STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Motion of

RACINE EDUCATION ASSOCIATION

Requesting a Review of Implementation Pursuant to
ERC 33.10(6) In A Dispute Between the Association and

RACINE UNIFIED SCHOOL DISTRICT

Case 138
No. 53037
INT/ARB-7722

Decision No. 29310

Appearances:

Kelly & Kobelt, Attorneys at Law, by **Mr. Robert C. Kelly,** 122 East Olin Avenue, Suite 195, Madison, Wisconsin 53713, for the Association.

Mr. Frank L. Johnson, Director of Employee Relations, Racine Unified School District, 2220 Northwestern Avenue, Racine, Wisconsin 53404, and Melli, Walker, Pease & Ruhly, S.C., by **Mr. Jack D. Walker** and **Mr. Douglas E. Witte,** 119 Martin Luther King Jr., Blvd., Suite 600, P.O. Box 1664, Madison, Wisconsin 53701-1664, for the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 6, 1996, the Racine Education Association filed a Motion to Review Implementation with the Wisconsin Employment Relations Commission pursuant to ERC 33.10(6).

Hearing on the Motion was conducted by Commission Examiner Peter G. Davis on March 15, 1996 in Racine, Wisconsin; on April 9, 1996 in Madison, Wisconsin; on October 4, 1996 in Madison, Wisconsin, and on October 31, 1996 in Racine, Wisconsin.

The parties filed post hearing briefs, the last of which was received April 1, 1997. By November 28, 1997, the parties filed supplemental argument and position statements as to the Commission's intention to take notice of certain documents.

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

FINDINGS OF FACT

1. The Racine Unified School District, herein the District, is a municipal employer having its offices at 2220 Northwestern Avenue, Racine, Wisconsin 53404.

2. The Racine Education Association, herein the Association, is a labor organization having its offices at 516 Wisconsin Avenue, Racine, Wisconsin 53405-1051.

3. The Association is the collective bargaining representative for employes of the District in a bargaining unit described in the parties' most recent contract as:

. . . all regular full-time and regular part-time certified teaching personnel. . . .

4. On or about January 15, 1992, the District and Association executed a contract covering Finding of Fact 3 unit employes for the period of August 20, 1990 through August 24, 1992.

5. 1993 Wisconsin Act 16 took effect on August 12, 1993 and is attached to this decision as Appendix "A".

6. To meet its obligation to administer Act 16, the Wisconsin Employment Relations Commission promulgated emergency administrative rules effective October 13, 1993 and permanent administrative rules (Chapter ERB 33) effective June 1, 1994. ERB 33 was later retitled ERC 33, is attached to this decision as Appendix "B", and states that it:

> . . . governs the procedure relating to collective bargaining and interest arbitration pursuant to s. 111.70(4)(cm), Stats., for collective bargaining agreements entered into on or after August 12, 1993 affecting school district professional employees. . . .

As of August 12, 1993, the District and the Association had not entered into a successor to their 1990-1992 contract.

7. The District made the following offer to the Association dated September 25, 1995:

This is the District's submission of the QEO for the period of time after June 30, 1993 to July 1, 1995. In accordance with ERB 33.10(3), the District states:

1. For any period of time after June 30, 1993, covered by the proposed collective bargaining agreement, the District shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70(1)(nc), Stats.

2. For each 12 month period or portion thereof which commences July 1, 1993, and is covered by this agreement, the District shall provide the minimum increase in salary which s. 111.70(1)(nc)1, Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70(1)(nc)1, Stats., allows for the purposes of a qualified economic offer.

Attached to this letter is the Qualified Economic Offer forms A and B as attested to by Robert Stepien, Assistant Superintendent of Business Services.
If you have questions or concerns, District representatives will be available to discuss those issues.

The offer was accompanied by Forms A and B.

8. By letter dated September 29, 1995, the District advised the Association as follows:

Please take notice that the District intends to implement the QEO which was submitted to you by letter dated September 25, 1995. The date of implementation will be no sooner than October 15, 1995 but will follow a determination by investigators that the parties are deadlocked. The implementation will be done as follows:

1. All persons who are eligible for a step increase for the years 1993-94 and 1994-95 will be moved to the appropriate step. This has been done.

2. All persons who are eligible for a lane change for the years 1993-94 and 1994-95 will be moved to the appropriate lane. This has been done.

3. The teachers' and psychologists' salary schedule(s) will be advanced for the year 1993-94 by 1.04497%. The teachers' and psychologists' salary schedule for the year 1994-95 will be advanced by 1.28708%. Payment for each school year will be made retroactively to July 1, 1993 and July 1, 1994. Retroactive payment will be made as soon as possible after October 15, 1995 or after the investigation's determination of deadlock whichever is later.

All fringe benefits and the teachers percentage contribution toward the cost of these benefits each year will remain the same. Since the 1993-95 contract year has expired, the District will not retroactively collect from the teachers the increased health plan contributions which would be necessary to maintain the teachers' same percentage contribution to that benefit. However, that amount will be reflected in the contribution made by teachers starting with the 1995-96 school year and it will continue to be adjusted yearly thereafter as appropriate."

Following the Commission investigator's determination of deadlock, the District ultimately implemented its September 25, 1995 offer.

9. On November 14, 1995, the District and Association executed a contract covering Finding of Fact 3 unit employes for the period of August 25, 1992 through August 24, 1993.

10. The District has an obligation under the parties' 1992-1993 bargaining agreement to provide certain health and dental benefits to employes represented by the Association. Employes pay $10 per month for single health coverage and $20 per month for family health coverage and $1 per month for single dental coverage and $3 per month for family dental coverage. The District pays the remaining cost.

The District pays the cost of these contractual benefits itself rather than through an insurance carrier. It contracts with a separate entity (Wausau Insurance Company) to administer the benefits and carries stop-loss insurance to cover costs above a certain level.

The amount of money which the District will budget for health and dental costs in a given year is determined through the calculation of a monthly "premium equivalent". The "premium equivalent" is calculated based on estimated claims incurred by employes, inflation, and projected administrative and stop-loss insurance costs. Once the premium equivalent is established, the District then deposits its share of the premium equivalent along with the employes' contribution in an account from which benefits are paid.

11. The District pays MEI, Inc. a monthly fee per employe for various health benefit related services including access to health providers who have agreed to provide medical services to District employes at a discounted cost.

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

CONCLUSIONS OF LAW

1. The offer of the Racine Unified School District dated September 25, 1995 is a qualified economic offer within the meaning of Sec. 111.70(1)(nc), Stats. and ERC 33.10(2) and (3)(a).

2. The Racine Unified School District implemented its qualified economic offer in a manner consistent with Sec. 111.70(1)(nc), Stats. and ERC 33.

3. The Racine Unified School District has failed to comply with ERC 33 by providing the Racine Education Association with inaccurate and inappropriately attested to Forms A and B for the August 25, 1992-August 24, 1993 base year and the August 25, 1993-June 30, 1995 contract period.

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

ORDER

Within thirty (30) days of the date of this Order, the Racine Unified School District shall:

1. Provide the Racine Education Association with Forms A and B completed in a manner consistent with ERC 33.10(3)(b) and this decision.

2. Advise the Wisconsin Employment Relations Commission in writing as to the actions the District has taken to comply with this Order.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of February, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

RACINE UNIFIED SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

The District made the following offer to the Association dated September 25, 1995:

. . .

This is the District's submission of the QEO for the period of time after June 30, 1993 to July 1, 1995. In accordance with ERB 33.10(3), the District states:

1. For any period of time after June 30, 1993, covered by the proposed collective bargaining agreement, the District shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70(1)(nc), Stats.

2. For each 12 month period or portion thereof which commences July 1, 1993, and is covered by this agreement, the District shall provide the minimum increase in salary which s.111.70(1)(nc)1, Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70(1)(nc)1, Stats., allows for the purposes of a qualified economic offer.

Attached to this letter is the Qualified Economic Offer forms A and B as attested to by Robert Stepien, Assistant Superintendent of Business Services.

If you have any questions or concerns, District representatives will be available to discuss those issues.

. . .

The offer was accompanied by Forms A and B.

By letter dated September 29, 1995, the District advised the Association as follows:

Please take notice that the District intends to implement the QEO which was submitted to you by letter dated September 25, 1995. The date of implementation will be no sooner than October 15, 1995 but will follow a determination by investigators that the parties are deadlocked. The implementation will be done as follows:

1. All persons who are eligible for a step increase for the years 1993-94 and 1994-95 will be moved to the appropriate step. This has been done.

2. All persons who are eligible for a lane change for the years 1993-94 and 1994-95 will be moved to the appropriate lane. This has been done.

3. The teachers' and psychologists' salary schedule(s) will be advanced for the year 1993-94 by 1.04497%. The teachers' and psychologists' salary schedule for the year 1994-95 will be advanced by 1.28708%. Payment for each school year will be made retroactively to July 1, 1993 and July 1, 1994. Retroactive payment will be made as soon as possible after October 15, 1995 or after the investigation's determination of deadlock whichever is later.

All fringe benefits and the teachers percentage contribution toward the cost of these benefits each year will remain the same. Since the 1993-95 contract year has expired, the District will not retroactively collect from the teachers the increased health plan contributions which would be necessary to maintain the teachers' same percentage contribution to that benefit. However, that amount will be reflected in the contribution made by teachers starting with the 1995-96 school year and it will continue to be adjusted yearly thereafter as appropriate."

On February 6, 1996, the Association filed a Motion to Review Implementation with the Commission pursuant to ERC 33.10(6). The District responded to the Association Motion on February 12, 1996, alleging that "The District has implemented a Qualified Economic Offer that meets the requirements of the law."

Thereafter, by letter dated February 23, 1996, the Association advised the Commission that:

". . .the District's September 25, 1995 Economic Offer does not constitute a Qualified Economic Offer (QEO) pursuant to Wis. Stats. 111.70(1)(nc) and the Wisconsin Administrative Code ss. ERC 33 in that:

(1) neither the "Employee Base", the "Base Year Salary" nor the "Fringe Benefit Costs" were developed as of the 90th day prior to August 24, 1993, which was the expiration date of the most recently expired collective bargaining agreement. (footnote omitted).

(2) on information and belief those costs listed under the heading "Extra Duty Pay" on Form B include payments that were made to persons other than those bargaining unit employees who were represented by the REA on the 90th day prior to August 24, 1993.

(3) on information and belief those costs listed under the heading "Summer School" on Form B include payments made to persons other than those bargaining unit employees who were represented by the REA on the 90th day prior to August 24, 1993.

(4) the health insurance costs shown for the Base Year, QEO1 and QEO2 are not the ***actual costs*** of the benefits paid to those employees represented by the REA on the 90th day prior to August 24, 1993.

(5) the payments made by the District for medical management are not, as such, costs chargeable to the bargaining unit employees represented by the REA.

The District responded to the Association by letter dated March 5, 1996 as follows:

• • •

The Association raises five issues:

1. First, the Association claims salary and benefit costs were not captured as of May 26, 1993 which was 90 days prior to the expiration date of the expired collective bargaining agreement.

   The District responds by saying that the law which was passed on August 10, 1993 retroactively, foreclosed the District from capturing the information on that exact date since such computer information is changed on a daily basis. However, the District did happen to have a staffing and salary "picture" that was taken on May 13, 1993. Between this date and May 26, 1993, two teachers terminated employment with salaries of $36,946 and $47,754. If these costs are to be removed from the calculations, this would reduce the amount of money available to spread to teachers as the QEO rules require.

The District did use March 31, 1993 as a "picture" date for the benefit portion of the calculation because the original "picture" date was set per WERC rule as April 2, 1993 (prior to the settlement of the 1992-93 labor agreement). If the District were to use a benefit "picture" that was taken on May 31, 1993, the participation rates would change negligibly to the benefit of the teacher unit. Nevertheless, when combining the changes in the salary and benefit portions of the calculation, the net result would be a reduction in the amount of money available for teacher raises.

2. Second, the Association claims extra duty pay was included in the QEO calculation that may have included pay to non-bargaining group employees. Assuming this was true, the impact of this on the QEO would be negligible and even if not negligible, it would reduce money available for teacher raises.

3. Third, the Association claims that summer school pay was included in the QEO calculation that may have included pay to non-bargaining group employees. Assuming this was true, the impact of this on the QEO would be negligible and even if not negligible, it would reduce money available for teacher raises.

4. Fourth, the Association claims the health insurance costs are not the actual costs. The health insurance costs for the District, which is self-insured, are based on an average calculated premium covering all bargaining groups. This matter has previously been determined by the WERC to be an acceptable practice in calculating the QEO.

5. Fifth, the Association claims medical management costs are not proper. Costs of the MEI medical management are proper medical costs and should be included in the calculation. If such was determined that the costs should be excluded, this would reduce money available for teacher raises.

> In my opinion, the only thing to be decided is the question of whether the cost of the District's medical management consultant is appropriate for calculation in the health care costs. The settlement of this issue would be for academic purposes only, because if the Association's allegation is right and this cost should not be included, the fact that the District included the cost, would have the effect of the District exceeding the QEO.
>
> However, since the District would be able to recalculate the QEO in the event the Association was successful with any part of its challenge and since such recalculation would demonstrate an overpayment to teachers even though such would be negligible, the District meets the QEO when it exceeds the minimum."

During hearing and briefing of the Motion, the District made certain revisions and corrections to Forms A and B. Certain issues remain in dispute between the parties.

POSITIONS OF THE PARTIES

The Association

The Association contends the District's Qualified Economic Offer (QEO) is a nullity because it does not conform in every respect to applicable statutes and administrative rules.

The Association first argues the District failed to follow the conditions precedent to making a QEO. The Association contends that pursuant to ERC 33.10(3)(b), the District was obligated to provide the Association with Forms A and B sixty days prior to August 24, 1993 (i.e. June 25, 1993), the stated expiration date of the then existing bargaining agreement. The Association further argues that Commission rules require the District's treasurer and superintendent or business manager to attest to the accuracy of the information on Forms A and B. Here, the Association contends the District failed to provide Forms A and B to the Association in a timely manner or with the required attestation. The Association asserts these violations cannot now be remedied and that the District does not and cannot have a QEO.

The Association next argues that Forms A and B as prepared by the District contain inaccurate information. More specifically, the Association asserts that the District improperly included compensation costs attributable to non-bargaining unit employes and failed to use the correct time period for summer school costs. The Association contends that these errors improperly inflate the costs on Forms A and B, and thus improperly inflate the size of the resultant QEO.

The Association acknowledges the District's contention that these alleged errors are of little consequence because they produce a QEO in excess of the minimum allowed by law. The Association "vehemently" disagrees with the District's view of the law. The Association contends that an offer which exceeds that defined in Sec. 111.70(1)(nc), Stats., is not a QEO and cannot be unilaterally implemented. The Association argues this is so because:

> The statute gives the school district employer the right under proper circumstances, to unilaterally implement a "Qualified Economic Offer" **as defined by 111.70(1)(nc), Stats.** -- nothing more -- nothing less. To hold that a school district employer can, under the QEO law, not only unilaterally implement a QEO but that it may implement any compensation and fringe benefit offer (package) it wishes to as long as that offer equals or exceeds a QEO would be to totally ignore clearly stated public policy (see Sec. 111.70(6)) and eliminate completely any obligation, mutual or otherwise, on the school district employer's part to collectively bargain as that term is defined by Section 111.70(1)a, Stats. What school district employer would engage in collective bargaining in the statutory sense if it were otherwise allowed, pursuant to the QEO law, to unilaterally implement, in its unfettered discretion, a unilaterally conceived and developed compensation and fringe benefit package as long as that unilaterally conceived and developed compensation and fringe benefit package equalled or exceeded the requirements of Section 111.70(1)(nc), Stats? The QEO law passes legal muster only if the unilaterally implemented employer compensation and fringe benefit package conforms, and strictly so, to the requirements of Sec. 111.70(1)nc, Stats. While the employer, under these circumstances, may legally, unilaterally implement a compensation and fringe benefit package, that compensation and fringe benefit package is not one of the employer's design, rather it is a statutorily defined compensation and fringe benefit package designed by the legislature. The law is well settled, statutory provisions must be interpreted, when possible, in a manner that harmonizes those provisions. Harmony, we respectfully submit, can be obtained here only if the compensation and fringe benefit package the employer is lawfully permitted to unilaterally implement, is one established by the legislature involving no employer input or discretion. The opposite is true if the employer can unilaterally implement any compensation and fringe benefit package it desires to implement as long as that package equals or exceeds the requirements of Sec. 111.70(1)nc. Indeed, the only time an employer would engage in collective bargaining, if this were the case, would be in circumstances where the employer wished to bargain a compensation or fringe benefit package that was less than the compensation and fringe benefit package required by Sec. 111.70(1)nc, Stats.

What about the labor organization and its role under these circumstances? Would not the labor organization be relegated to performing two functions - specifically: (1) examining the Commission Qualified Economic Offer Calculation Forms A and B submitted to it to see if the compensation and fringe benefit package outlined therein at least equalled a QEO as defined by Sec. 111.70(1)nc, Stats., and (2) submitting to arbitration mandatory non-economic issues, if any there be, that the parties were unable to resolve as between themselves.

What happens to the rights of the municipal (teacher) employees as spelled out in Sec. 111.70(2), Stats. if a school district employer can unilaterally implement any compensation and fringe benefit packages it chooses to implement as long as that compensation and fringe benefit package exceeds a QEO as defined by Sec. 111.70(1)nc. Why would municipal employees form, join or assist a labor organization under these circumstances?

Sec. 111.70(3)(a)(1), Stats. makes it a prohibited practice for a municipal employer:

1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), Stats., describes the rights protected by Sec. 111.70(3)(a)1, Stats., as being:

(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Violations of Sec. 111.70(3)(a)1, Stats., occur when employer conduct has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Sec. 111.70(2) rights. If, after evaluating the conduct in question under all the circumstances, it is concluded that the conduct had a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere and even if the employee(s) did not feel coerced or was not in fact deterred from exercising Sec. 111.70(2) rights.

> As the test of Sec. 111.70(2), Stats., reflects, the employe rights established include ". . .the right to form, join or assist labor organizations. . ." As reflected by the language of Sec. 111.70(2), Stats., this right includes the decision to 'join' the Union as a member and to generally support or 'assist' the Union."
> Jefferson County, Dec. No. 26845-B, 7/8/92; Green County, Dec. No. 26798-B; Glendale-River Hills School District, 9/3/91.
>
> The labor organization, in this case the REA, has the obligation, indeed the authority, to establish those matters of compensation and fringe benefits that are accordable to its bargaining unit members. The bargaining unit members look to their Union to establish their wages, hours and conditions not to their Employer. Allowing the Employer to unilaterally establish the compensation and fringe benefits for unit people would change all this and would have more than a reasonable tendency to make the involved teacher employees less supportive of their labor organization and less interested in exercising their Section 111.70(2) rights.
>
> The District's September 25, 1995 compensation and fringe benefit package as outlined in the Commission Qualified Economic Offer Calculation Forms A and B it submitted to the REA on September 25, 1995 included base year compensation and fringe benefit costs that were not attributable to those employees who were represented by the REA on May 26, 1993. That is the fact. It follows, since the base year costs are overstated that the costs reflected on Forms A and B are also over stated. The District's September 25, 1995 compensation and fringe benefit package exceeds that required by Section 111.70(1)nc, Stats. Hence, the District's September 25, 1995 submission did not constitute a QEO. Further, the District has, and had, no right under the statute to unilaterally implement the same.

The Association next contends that the District's QEO is improper because it does not reflect the actual costs of health and dental benefits paid to unit employes represented by the Association on May 26, 1993 (i.e. the "snapshot date"). The Association argues in this regard that: (1) the District improperly uses premium equivalents instead of actual claims costs; (2) District "premium equivalents" are improperly based on claim experience of a group of employes broader than those in the REA unit; (3) District included administrative expenses are projected rather than actual; (4) District stop-loss premiums are not a legitimate fringe benefit cost; (5) District COBRA premiums are improperly included; and (6) District medical management costs are improperly included.

The Association lastly argues that the District QEO is improper because it did not include the cost of providing workers' compensation benefits.

In conclusion, the Association asserts the District has not made a proper QEO and cannot now be allowed to do so. Thus, the Association contends it should be able to proceed to arbitration.

The District

The District asserts the Association fails to admit the difference between "making" a QEO and "implementing" a QEO. The District contends it made a QEO by committing itself to honor the statutory components thereof. The District argues that any errors it may have made in calculating and implementing its QEO are the proper subject of this litigation. However, the District alleges that any errors it made when translating its offer to monetary amounts do not affect the existence of the QEO itself. The District contends that the Commission would not have promulgated administrative rules allowing for correction of calculations if such errors voided a QEO.

Turning to Association contentions that a QEO does not exist because Forms A and B were allegedly not appropriately filed, the District asserts the Forms are not a substantive element of a QEO. The District further argues it provided the Forms to the Association in a timely manner given the unique circumstances confronting the parties. The District alleges the lack of the school board treasurer's signature on the Forms should not invalidate the Forms, given the ministerial nature of such an action.

During the course of this litigation, the District has acknowledged certain calculation errors and made corrections. These corrections reduce base year salary and fringe benefit costs which, in turn, reduce the salary increase the District must offer to have a minimum QEO. As to remaining disputes regarding health insurance costs, workers' compensation cost, and summer school costs, the District asserts its calculations are proper.

Turning to the Association's contentions regarding the relationship between the QEO law and collective bargaining, the District asserts:

> The remaining arguments of the Association basically concern the Association's belief that the QEO law is not valid or that it somehow upsets the balance of power with respect to negotiations. First of all, these concerns should be addressed to the legislature, not the WERC. It is presumed that the legislature knows what it is doing when it enacts a law. 15/ In this case there is no need to speculate as to the legislature's intention. 1993 Wisconsin Act 16 was passed specifically to restrict the rights of bargaining units of school district professional

employees to go to interest arbitration over economic issues. Moreover, the legislature reaffirmed its intent in repassing the QEO provisions in 1995 Wisconsin Act 27.

The Association claims the QEO provisions of the statutes are wholly different than either the voluntary impasse procedures parties may agree to or the traditional interest arbitration procedures. The District agrees that this is a new procedure. Other commentators have recognized the unique nature of the QEO process as well:

> Inasmuch as collective bargaining usually is defined as negotiations on wages, hours, and conditions of employment, limited only by the rules governing mandatory, permissive and prohibited subjects of bargaining, Council members do not perceive the concept of a Qualified Economic Offer as representing a collective bargaining device. Council members instead see it as a cost containment device superimposed on the collective bargaining process. 16/

However, a similar statement could be made regarding the traditional interest arbitration process. Allowing an arbitrator to pick between the final offers of two parties is not collective bargaining. Moreover, where the QEO can be seen as a cost containment device, interest arbitration can most properly be described as a cost escalating device. Both QEO and interest arbitration are artificial devices which produce results different than if the parties engaged in collective bargaining. Thus, the extent the QEO law may be invalid then interest arbitration is equally invalid. If one aspect of the law is struck down the entire law must be struck down.

The Association further argues that the QEO is a unilateral process solely under the control of the municipal employer and that employers can use it to engage in bad faith bargaining. If the Association believes bad faith bargaining has occurred it is free to file such a complaint with the Commission. While the municipal employer is the party with the ability to propose or not propose a QEO and is allowed to unilaterally implement a QEO once deadlock is declared, that does not mean the labor organization has no role. The rules specifically provide a procedure whereby the labor organization can challenge the implementation of a QEO. The Association is availing itself of that specific procedure in this

proceeding. While the Association may not like the role it has been given, these complaints should be taken to the legislature.

15/ See, STATE EX REL. SCHULTZ V. WELLENS, 96-0415, ____ Wis. 2d __, (Ct. App. February 11, 1997) (and cases cited therein). "The legislature is presumed to know the relationship between new and existing statutes."

16/ See, Analysis And Assessment Of Each Of The Changes Proposed By The Governor To S 111.70(4)(cn) Of The Statutes In 1993 Senate Bill 44, submitted by the Council on Municipal Collective Bargaining dated January 3, 1995. Slip op. At p. 9.

DISCUSSION

Definition of a Qualified Economic Offer

Section 111.70(1)(nc), Stats. defines a qualified economic offer as follows:

> (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. (5)(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 expiration of any previous collective bargaining agreement between the parties, or the 90th day prior to commencement of negotiations if there is no previous collective bargaining agreement between the parties.
> >
> > b. In any collective bargaining unit in which the municipal employe positions were on August 12, 1993, assigned to salary ranges with steps that determine the levels of progression within each salary range during a 12-month period, a proposal to provide for a salary increase of at least one full step for each 12-month period covered by the proposed collective bargaining agreement, beginning with the expiration date of any previous collective bargaining agreement, for each municipal employe who is eligible for a within range salary increase, unless the increased

cost of providing such a salary increase, as determined under sub. (4)(cm)8s., exceeds 2.1% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit for any 12-month period covered by the proposed collective bargaining agreement, or unless the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employes' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employes, as determined under sub. (4)(cm)8s., in addition to the increased cost of providing such a salary increase, exceeds 3.8% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit for any 12-month period covered by the proposed collective bargaining agreement, in which case the offer shall include provision for a salary increase for each such municipal employe in an amount at least equivalent to that portion of a step for each such 12-month period that can be funded after the increased cost in excess of 2.1% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit is subtracted, or in an amount equivalent to that portion of a step for each such 12-month period that can be funded from the amount that remains, if any, after the increased cost of such maintenance exceeding 1.7% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit for each 12-month period is subtracted on a pro-rated basis, whichever is the lower amount.

c. A proposal to provide for an average salary increase for each 12-month period covered by the proposed collective bargaining agreement, beginning with the expiration date of any previous collective bargaining agreement, for the municipal employes in the collective bargaining unit at least equivalent to an average cost of 2.1% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit for each 12-month period covered by the proposed collective bargaining agreement, beginning with the expiration date of any previous collective bargaining agreement, including that percentage required to provide for any step increase and any increase due to a promotion or the attainment of increased professional qualifications, as determined under sub. (4)(cm)8s., unless the increased cost of providing such a salary increase, as determined under sub. (4)(cm)8s., exceeds 2.1% of the total compensation and

fringe benefit costs for all municipal employes in the collective bargaining unit for any 12-month period covered by the proposed collective bargaining agreement, or unless the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employes' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employes, as determined under sub. (4)(cm)8s., in addition to the increased cost of providing such a salary increase, exceeds 3.8% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit for any 12-month period covered by the collective bargaining agreement, in which case the offer shall include provision for a salary increase for each such period for the municipal employes covered by the agreement at least equivalent to an average of that percentage, if any, for each such period of the prorated portion of 2.1% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit that remains, if any, after the increased cost of such maintenance exceeding 1.7% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit for each 12-month period and the cost of a salary increase of at least one full step for each municipal employe in the collective bargaining unit who is eligible for a within range salary increase for each 12-month period is subtracted from that total cost.

2. "Qualified economic offer" may include a proposal to provide for an average salary decrease for any 12-month period covered by a proposed collective bargaining agreement, beginning with the expiration date of any previous collective bargaining agreement, for the municipal employes covered by the agreement, in an amount equivalent to the average percentage increased cost of maintenance of the percentage contribution by the municipal employer to the municipal employes' existing fringe benefit costs, as determined under sub. (4)(cm)8s., and the average percentage increased cost of maintenance of all fringe benefits provided to the municipal employes represented by a labor organization, as such costs and benefits existed on the 90th day prior to commencement of negotiations, exceeding 3.8% of the total compensation and fringe benefit costs for all municipal employes in the collective bargaining unit required for maintenance of those contributions and benefits for that 12-month period if the increased cost of

> maintenance of those costs and benefits exceeds 3.8% of the total compensation and fringe benefit costs for all municipal employe in the collective bargaining unit for that 12-month period. (Emphasis added).

As is apparent from the statutory use of the phrase "at least" in Sec. 111.70(1)(nc)1.b. and c., Stats., the Legislature was defining the least or minimum level of a salary increase which could be offered to meet the statutory definition of a qualified economic offer. Thus, in our view, it is clear that the Legislature intended to allow school districts to offer more than the statutory minimum level of salary increase as part of a qualified economic offer. Therefore, in our administrative rules, we provided forms by which a "MINIMUM (emphasis added) QUALIFIED ECONOMIC OFFER" (See ERC 33 Appendix Form A - Title Page) could be calculated and we carried over the statutory use of the phrase "at least" when we defined the content and existence of a qualified economic offer in ERC 33.10(2) and (3).

Given all of the foregoing, we reject the Association's argument that the Municipal Employment Relations Act does not allow the District to offer more than the statutory minimum qualified economic offer salary increase as part of a valid qualified economic offer.

When Does a Qualified Economic Offer Exist?

The common sense answer to this question is that a qualified economic offer exists whenever the school district makes an offer to the union which meets the statutory definition of such an offer contained in Sec. 111.70(1)(nc), Stats. We took this common sense interpretation in our administrative rules when we defined the "CONTENTS" of a qualified economic offer in ERC 33.10(2) as:

> . . . a proposal in which the municipal employer obligates itself to at least comply with the salary and fringe benefit requirements of s. 111.70(1)(nc), Stats., for the entirety of any bargaining agreement for any period after June 30, 1993.

and the EXISTENCE of a qualified economic offer in ERC 33.10(3)(a) as:

> **(3)** EXISTENCE. (a) A qualified economic offer exists if the municipal employer submits an offer to a labor organization which at least states the following:

> 1. For any period of time after June 30, 1993, covered by the proposed collective bargaining agreement, the municipal employer shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70(1)(nc), Stats.
>
> 2. For each 12 month period or portion thereof which commences July 1, 1993, and is covered by this agreement, the municipal employer shall provide the minimum increase in salary which s. 111.70(1)(nc)1, Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70(1)(nc)2, Stats., allows for the purposes of a qualified economic offer.

Thus, where a school district's offer commits it to do whatever is statutorily required to have a qualified economic offer, it has made a qualified economic offer. As we stated in SHOREWOOD SCHOOL DISTRICT, Dec. No. 29259 (WERC, 12/97):

> . . . Where the school district has committed itself to comply with the Sec. 111.70(1)(nc), Stats., it has made a qualified economic offer [ERC 33.10(2) and (3)(a)]. Where it is determined the school district has acted in a manner inconsistent with its qualified economic offer, ERC 33.10(6) reflects the Commission's judgment that it is appropriate to require compliance with the still existing offer/commitment to comply with Sec. 111.70(1)(nc), Stats. As long as the school district maintains its commitment to honor Sec. 111.70(1)(nc), Stats., it has a qualified economic offer and access to interest arbitration as to economic issues is barred by Sec. 111.70(4)(cm)5s, Stats.

Here, the District's September 25, 1995 proposal to the Association committed the District to comply with Sec. 111.70(1)(nc), Stats. The offer's use of the words of ERC 33.10(3)(a)1 and 2 makes the District's commitment clear and unmistakable. Thus, the District has made a qualified economic offer.

Forms A and B

ERC 33.10(3)(b) states:

> At the time it submits a qualified economic offer to the labor organization or 60 days prior to the stated expiration date of any existing collective bargaining agreement, whichever is earlier, the municipal employer's treasurer and superintendent or business manager shall provide the labor organization with completed commission qualified economic offer calculation Forms A and B. Forms A and B are appendices to this chapter. When completing Forms A and B, the treasurer and superintendent or business manager shall use all available cost and employe complement information and shall attest to of the information.

> If additional cost or employe complement information becomes available, the treasurer and superintendent or business manager shall provide the labor organization with revised qualified economic offer calculation Forms A and B.

In SHOREWOOD SCHOOL DISTRICT, supra, we were confronted with the issue of whether the failure to provide Forms A and B precludes a school district from having a qualified economic offer. We held as follows:

> However, as ERC 33.10(2) and (3) reflect 1/, the obligation to provide Forms A and B is separate and distinct from the issue of whether a QEO exists or has been properly implemented. The Forms must be provided whether or not the employer elects to submit a QEO [ERC 33.10(3)(b)]. Under these circumstances, while failure to provide the Forms is inappropriate behavior 2/, it does not warrant a conclusion that a QEO cannot or does not exist or was not or cannot be properly implemented. Thus, we reject the Association's request that the failure to provide Forms A and B allow it to proceed to interest arbitration.
>
> 1/ ERC 33.10(2) and (3) state:
>
> > (2) CONTENTS. A qualified economic offer is a proposal in which the municipal employer obligates itself to at least comply with the salary and fringe benefit requirements of s. 111.70(1)(nc), Stats., for the entirety of any collective bargaining agreement for any period after June 30, 1993.
> >
> > (3) EXISTENCE. (a) A qualified economic offer exists if the municipal employer submits an offer to a labor organization which at least states the following:
>
> 1. For any period of time after June 30, 1993, covered by the proposed collective bargaining agreement, the municipal employer shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70(1)(nc), Stats.
>
> 2. For each 12 month period of portion thereof which commences July 1, 1993, and is covered by this agreement, the municipal employer shall provide the minimum increase in salary which s. 111.70(1)(nc)2, Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70(1)(nc)2, Stats., allows for the purposes of a qualified economic offer.

> (b) At the time it submits a qualified economic offer to the labor organization or 60 days prior to the stated expiration date of any existing collective bargaining agreement, whichever is earlier, the municipal employer's treasurer and superintendent or business manager shall provide the labor organization with completed commission qualified economic offer calculation Forms A and B. Forms A and B are appendices to this chapter. When completing Forms A and B, the treasurer and superintendent or business manager shall use all available cost and employe complement information and shall attest to the accuracy of the information. If additional cost or employe complement information becomes available, the treasurer and superintendent or business manager shall provide the labor organization with revised qualified economic offer calculation Forms A and B.
>
> 2/ The duty to bargain in good faith includes the obligation to provide information relevant and necessary when bargaining a contract. MAYVILLE SCHOOL DISTRICT, Dec. No. 25144-D (WERC, 5/92). In appropriate circumstances, failure to provide Forms A and B can reasonably be viewed as a violation of the duty to bargain.

Consistent with our holding in SHOREWOOD, we reject the Association's argument that inaccuracies in, or incomplete attestation on, or untimely filing of Forms A and B warrant a conclusion that the District has not made or cannot make a qualified economic offer. As stated in SHOREWOOD, Forms A and B must be provided whether or not a district elects to make a qualified economic offer. Forms A and B provide the union with notice of what the school district believes a minimum qualified economic offer would produce in terms of salary and fringe benefits. The information on Forms A and B gives the parties an opportunity to discuss and hopefully resolve disputes as to costing which may arise during the parties' efforts to reach a voluntary settlement. However, contrary to the argument of the Association, Forms A and B are not a part of a qualified economic offer.

Given the foregoing, it is entirely appropriate for the Association to seek District compliance with the requirements of ERC 33.10(3)(b). However, any District failures as to Forms A and B are matters to be remedied by the appropriate completion of these Forms, but do not give the Association access to interest arbitration.

In reaching this conclusion, we also necessarily reject the Association contention that even if appropriate completion of Forms A and B is not part of a qualified economic offer, appropriate completion is at least a condition precedent to making such an offer. The Association would have us hold that if a school district tries but fails to meet this condition precedent in any respect, the school district has waived its right to make a qualified economic offer. Appropriate completion of Forms A and B is not a condition precedent to making a qualified economic offer.

When creating and adopting ERC 33, we considered the question of whether errors in Forms A and B (or in the manner in which a qualified economic offer was ultimately implemented) were matters which could be corrected or were matters which should allow the union to have access to interest arbitration of economic issues. For several important reasons, we concluded that school districts should have the opportunity to make corrections 1/ and that errors, if corrected, do not forfeit a school district's right to make a qualified economic offer. All of these reasons relate to the legislature's public policy direction to us in Sec. 111.70(6), Stats., that settlement procedures be "fair".

As is evident from a reading of Sec. 111.70(1)(nc), Stats., the qualified economic offer law enacted in 1993 is not in all respects a model of clarity. The same may doubtless be said for ERC 33. Even assuming clarity, the new statute and resultant administrative rules are somewhat complex and require complicated mathematical computations. In this context, we concluded it would not be a "fair" procedure if erroneous assumptions about the meaning of the statute or rules or mathematical errors deprived the employer of the right to make a qualified economic offer. In our opinion, it is "fair" to require the employer to do its best to provide accurate information in Forms A and B and to do its best when implementing its qualified economic offer. We further believe that if mistakes are made, it is "fair" that there be the opportunity to remedy those mistakes. 2/

Corrections Needed as to Forms A and B

ERC 33.10(3)(b) requires that the District's treasurer and superintendent or business manager attest to the accuracy of the information on Forms A and B. By requiring the involvement of an elected board member and a high ranking employe, the Commission sought to make clear the importance of providing accurate information on Forms A and B. The District's Forms A and B have not been attested to by the District treasurer. The District is directed to remedy this failure.

ERC 33.10(3)(b) also requires that Forms A and B be provided to the union 60 days prior to the expiration of any existing bargaining agreement or at the time a qualified economic offer is submitted. At the time this requirement first went into effect (the October 13, 1993 effective date of the Commission's emergency administrative rules), these parties did not have a collective bargaining agreement. The 1992-1993 contract was not ratified until November, 1995. Thus, the rules required District submission of Forms A and B at the time a qualified economic offer was made. Forms A and B accompanied the District's September 25, 1995 qualified economic offer and thus they were timely submitted to the Association.

Health and Dental Benefit Costs

When calculating the QEO, the District used its share of the premium equivalent as the applicable health and dental benefit cost. The Association contends the District's methodology is improper because it must, but does not, reflect only the actual cost of benefits used by unit employes during the year prior to the effective date of the disputed contract (the base year) and during the time covered by the QEO itself.

Section 111.70(1)(nc)1.a., Stats., provides that one component of a QEO is:

> 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., ... (Emphasis added)

Section 111.70(4)(cm)8s, Stats., provides in pertinent part:

> 8s. "Forms for determining costs". The commission shall prescribe forms for calculating the total increased cost to the municipal employer of compensation and fringe benefits provided to school district professional employes. The cost shall be determined based upon the total cost of compensation and fringe benefits provided to school district professional employes who are represented by a labor organization on the 90th day before expiration of any previous collective bargaining agreement . . . without regard to any change in the number, rank or qualifications of the school district provisional employes. . . . (Emphasis added).

The Commission promulgated administrative rules regarding QEO's (ERC 33) which include forms for development of a QEO. ERC Appendix Form A states as follows:

> Note: 1993 Wis. Act 16 required the Wisconsin employment relations commission to create forms by which the components of a minimum qualified economic offer could be established and measured. Act 16 does not allow the cost of a qualified economic offer to be based upon the actual cost of such an offer to the employes actually employed during the term of the contract. Instead, the Act requires that the cost of the offer be evaluated by assuming a fixed employe complement is present during the term of the contract. (Emphasis added).

The foregoing reflects our understanding of the Legislature's intent that QEO calculations be based on the assumption that the actual employes represented by a union on the 90th day prior to contract expiration will continue to be employed during period of time covered by the QEO (i.e. "without regard to any change in the number, rank or qualifications . . .). The District properly sought to use this statutory assumption when calculating the QEO. We thus

reject the Association's argument that QEO insurance costs must be calculated using only the employes actually employed during the QEO (as opposed to all the employes present on the snapshot date of the base year) as being at odds with Sec. 111.70(4)(cm)8.s., Stats., and ERC 33.

The Association has also attacked the District's insurance cost methodology based on the District's use of a premium equivalent. In LACROSSE SCHOOL DISTRICT, Dec. No. 28462 (WERC, 11/95) we were confronted with an assertion that the employer who self-insured health benefits had improperly calculated the level of the premium equivalency it used when calculating a qualified economic offer. We stated:

> As a general matter, we are persuaded that neither Sec. 111.70(1)(nc)1.a., Stats., nor Sec. 111.70(4)(cm)8s, Stats., envision that the Commission would evaluate whether the level of health insurance premium cost increase or decrease (as opposed to the employer's percentage contribution toward said cost) was appropriate when determining the composition of a qualified economic offer. Thus, neither the text nor calculation forms of our administrative rules adopted pursuant to Sec. 111.70(4)(cm)8s, Stats., make any reference to such an inquiry. Therefore, we generally conclude that, for instance, when health insurance benefits are obtained through a private provider and that provider raises premiums by a certain percentage, we have no role to play in evaluating the propriety of that level of premium increase.
>
> The Association does not necessarily disagree with the foregoing as it related to private providers but argues that where the employer itself is the entity that establishes the premium levels, the risk of inappropriate premium level manipulation is so great that the Commission should evaluate the level of premium increase against some objective standards. We concede the potential for abuse argued by the Association, although we believe this potential exists in both the private carrier and self-insurance arenas. However, as noted above, we do not believe the Legislature intended to empower us to evaluate the propriety of premium levels and in effect establish premium levels ourselves for the purposes of a qualified economic offer. Instead, we believe it was the Legislature's intent that collective bargaining over the identity of the insurance provider, the benefits to be received and the employe cost of those benefits would serve as a sufficient check on any abuses which might occur.

Among other matters, LACROSSE generally stands for the proposition that use of the mechanism of a premium equivalency is appropriate for QEO determinations of the "municipal employes' existing fringe benefit costs" under Sec. 111.70(1)(nc)1.a., and 111.70(4)(cm)8s, Stats. where the employer self-insures the contractual health/dental benefits. Based on LACROSSE, we reject the Association's argument to the contrary.

Even assuming the concept of premium equivalency is appropriate, the Association nonetheless argues that the equivalency can only be based on the actual claims experience and administrative costs of the employes actually represented by the Association (unit employes) as opposed to all District employes. We again find guidance in our LACROSSE decision. LACROSSE reflects our general view that the Legislature did not empower us to evaluate the propriety of premium levels established by a private provider or of premium equivalencies established by employers that self-insure. Thus, with a private carrier, we will not evaluate whether the premiums are established based on the experience or costs of unit employes or a broader group. As reflected in LACROSSE, we find no basis for concluding that a different approach is mandated when the employer self-insures. Thus, we reject this Association argument as well.

The Association also contests the inclusion of projected claims costs, projected administrative expenses and stop-loss insurance costs as part of the premium equivalency calculation. LACROSSE again provides guidance. If a private carrier included these components when determining the premium it would charge, we would not evaluate the propriety of the components for the purposes of QEO calculations. We reiterate that we find no basis for treating premium equivalencies in a different manner. We would also note that these components are rationally related to the cost of providing health and dental benefits.

In addition, the Association objects to inclusion of "medical management" costs as a fringe benefit cost. The record establishes that the District's participation in MEI, Inc. gives the District generally, and Association-represented employes specifically, access to provider networks which discount their fees for providing contractually-bargained health benefits. In our opinion, this "medical management" cost is directly related to the cost of providing "fringe benefits" and thus is properly included.

Lastly, we note that the District has correctly concluded that use of a COBRA premium equivalent rate in its Form A and B calculations was incorrect. We have directed the District to revise Forms A and B to use the actual premium equivalent.

Worker's Compensation Costs

When completing Forms A and B, the District did not include workers' compensation premium costs as a fringe benefit cost. The Association contends this cost should have been included.

We acknowledge that the phrase "fringe benefit costs" in Sec. 111.70(1)(nc)1.a., Stats. could be interpreted in a manner which would include worker's compensation costs. However, when drafting our administrative rules (Chapter ERC 33 and Forms A, B, C and D), we understood the Legislature to have used the phrase "fringe benefit costs" to encompass costs which have traditionally been recognized and considered by Wisconsin unions and employers when they bargained and costed public sector contracts in general and teacher contracts in particular. Based on that understanding of the legislative intent, we did not include worker's

compensation costs on Form B because in our historical experience, such costs are not typically recognized and considered a part of the bargaining process or when costing of the settlement ultimately reached. When we proceeded through the rule-making process, no unions or employers asked that this cost be included, 3/ which reaffirmed our view of the historical context.

Given the foregoing, the District did not err by failing to include worker's compensation costs on Form B.

Summer School

On Forms A and B, the District used summer school costs from the summer of 1992 as part of its base year calculations. The District contends this was appropriate for various reasons including the fact that as of the May 26, 1993 snapshot date, summer school costs for the summer of 1993 were unknown. The Association counters by arguing that within the context of the August 24, 1993 contract expiration date, summer school costs from the summer of 1993 should have been used.

Under Form A, the base year for these parties spans the period of August 25, 1992 through August 24, 1993. The District should have used summer school costs for this period. We have directed the District to make the appropriate modifications to Forms A and B to correct this error.

Proration

Where the period of time covered by a qualified economic offer is less than two years, ERC 33-Form A requires the salary and fringe benefit costs for the period following the first year of the offer (in this case August 25, 1994-June 30, 1995) be prorated because they cover less than one year of time. The District has not provided the Association with Forms A and B which appropriately prorate the correct salary and fringe benefit costs identified in this decision and has been ordered to do so.

SUMMARY

In summary, we have concluded that the September 25, 1995 offer of the District constitutes a qualified economic offer and that the District's implementation thereof was

consistent with applicable law. However, the District has not provided the Association with accurate or appropriately attested to Forms A and B and we have directed the District to do so.

Dated at Madison, Wisconsin, this 17th day of February, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

ENDNOTES

1/ As we noted in SHOREWOOD SCHOOL DISTRICT, Dec. No. 29259 (WERC, 12/97) if a school district elects not to make the required changes in the manner in which it implemented its qualified economic offer, it has withdrawn its qualified economic offer and the parties can then proceed to interest arbitration.

2/ This approach is consistent with procedure followed when a union bargaining proposal is found to be a non-mandatory subject of bargaining during the pendency of an interest arbitration investigation (See ERC 33.15). The union does not lose the right to pursue the issue addressed in its proposal. Instead, the union is given the opportunity to modify its proposal to bring it into conformance with the Commission's declaratory ruling and can then take the modified proposal to interest arbitration.

3/ Indeed, as reflected in Exhibits 40-44, representatives of the Wisconsin Education Association Council and the Wisconsin Association of School Boards concluded workers' compensation costs should not be included and their recommendations for costs to be included were distributed state-wide as part of the rulemaking process.

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