STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of MADISON TEACHERS INC. To Initiate Arbitration Between Said Petitioner MADISON METROPOLITAN SCHOOL DISTRICT	Case 215 No. 48323 INT/ARB-6664 Decision No. 27612-B

Appearances:

Cullen, Weston, Pines and Bach, Attorneys at Law, by Mr. Richard Thal, 20 North Carroll Street, Madison, Wisconsin 53703, for Madison Teachers Inc.

Lathrop and Clark, Attorneys at Law, by Ms. Malina R. Piontek Fischer, 122 West Washington Avenue, Suite 1000, P.O. Box 1507, Madison, Wisconsin 53701-1507, for the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On April 12, 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 John C. Oestreicher as the Interest Arbitrator who would determine which final offer should be selected as to certain disputed provisions of an October 16, 1992-October 15, 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 Sec. 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.

On February 18, 1994, hearing was held before Examiner Peter G. Davis, in Madison, Wisconsin. Thereafter, the parties entered into a factual stipulation which was received by the Commission on August 22, 1994. The parties then filed written argument in support of their respective positions, the last of which was received October 17, 1994.

By letter dated November 23, 1994, the Examiner asked the parties for additional written argument relating to the impact of the Commission's decision in Campbellsport School District, Dec. No. 27568-B (WERC, 8/94). The parties then filed supplemental written argument, the last of which was received December 13, 1994.

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

FINDINGS OF FACT

1. Madison Metropolitan School District, herein the District, is a municipal employer having its principal offices at 545 West Dayton Street, Madison, Wisconsin 53703.

2. Madison Teachers Inc., herein MTI, is a labor organization functioning as the collective bargaining representative of school district professional employes of the District employed as substitute teachers. MTI has its principal offices at 821 Williamson Street, Madison, Wisconsin 53703.

3. The District and MTI were unable to reach voluntary agreement on an October 16, 1992-October 15, 1994 contract covering the wages, hours and conditions of employment of the school district professional employes employed by the District and represented by MTI. Pursuant to Sec. 111.70(4)(cm)6., Stats., by March 26, 1993, the District and MTI submitted final offers on all unresolved issues for the 1992-1994 contract to the Wisconsin Employment Relations Commission. Pursuant to an April 12, 1993 Order from the Commission, the parties proceeded to select Interest Arbitrator John C. Oestreicher who was subsequently appointed by the Commission to resolve the contract impasse through selection of the final offer of the District or MTI. As of August 12, 1993, the Interest Arbitrator had not issued an award.

4. MTI's final offer contains provisions for new "Holiday and Conventions" and "Snow Days" benefits which would be in effect on April 2, 1993 and continue for the period commencing

July 1, 1993. The District's final offer for the period commencing July 1, 1993 does not provide for the existence of these fringe benefits.

5. If the Interest Arbitrator were to select MTI's final offer, the District's final offer would not maintain all fringe benefits which would be in effect on April 2, 1993.

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

CONCLUSIONS OF LAW

1. The District's final offer for the period July 1, 1993-October 15, 1994 is not a qualified economic offer within the meaning of Sec. 111.70(1)(nc), Stats., and nonstatutory provision Sec. 9120(2x) of 1993 Wisconsin Act 16.

2. Because the District's final offer for the period July 1, 1993-October 15, 1994 is not a qualified economic offer, all matters submitted to arbitration pursuant to Sec. 111.70(4)(cm), 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 John C. Oestreicher shall proceed to issue an award in which he selects the final offer of the District or the final offer of MTI.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of April, 1995.

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

MADISON METROPOLITAN 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 sent 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 by asserting that its final offer before the Interest Arbitrator was a qualified economic offer and that the arbitration proceedings should therefore be terminated.

By letter dated September 3, 1993, MTI responded by asserting that 1993 Wisconsin Act 16 should not be retroactively applied to the interest arbitration proceeding between the parties because such application would result in a manifest injustice and it would be constitutionally impermissible. MTI further contended that, in any event, the District did not have a qualified economic offer before the Interest Arbitrator.

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 October 8, 1993, the District responded to the Commission's September 21, 1993 letter as follows:

> This is to advise you that MMSD's existing final offer for the Substitute Teacher Bargaining Unit is a "qualified economic offer" for the post July 30, 1993 period. Further, the District's final offer

> for the post June 30, 1993 period is a "qualified economic offer" even if MTI's final offer is selected for the 1992-93 base year.
>
> For the 1992-93 school year the District's and MTI's final offers are very similar--the Board is offering a 4% salary increase and MTI is proposing a 4.3% salary increase.
>
> The District is not proposing any changes to benefits or the salary structure for either year of the two year substitute agreement. There are no steps or lanes in this contract.
>
> I have enclosed two sets of the new WERC Forms A and B. The first set indicated by "Board of Education Offer" in the right hand corner reflects the costing sheets showing the Qualified Economic Offer under the Board's Offer. Note that the Board of Education's 1993-94 salary cost for the Substitute Unit is 2.5% and the fringe benefit cost is .5%.
>
> The second set of Form A and B indicated by the Madison Teachers Inc. Offer" indicates that MTI's salary cost for 1993-94 is also 2.5% and the fringe benefit cost is .5%.
>
> We trust that this responds to your request.

By letter dated October 13, 1993, MTI responded to the Commission's September 21, 1993 letter as follows:

> I write in response to your letter dated September 21, 1993 regarding the above interest-arbitration case. It remains MTI's position that Arbitrator John C. Oestreicher retains jurisdiction over the indivisible final offers submitted. Moreover, it is MTI's position that the District has not submitted a qualified economic offer (QEO) for the post-June 30, 1993 period.
>
> In the September 21 letter you state that the Commission believes that 1993 Wisconsin Act 16 (Act 16) applies to the above-entitled interest-arbitration dispute. MTI believes that the Commission's decision to withdraw Arbitrator Oestreicher's jurisdiction over the entire dispute is an incorrect application of Act 16. MTI, therefore, is filing a Petition for Review of the Commission's decision that Act 16 applies to this case.

In the September 21 letter the Commission also states that the parties' existing offers form a valid and exclusive basis for determining whether and how this arbitration dispute can proceed. The Commission asks MTI to advise it whether it believes the District's offer for the post-June 30, 1993 period is a QEO. The District's existing 1993-94 offer is not a QEO. A QEO determination requires more than consideration of percentage salary increases. A QEO determination must be made by the Commission based on a consideration of data provided on a prescribed form for "calculating the total increased cost to the municipal employer of compensation and fringe benefits provided to school district professional employees." Sec. 111.70(4)(cm)8s, Stats.; Wis. Admin. Code ss ERB 33.10 (Oct. 1993). The District has not completed a QEO form.

In sum, MTI believes the Commission should reconsider its September 21 decision which withdrew jurisdiction of the parties' 1993-94 offers from the arbitrator. If the Commission does not reconsider that decision, MTI asks that a hearing be conducted to provide a record upon which a QEO determination may be made.

This hearing should be treated as a ss227.42, Stats. contested case hearing for the following reasons:

(1) MTI and its members have a substantial economic interest which will be adversely affected by a QEO determination not consistent with Ch. 111, Stats. and Wis. Admin. Code ch. ERB 33;

(2) There is no evidence of legislative intent that MTI's interest is not to be protected. On the contrary, the legislature has specifically authorized extensive procedures, including hearing by the Commission to protect the interest of labor organizations and their members in the interest-arbitration process (see sec. 111.70(4)(cm)(6), Stats.);

(3) The injury alleged is specific to MTI because MTI is the exclusive collective bargaining representative for all the substitute teachers affected by the QEO

determination; and

(4) Disputes of material fact exist, including whether or not the District's proposal is a QEO.

By letter dated October 21, 1993, the Commission advised the parties that because they disagreed as to whether the District had a qualified economic offer for the post-June 30, 1993 period, they should provide the Commission with a date for hearing. Ultimately, the parties agreed to a hearing on February 18, 1994. During that hearing, the parties agreed that they would meet to review information relevant to determining the cost of the District's final offer. While the parties were engaged in that effort, MTI submitted a Supplemental Affidavit on June 9, 1994. The District objected to inclusion of the Affidavit in the record. On July 26, 1994, the Examiner advised the parties that the Affidavit would be received into the record in its entirety.

On August 12, 1994, the District submitted several documents and an Affidavit for receipt into the record. MTI had no objection to receipt of the documents and the Affidavit and they were received into the record.

On August 22, 1994, the parties submitted a Stipulation which stated in pertinent part:

> 1. The 1992-93 total compensation costs, associated with the salaries and benefits paid by the District to the substitute teachers unit represented by MTI, have been determined based upon a list of approximately 430 substitute teachers employed by the District on April 1, 1993. Both parties have had an opportunity to review this list and agree that it is an accurate account of the substitute teachers represented by MTI on that date.
>
> 2. Assuming that the final offer of MTI were to be selected by Arbitrator Oestreicher for the 1992-93 school year, the 1992-93 total compensation costs, associated with the salaries and benefits paid by the District to the substitute teachers unit represented by MTI, equal $2,348,042.00. Said total compensation costs include the cost of long term salary rates, short term salary rates, longevity, and approximately $13,862 in insurance fees paid by the District. Both parties have had an opportunity to review the computation of these costs and agree with their accuracy.
>
> 3. The District's final offer for the 1993-94 school year

included a salary increase of 3% on the short term salary rate and longevity.

4. The District's final offer for the 1993-94 school year maintained the fringe benefits paid to the substitute teachers as they existed during the 1992-93 school year.

5. The long term salary rate increased by 1.68% during the 1993-94 school year due to an increase in the Track 1, Level 1.0 base salary contained in the Teachers' Collective Bargaining Agreement. This increase was included in computing the salary increase for the 1993-94 school year.

6. The District's final offer for the 1993-94 school year results in a total salary increase of $50,324.61. Said increase is the equivalent of a 2.14% increase over the 1992-93 total compensation costs to be paid to the substitute teachers unit represented by MTI, assuming that the final offer of MTI were to be selected by Arbitrator Oestreicher for the 1992-93 school year.

POSITIONS OF THE PARTIES

MTI

In its initial brief and reply brief, MTI argues that the Commission should determine Arbitrator Oestreicher retains his jurisdiction over the final offers submitted by the parties. In the alternative, MTI argues that if the Commission determines the second year of the parties' 1992-94 contract is now governed by a statute that was not effective until after the parties' interest arbitration hearing, the Commission should give the parties the opportunity to amend their existing offers.

MTI contends that there is a presumption against retroactive legislation and rule-making. Applying that presumption to this dispute, MTI urges the Commission to exercise its discretion under Act 16 in a manner consistent with this presumption.

Even if the Commission erroneously concludes that the Legislature intended Act 16 to apply retroactively, MTI asserts that no such retroactive application is appropriate because it would result in a manifest injustice to MTI.

MTI further argues that the Commission's own administrative rules indicate that Act 16 should not be applied retroactively in this case.

The District

The District contends that its final offer for the post-June 30, 1993 period is a qualified economic offer which terminates the interest arbitration proceeding for that period. The District contends that the parties' Stipulation reflects that the District met its wage and fringe benefit obligations as established by Act 16.

The District argues that Act 16 clearly establishes a legislative intent to withdraw the interest arbitration dispute from Arbitrator Oestreicher's jurisdiction if the District has made a qualified economic offer for the post-June 30, 1993 period. The District disputes MTI's contention that this is a retroactive application of Act 16. The District argues that the legislation is prospective in its application (i.e., Act 16 applies to disputes in which an award had not been issued on or prior to its effective date). The District asserts that the Legislature could not have been more clear in expressing its intent that Act 16 would apply to interest arbitration disputes such as that presently before Arbitrator Oestreicher. The District further asserts that the Commission's authority is limited by the Legislature to determining whether it is appropriate for the arbitration proceeding to continue. The clear legislative intent makes it inappropriate to apply any "manifest injustice" principle.

Given the foregoing, the District urges the Commission to determine that the District has made a qualified economic offer for the post-June 30, 1993 period and, pursuant to its statutory obligations under nonstatutory Sec. 9120(2x), 1993 Wisconsin Act 16, order Arbitrator Oestreicher to terminate the arbitration with respect to that portion of the dispute.

Supplemental Argument

Following receipt of the foregoing argument of the parties, Commission Examiner Davis sent the parties the following letter dated November 23, 1994:

> Enclosed is a copy of the Commission's decision in Campbellsport School District, Decision No. 27568-B (WERC, August 8, 1994). As indicated on pages 18-20 of that decision, a portion of the Commission's analysis in Section 9120 (2x) cases requires a comparison herein of the fringe benefits which would be in effect on April 2, 1993 if MTI's offer were selected against the fringe benefits for the post-June 30, 1993, period contained in the District's offer.
>
> From my review of the parties' final offers herein, it appears:

> (1) that if MTI's final offer were selected, new "Holiday and Conventions" and "Snow Days" provisions would arguably be in effect on April 2, 1993; and (2) that the District's final offer for the post-June 30, 1993, period does not provide for the continued existence of these new provisions.
>
> I would appreciate your prompt written comment on the observations contained in this letter.

By letter dated December 6, 1994, the District responded to the Examiner's November 23, 1994 letter. The District therein asserts that the parties' Stipulation constituted an agreement between the parties that the District's final offer for the post-June 30, 1993 period maintained all fringe benefits in place on April 2, 1993. Thus, the District argues that its offer does provide for the continued existence of the new "Holiday and Convention" and "Snow Day" fringe benefits if MTI's final offer were selected.

The District further contends that the Campbellsport decision is distinguishable from the instant dispute because the employer's final offer in that dispute automatically changed insurance benefits and there was no agreement between the parties to maintain fringe benefits as they existed prior to July 1, 1993.

Given the foregoing, the District asserts that the Campbellsport decision is not applicable to the instant dispute between the parties and further that the Commission should rule that the Interest Arbitrator no longer has jurisdiction over that portion of the parties' dispute which relates to the post-June 30, 1993 period.

In its December 6 and December 13, 1994 responses, MTI asserts that the District does not have a qualified economic offer because the "Holiday and Convention" and "Snow Day" benefits which would be in effect on April 2, 1993 if MTI's offer were selected are not provided for in the District's final offer for the post-June 30, 1993 period. MTI disputes the District's assertion that the Stipulation addresses the question of "Holiday and Conventions" and "Snow Days" benefits. MTI contends that the intent of the Stipulation was simply to agree that the District's final offer did not change benefits which were provided for in the parties' 1989-1992 contract. MTI further argues that when the Stipulation was signed by the parties, the parties were unaware of the Campbellsport analysis. Thus, MTI asserts the District cannot reasonably claim that the Stipulation should now be construed to waive MTI's ability to argue that the District's final offer was not a qualified economic offer under a Campbellsport analysis. MTI asserts the District's final offer clearly does not provide for the "Holiday and Conventions" and "Snow Days" benefits.

MTI further argues that the District's efforts to distinguish Campbellsport are unpersuasive because the only relevant question is whether the District's final offer maintains for the entire

contract period those fringe benefits existing on April 2, 1993. Where, as here, the employer's final offer does not maintain those fringe benefits, Campbellsport requires that the interest arbitration proceedings continue.

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

Under our interpretation of nonstatutory provision (2x), as further refined in Campbellsport School District, Dec. No. 27568-B (WERC, 8/94) rev'd CirCt Fond du Lac, 94-CV-518 (2/95), appeal pending, the key question presented to us in this proceeding is whether the District's offer maintains the fringe benefits 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 benefits 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 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.

The parties agree that if MTI's final offer were selected by the interest arbitrator, new "fringe benefits" related to "Holiday and Conventions" and "Snow Days" would be in effect on April 2, 1993. The District does not argues that its final offer, standing alone, would provide these new benefits for the post-April 2, 1993 contract period. 1/ Nor does the plain language of the District's final offer provide for these new fringe benefits to be in effect during any portion of the parties' disputed contract. Thus, but for the terms of the parties' Stipulation, there would be no doubt that the District does not have a qualified economic offer under our Campbellsport analysis.

Our review of the parties' Stipulation does not change our conclusion. Even assuming arguendo that the terms of the Stipulation could override the plain language of the District's final offer, the Stipulation only provides that "The District's final offer for the 1993-94 school year maintained the fringe benefits paid to the substitute teachers as they existed during the 1992-93 school year." Thus, in our view, the Stipulation indicates that the District's final offer for the 1993-1994 school year does not seek to change the fringe benefits received by substitute teachers during the 1992-1993 school year when no contract was in effect. However, the critical analytical question is not whether the District's final offer maintains fringe benefits which actually existed during the contract hiatus 1992-93 school year (which would include the key date of April 2, 1993) but rather whether the District's final offer would maintain the fringe benefits which would retroactively exist if the MTI offer for the 1992-93 school year were accepted. Thus, we do not believe the Stipulation can reasonably be interpreted as an agreement by the parties that the District's final offer provides the new fringe benefits for the duration of the parties' 1992-1994 contract if MTI's offer were selected. Therefore, as measured against the MTI offer, the District does not have a qualified economic offer for the period of July 1, 1993 through October 15, 1994.

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

1/ In Campbellsport, the employer made an unpersuasive argument that its offer should be interpreted as providing for continuation of whatever fringe benefits are in effect on April 2, 1993. The District herein does not argue that the language of its offer should be so interpreted, presumably because the plain language of the offer would not make such an argument persuasive.

Dated at Madison, Wisconsin, this 6th day of April, 1995.

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