BEFORE THE ARBITRATOR

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| In the Matter of the Arbitration of a Dispute Between | |
| MELROSE-MINDORO EDUCATION ASSOCIATION | Case 18 No. 50041 MA-8132 |
| and | |
| MELROSE-MINDORO AREA SCHOOL DISTRICT | |

Appearances:

Mr. Anthony L. Sheehan, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of Melrose-Mindoro Education Association.

Weld, Riley, Prenn & Kuelthau, S.C., Attorneys at Law, by Ms. Kathryn J. Prenn, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Melrose-Mindoro Area School District

## ARBITRATION AWARD

Melrose-Mindoro Education Association (Association) and Melrose-Mindoro Area School District (District) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an arbitrator appointed by the Wisconsin Employment Relations Commission (Commission) from its staff. On November 8, 1993, the Union filed with the Commission a Request to Initiate Grievance Arbitration. At or about this time, the District filed a related Complaint of Prohibited Practices with the Commission. Through the efforts of Commission staff member Thomas Yaeger, the District agreed to hold the complaint in abeyance and to defer the matter to arbitration. The Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing was held on April 13, 1994, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was transcribed, and a copy was received on May 5, 1994. The parties submitted briefs, the last of which was received June 7, 1994. The District filed a reply brief on July 19, 1994, and on that same date, the Association advised the Arbitrator that it would not be filing a reply brief in this matter. Full consideration has been given the evidence and argument of the parties in reaching this decision.

## STATEMENT OF THE FACTS

On or before June 22, 1992, the parties entered into a collective bargaining agreement for July 1, 1992 through June 30, 1994. The agreement included the 1993-94 salary schedule as Appendix B. Said Appendix also included the following: "If cost controls should be mandated for 1993-94, the negotiations for the pay schedule only may be reopened by the Board of Education."

During the summer of 1993, the legislature passed and the Governor signed into law 1993 Wisconsin Act 16 (hereinafter Act 16). Said Act placed some fiscal constraints on school districts effective with the 1993-94 school year.

On or about July 28, 1993, the District formally requested that the Union reopen negotiations with respect to the 1993-94 salary schedule. Prior to the start of the 1993-94 school year, the District also informed the Association that, based upon passage of Act 16, the District would continue to pay the 1992-93 salary schedule until such time as a 1993-94 salary schedule was determined. The District did advance unit members by the appropriate step and

lane increments from the 1992-93 salary schedule. On or about September 21, 1993, the Association advised the District that it believed it had no obligation to reopen the agreement.

The Association filed a grievance over the District's refusal to implement the 1993-94 salary schedule. Said grievance was not resolved through the parties' grievance procedure and is properly before this Arbitrator.

PERTINENT CONTRACT LANGUAGE

**Appendix "B"**
**1993-94 SALARY SCHEDULE ****

. . .

** If cost controls should be mandated for 1993-94, the negotiations for the pay schedule only may be reopened by the Board of Education" (sic).

ISSUES

The parties were unable to stipulate to a framing of the issues. The parties did stipulate to allowing the Arbitrator to frame the issues in the Award.

The Association would frame the issues as follows:

> Is the School District violating the current collective bargaining agreement by failing to pay the salary amounts stated in Appendix "B" of the 1992-94 collective bargaining agreement?
>
> If so, what is the remedy?

The District would frame the issues as follows:

> Has the Union violated the provisions of the parties' collective bargaining agreement by refusing to bargain with the District regarding the 1993-94 salary

schedule subsequent to the Board's request to reopen negotiations pursuant to Appendix "B" of the 1992-94 agreement?

If so, what is the appropriate remedy?

I frame the issue as follows:

Did the District violate Appendix "B" of the collective bargaining agreement when it failed to pay the unit members in accordance with the 1993-94 salary schedule?

If so, what is the appropriate remedy?

The parties stipulated that if the Issue is answered in the negative, the Arbitrator will direct the parties to resume bargaining over the salary for the 1993-94 school year.

POSITION OF THE PARTIES

On brief, the Association argues that Act 16 is not a "cost control" as that term is ordinarily used and thus the District cannot insist on reopening the contract nor can it unilaterally change the salary schedule; that for comparison purposes, Union Exhibit 1, a separate legislative bill, is a "cost control"; that documents from the legislature and the Legislative Fiscal Bureau establish a clear distinction between "cost controls" and "revenue limits"; that judicial notice of public documents is appropriate and, thus, Union Exhibits 1-6 and 8 are appropriate for judicial notice; that the Legislative Fiscal Bureau is a highly credible and nonpartisan group that must be given great deference; that not only is the prepared statement from Governor Thompson self-serving and politically motivated, but extrinsic evidence of legislative intent or legislative history is irrelevant; that Act 16 must be interpreted as it is constructed; and that the QEO is not a "cost control" but merely sets an economic threshold which the employer may meet or exceed at its option.

The Association also argues that the District's "intent" with respect to the reopener provision is not relevant; that the District may not retroactively implement a QEO during the term of a collective bargaining agreement; that, assuming arguendo that the District's intent is relevant, the District has the burden of proving that its reference to "cost controls" meant something other than the usual, ordinary meaning of that term; that the District has not met that burden; that the District voluntarily chose to set its levy rate below the statutory revenue limit; and that the District's "alleged" inability to pay is not relevant and is not a defense.

Therefore, the Association asserts that the Arbitrator should find that the District has violated the collective bargaining agreement by failing and refusing to pay the agreed upon salary schedule, and that the Arbitrator should direct the District to pay the requisite back wages with appropriate interest.

On brief, the District argues that arbitrators are to give words their ordinary and popularly accepted meaning in the absence of anything indicating that the parties intended some special colloquial meaning; that the term "cost controls" is a generic term which encompasses various specific measure, such as revenue caps and tax levy limits, for controlling costs; that the language in the reopener provision is clear and unambiguous; that the language requires the Association to negotiate the salary schedule for the 1993-94 school year; that in the event a contract provision is ambiguous, the arbitrator may consider the

circumstances of the negotiations leading to the agreed on provision; that the language is general because it had to be so given all of the uncertainties; and that there can be no doubt that the language was intended to cover a situation such as the one created by Act 16. Therefore, the District requests the Arbitrator to dismiss the grievance and to order the Association to negotiate the 1993-94 salary schedule.

On reply brief, the District argues that the "clear meaning" of the reopener provision can only be the meaning given to it by the parties at the time it was negotiated; that the term "cost controls" is generic; that the intent of the parties in agreeing to that term was based that generic use; and that the "clear meaning" requires that the parties come back to the bargaining table.

DISCUSSION

The issue before this arbitrator is whether the District violated Appendix "B" of the collective bargaining agreement when it failed to pay the unit members in accordance with the 1993-94 salary schedule. In order to determine that issue, I must decide whether Act 16 is a cost control within the meaning of this collective bargaining agreement.

The Association would have me determine the issue by deciding whether Act 16 is a cost control within the meaning of Act 16. But I am not here to interpret Act 16; I am here to give meaning to the language of the agreement between the parties. And I find that, within the meaning of the agreement, Act 16 is a cost control.

It is clear from this record that the language at issue here was agreed upon by the parties, and that even though the language was undesirable from the Association's view point, the Association accepted the language in order to reach a bargain on a 1992-94 collective bargaining agreement.

It is also clear from this record that, absent agreement that "If cost controls should be mandated for 1993-94, the negotiations for the pay schedule only may be reopened by the Board of Education," an overall agreement would have been difficult and maybe impossible to obtain. At this point, it is unclear as to what such an agreement or arbitrated resolution would have looked like.

So the parties agreed to the language at issue here. Thus, if Act 16 is a cost control within the meaning of the agreement, then the District's request to reopen the agreement and withhold implementation of the 1993-94 salary schedule was appropriate. If Act 16 is not a cost control, then the District violated the contract.

The Association argues that there is a clear distinction between "cost controls" and "revenue limits" and that the term "cost controls" does not appear in Act 16.

But this is too narrow a reading of both the Act and the Agreement. Just because the term does not appear in the Act does not mean that this is something other than a cost control. This is especially true, as the District argues, in that I need to look at the Agreement, part of which is looking at the intent of the agreement.

I am convinced, after much reflection and review of the exhibits and testimony, that the parties intended that the term "cost controls" to mean any legislative action which limited the District's ability to fund a budget. Such is the case here.

Therefore, for the reasons stated above, the Arbitrator issues the following

AWARD

1. That the District did not violate Appendix "B" of the collective bargaining agreement when it failed to pay the unit members in accordance with the 1993-94 salary schedule.

2. That in compliance with the stipulation of the parties, the Association and the District are directed to resume bargaining over the salary for the 1993-94 school year.

3. That the Grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 14th day of November, 1994.

By James W. Engmann /s/
James W. Engmann, Arbitrator