dated September 29, 1993, the Association responded to the Commission's September 21, 1993, letter as follows:

> In your September 21, 1993 letter you asked the Campbellsport Education Association's position as to whether the Campbellsport School District has submitted a "qualified economic offer" for the 1993-94 school year. The Association addressed this issue in its September 2, 1993 letter to Mr. Peter Davis (attached).
>
> In addition to the September 2, 1993 letter, the Association would add:
>
> 1. The District has changed the salary schedule structure, including in its final offer flat dollar amount increases to the salary schedule which result in diminished salary schedule structure value; and
>
> 2. Since there is not a settled Collective Bargaining Agreement for 1992-93, it is impossible to determine whether the District has made a "qualified economic offer" for 1993-94.
>
> For the reasons stated in the September 2, 1993 letter and expressed above, the Association requests the Wisconsin Employment Relations Commission order the above referenced matter to proceed for both 1992-93 and 1993-94.
>
> Please contact me if you require additional information.

By letter dated October 5, 1993, the District responded to the Commission's September 21, 1993, letter as follows:

> This letter is in response to your letter of September 21, 1993, concerning the Commission's application of 1993 Wisconsin Act 16. This letter supplements the District's letter to the Commission of August 27, 1993, wherein the District outlined its position that although the 1992-1993 offer was subject to determination by the interest arbitrator, the 1993-1994 aspect of the offer was not subject to interest arbitration.
>
> The District concurs with the Commission's opinion that the 1992-1993 contract offer is subject to interest arbitration. In addition, as the offers submitted by the parties for the 1993-1994 contract year represent qualified economic offers, the 1993-1994 aspect of this dispute is not subject to interest arbitration. However, the District does not concur with the Commission's interpretation that the District's

economic offer for 1993-1994 cannot be reduced in a manner so as to still meet the qualifications of a qualified economic offer.

It is the District's position that not only does the 1993-1994 offer meet the criteria of a qualified economic offer, but also that the District may reduce this economic offer so long as it comports with the requirements of a qualified economic offer.

The District's position is based not only upon the language of the statute, but also upon the express language of its final offer. The District's final offer as submitted to the interest arbitrator includes the following:

> **In the event the District becomes subject to any cost controls during the term of this Agreement, this salary schedule shall become limited to such cost controls. In addition, both parties reserve the right to re-open negotiations for the sake of adjusting the economics of this Agreement so as to also comply with any cost controls during the term of this Agreement.**

The language and intent of the District's proposal was written in express anticipation of the law changes. As written, the language of the District's offer is intended to allow the District to adjust it's (sic) offer so as to meet the economic aspects of the new law. In this regard, the District's 1993-1994 offer not only meets the criteria of a qualified economic offer on its face, but the District through the above cited language may modify its offer to the extent necessary so as to meet that definition.

It is the District's position that aside from meeting the criteria of a qualified economic offer in 1993-1994, and aside from having the ability to modify its 1993-1994 offer so as to still meet the criteria of a qualified economic offer, the District may also modify its 1993-1994 offer to include an offer for 1994-1995 so as to also comply with the express provisions of the statute.

In conclusion, it is the District's position that the 1992-1993 aspect of this pending dispute is subject to determination by the interest arbitrator. The 1993-1994 aspect of this dispute should be returned to the parties as (1) the District's offer meets the criteria

> for a qualified economic offer; (2) the District's offer has express language to allow it to modify its offer so as to meet the criteria of a qualified economic offer; (3) the District's 1993-1994 offer may be modified to include a 1994-1995 offer in accordance with the provisions of the statutes.
>
> If we can provide any additional information, please let us know.

Given the parties' respective positions as to the matters which remained subject to interest arbitration, the Commission advised the parties that hearing would be conducted to provide a factual record upon which the Commission would resolve the parties' disagreement. Following unsuccessful efforts to resolve the dispute, hearing was ultimately conducted and the parties thereafter filed written argument in support of their respective positions.

POSITIONS OF THE PARTIES

The District

The District initially argues that the Notice of Hearing in this proceeding improperly identified the dispute as a "class 1 proceeding" under Sec. 227.01(3)(a), Stats. The District asserts that the proceeding is not a "class 1 proceeding" because the Commission is not acting in this matter under standards conferring substantial discretionary authority upon it. The District contends that the case should more properly have been identified as a "class 3 proceeding".

The District asserts that under non-statutory provision (2x), the scope of the Commission's analysis for determining which matters are subject to the pending interest arbitration does not include an analysis of whether the District's offer meets the requirements of a qualified economic offer under 1993 Wisconsin Act 16. The District argues that the Commission's sole role in this proceeding is to inform the interest-arbitrator that issues in dispute for 1992-1993 remain before him for determination but that all 1993-1994 issues are to be returned to the parties for proceedings under the new statute without regard to whether the District has made a qualified economic offer. The District asserts that a comparison of its offer to the definition of a "qualified economic offer" is not only beyond the authority of the Commission under (2x), but also results in unfair, illogical and impossible results. Determination of whether the District's offer is a qualified economic offer results in an ex post facto application of the law because it requires an assumption as to which offer would be accepted by the interest-arbitrator for 1992-1993, despite the fact that offers were prepared by the parties as a two-year, one-package offer. The District further alleges that an application of the qualified economic offer standard to its offer in effect assumes that if an arbitrator selected the Association's offer for the first year, the District would have put forth the same offer for 1993-1994 as is presently pending before the Arbitrator. The District contends that such is not the case.

The District next contends that the Commission will be violating the District's equal protection rights under the United States and Wisconsin constitutions if it does not give the District an opportunity to modify the 1993-1994 portion of its offer before any determination is made as to the offer's status as a qualified economic offer. The District asserts in this regard that the Commission cannot appropriately divide school districts into classifications with different rules based upon whether or not an interest-arbitration award had or had not been received on or before the effective date of 1993 Wisconsin Act 16. Therefore, the District reiterates the Commission should simply and legally determine which issues apply for each respective year and allow the interest-arbitrator to determine only the 1992-1993 issues.

Assuming arguendo that the Commission erroneously concludes that it is appropriate to determine whether the District's 1993-1994 offer is a qualified economic offer, the District contends that its offer does qualify as a qualified economic offer. Thus, the District contends that the 1993-1994 portion of the parties' dispute should be removed from the arbitrator's jurisdiction. In this regard, the District argues that even if it is erroneously concluded that it is appropriate to compare the District's 1993-1994 offer against an assumption that the interest-arbitrator will select the Association's offer for 1992-1993, the District's offer qualifies as a qualified economic offer. Contrary to the Association, the District asserts that its offer does not attempt to alter the existing structure of the salary schedule, but rather intends to continue whatever structure is established by the arbitrator's award for 1992-1993. As to the Association's claim that the District is seeking to modify the health insurance provision, the District contends that its offer only pertains to 1992-1993, and does not independently seek a change for 1993-1994. Lastly, the District argues that its reopener proposal in its final offer does not remove the offer from the realm of a qualified economic offer. The District contends that the reopener allows it to make any changes necessary to meet any requirements of the new law.

In its reply brief, the District urges the Commission to reject any Association argument that the District has a burden of proof to establish that its offer is a qualified economic offer. The District asserts that there is nothing in the statute which exists that there is a burden of proof upon either party. The District alleges that the Association's own arguments demonstrate that the statute was not intended to apply as suggested in the Commission's September 21, 1993 letter.

The Association

The Association argues that public policy, statutory interpretation and fundamental principles of fairness dictate that the entire two-year agreement should remain subject to interest arbitration. In this regard, the Association argues that non-statutory provision (2x) does not require that the Commission split the existing two-year offer, but rather has discretion to submit the entire offer to interest arbitration. Should the Commission conclude that the statute is ambiguous in this regard, the Association urges the Commission to interpret the law in a manner which avoids absurd, unreasonable results and does not prejudice any of the parties.

The Association asserts that the Commission's proposed interpretation of (2x) is not only unfair but illogical and absurd. The Association contends the parties spent a great deal of time, energy and money negotiating the contract and participating in the interest-arbitration process. The Association asserts that if the Arbitrator had simply been allowed to issue his award, the matter would have been entirely resolved many months ago. Given the facts of the parties' negotiations, the Association asserts that the parties themselves as well as the Commission should be estopped from interfering with the dispute resolution procedure. The Association further notes in this regard that Wisconsin statutes favor two-year collective bargaining agreements and that the Commission's proposed manner of proceeding is at odds with this preference for two-year contracts. Lastly, the Association asserts that because the 1992-1994 offers were prepared as a unitary two-year package, it is unfair to the parties and illogical to analyze the offers in any other fashion. The Association contends that the Commission's interpretation of (2x) has totally negated the parties' respective bargaining strategies and risk assessments. The Association argues that this is patently unfair and prejudicial to both parties, but even more so to the Association who can be deprived of access to interest arbitration.

Assuming the Commission continues to erroneously interpret provision (2x), the Association contends that because the 1992-1994 contract term overlaps the change in the bargaining law and because the parties have bargained a unitary package offer, the Commission should conclude that the District's entire proposal must meet the minimum QEO standard. The Association further argues that if the doctrine of a qualified economic offer is applicable to this dispute, the District should bear the burden of proof as to the existence of such an offer. In the Association's view, this is particularly appropriate because Act 16 dramatically changed the bargaining process and dispute resolution procedure that had been in existence for at least 15 years.

If the Commission erroneously concludes that the qualified economic offer analysis should be applied to the District's 1993-1994 offer, the Association asserts that the District has not made a qualified economic offer. First, the Association asserts that the District cannot have a qualified economic offer because there is no base year by which such an offer can be measured. Secondly, the Association asserts that the District's proposed change in insurance premium contributions establishes that the District's 1993-1994 offer does not maintain the percentage contribution for a fringe benefit as required to have a valid qualified economic offer. In this regard, the Association urges the Commission to reject the District argument that the insurance premium formula is determined solely in 1992-1993. The Association asserts that the 1993-1994 health insurance dollar level premiums will determine the percentage of insurance contributions under the District's offer. Thirdly, the Association asserts that the District has not made a qualified economic offer because the District's offer changes the existing salary schedule. In this regard, the Association argues that the existing salary structure reflects an indexed structure which the District seeks to alter by offering a flat dollar amount increase to each cell on the schedule. Fourthly, the Association asserts that no qualified economic offer is present because of a reopener provision included in the District's offer. The Association contends that the

adjustments to an offer which are contemplated by reopener language render the District offer incomplete and thus not capable of being determined to be a qualified economic offer. The Association also contends that the reopener provision in the District's offer was not triggered by the changes produced by Act 16 and thus does not provide the District with any right to change its offer.

In response to the District's assertion that its equal protection rights have been violated, the Association asserts that the District cannot avail itself of equal protection clause of the United States Constitution because said clause does not apply to subdivisions of the State. The Association further contends that the District does not have standing to assert rights under the Wisconsin Constitution as a political subdivision of the State.

The Association agrees with the District that this proceeding should have been noticed as a "class 3 proceeding". The Association notes that "class 3 proceedings" require preparation and service of a proposed decision by the hearing examiner.

Given all of the foregoing, the Association asserts that the entire two-year agreement remains subject to interest arbitration.

DISCUSSION

Our September 21, 1993, letter to the parties sets forth our interpretation and understanding of nonstatutory provision (2x). As reflected in that letter, we concluded then and continue to conclude now that:

> (1) Neither party has the right to modify the final offers they made prior to the existence of Act 16.
>
> (2) The portion of a pending interest arbitration dispute pertaining to any period prior to July 1, 1993, remains subject to interest arbitration without regard to the limitations imposed by Sec. 111.70(4)(cm)5s., Stats.
>
> (3) The economic issue portion of a pending interest arbitration dispute pertaining to the contract period commencing July 1, 1993, remains subject to arbitration only if the District's existing offer is not a "qualified economic offer" as defined in Sec. 111.70(1)(nc), Stats. 1/

1/ The District argues Act 16 does not empower us to make this "qualified economic offer" analysis. However, in our view, the District's argument ignores the clear meaning of the phrase, "as affected by this act" at the end of the first sentence of provision (2x). We believe that phrase compels us to make the "qualified economic offer" analysis.

It is primarily the "qualified economic offer" analysis we are required

(4) The base comparison point for determining whether the District has made a "qualified economic offer" is April 2, 1993.

Under our interpretation of Act 16, 2/ the key question presented to us in this proceeding is whether the District's offer maintains the existing fringe benefits and the percentage contribution toward same which would exist on April 2, 1993. Because either party's final offer might be selected by the Interest Arbitrator, and thus establish the April 2, 1993 base fringe benefit and percentage level contributions which are determinative herein, we must measure the District's offer for the period beginning July 1, 1993 against both parties' offers for the pre-July 1, 1993, period. If the District's offer fails to maintain for the entire contract period beginning July 1, 1993, those fringe benefits and employer percentage contributions which exist on April 2, 1993 under either party's offer, the District's offer is not a qualified economic offer and the entire dispute remains subject to interest arbitration. 3/

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to engage in which prompts us to conclude we correctly identified this as a "Class 1 proceeding" under Sec. 227.01(3)(a), Stats., in the Notice of Hearing.

2/ The District argues that our interpretation of Act 16 may violate the Equal Protection Clause of both the United States Constitution and the Constitution of the State of Wisconsin. We initially note that, with limited exceptions, school districts lack standing to challenge the constitutional validity of a statute. Buse v. Smith, 74 Wis. 2d 550 (1976). Assuming arguendo that the District has standing to attack the constitutional validity of the statute, we are mindful of the established principle that a party attacking a statute's validity has the burden of demonstrating its unconstitutionality beyond a reasonable doubt. Modern v. McGinnis, 70 Wis. 2d 1056 (1975). We are satisfied the District has not met its burden herein.

3/ The District argues that the below-quoted reopener proposal in its offer should allow it to conform its offer to the requirements of a "qualified economic offer". We reject the District's position. Whatever rights the reopener provision gives the District only exist if the District's offer is selected by the Interest Arbitrator and becomes part of the contract. The District's reopener proposal does not by its own terms give the District any rights to modify its offer and it is the offer which we must consider in our analysis.

"In the event the District becomes subject to any cost controls during the term of this Agreement, this salary schedule shall become limited to such cost controls. In addition, both parties reserve the right to reopen negotiations for the sake of adjusting the economics of this Agreement so as to also comply with any cost controls during the term of this Agreement."

We begin our analysis by considering the manner in which the phrase, "the percentage contribution by the municipal employer to the employes' existing fringe benefits" from Sec. 111.70(1)(nc)1.a. Stats., should be interpreted and applied herein. 4/ It is assumed by the parties and beyond dispute that the phrase "fringe benefits" includes health insurance benefits. The meaning of the "percentage contribution" language is also self-evident where the proposed contract language expresses the employer premium contribution as a percentage or, as here, uses the word "full".

The Association's final offer as to health insurance for the pre-July 1, 1993 period would maintain the existing "full" contribution level. The record establishes that on April 2, 1993, the monthly single and family health insurance premiums were $177.10 and $470.91, respectively. Thus, as of April 2, 1993, pursuant to the Association's offer, employes were entitled to have the District pay 100% of the single and family premium.

The District's final offer does not contain language which guarantees that the District would continue to pay 100% of the premiums for the duration of the contract period commencing July 1, 1993. 5/ If the premiums were to rise during that period, the District's contribution level would fall below 100%. Indeed, the record establishes that effective July 1, 1993, the single and family premiums increased to $201.14 and $485.54, respectively. Under these circumstances, it is apparent that the District's offer does not maintain "the percentage contribution by the municipal employer to the employes' existing "fringe benefits" which would exist on April 2, 1993 if the Association's offer were selected. Thus, the District's offer is not a qualified economic offer within the meaning of Sec. 111.70(1)(nc) 1. Stats.

4/ Section 111.70(1)(nc)1(a), Stats. states in its entirety:

> 111.70 (1)(nc) 1. "Qualified economic offer" means an offer made to a labor organization by a municipal employer that includes all of the following, except as provided in subd. 2:
>
> a. A proposal to maintain the percentage contribution by the municipal employer to the municipal employes' existing fringe benefit costs as determined under sub. (4)(cm)8s, and to maintain all fringe benefits provided to the municipal employes in a collective bargaining unit, as such contributions and benefits existed on the 90th day prior to commencement of negotiations.

5/ The District's argument that its 1993-1994 offer should be read as proposing to maintain the health insurance contribution level under whichever 1992-1993 offer is selected is totally at odds with the clear language of the District's offer and thus unpersuasive.

Further, the Association's health insurance offer for the pre-July 1, 1993 period contains an additional insurance benefit available to employes who retire. If the Association's offer were selected for the pre-July 1, 1993 period, this additional benefit would be one of the fringe benefits existing on April 2, 1993 that the District would be obligated to maintain if it wished to have a qualified economic offer. As reflected in the Findings of Fact, the District's July 1, 1993 through June 30, 1994 offer does not contain this health insurance benefit for those who retire.

Given the foregoing, it is apparent that if the Arbitrator were to select the Association's offer, the District's offer for the period July 1, 1993 through June 30, 1994 does not maintain the percentage contribution toward health insurance or the health insurance benefits in effect April 2, 1993. Thus, as measured against the Association offer, the District does not have a qualified economic offer for the period of July 1, 1993 through June 30, 1994.

Based on this conclusion, the entire dispute remains subject to interest arbitration and we have ordered Interest Arbitrator Vernon to proceed to issue an award. 6/

Dated at Madison, Wisconsin this 17th day of August, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

6/ The Association argues that the District's offer would also change the salary schedule structure in violation of Sec. 111.70(4)(cm)8p. Stats. Assuming, arguendo, that the District's offer does change the salary schedule structure, no violation of Sec. 111.70(4)(cm)8p. Stats. would occur because the structure change would take effect prior to August 12, 1993 (the effective date of Act 16). Thus, consistent with Sec. 111.70(4)(cm)8p. Stats., the structure in effect August 12, 1993 is maintained, not changed by the District's offer.