STATE OF WISCONSIN
BEFORE THE ARBITRATOR

****

In the Matter of the Petition of

WITTENBERG-BIRNAMWOOD SCHOOL DISTRICT	**Case No. 18** **No. 55779** **INT/ARB-8318**
To Initiate Arbitration Between Petitioner and	**[Dec. No. 29375]**

WITTENBERG-BIRNAMWOOD SUPPORT STAFF ASSOCIATION **Gil Vernon, Arbitrator**

****

APPEARANCES:

On the behalf of the District: Jeffrey T. Jones, Attorney - Ruder, Ware & Michler

On the behalf of the Association: Charles S. Garnier, Interim UniServ Director - Central Wisconsin UniServ Council (North)

I. BACKGROUND

On November 13, 1997, the District filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Wittenberg-Birnamwood Support Staff Association in their collective bargaining, and wherein it further requested the Commission to initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act.) On February 3, 1998, a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations and, by May 8, 1998, the parties submitted to said Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the

Commission, as well as a stipulation on matters agreed upon. The Investigator then notified the parties that the investigation was closed and the Commission that the parties remain at impasse.

On May 19, 1998, the Commission ordered the parties to select an arbitrator from a list it provided to the parties. The parties selected the undersigned and on June 16, 1998, the Commission ordered his appointment. A hearing was held on November 9, 1998. Post Hearing Briefs and Reply Briefs were filed. Reply Briefs were received February 10, 1999. On April 5, 1999, the Arbitrator contacted the parties and extended to them one last opportunity to resolve the matter voluntarily. So that each party would feel free to accept or reject this offer without the preception of consequence, they were asked to respond to the request by joint letter. If either party elected not to explore a compromise, the Arbitrator was to be advised that the "parties" without attribution declined the offer. A joint letter was received April 15, 1999, declining further settlement efforts.

II. FINAL OFFER AND ISSUES

The parties final offers match each other on many issues. There is agreement on the following matters:

(1) Minimum Eligibility Requirement For Participation In Insurances. Both parties' Final Offers revise Article VIII - Insurance, of the current Collective Bargaining Agreement to reduce the eligibility requirement for participation in the health and dental insurance plans. Under the parties' Final Offers, the minimum number of work hours that are required to be eligible for health and dental insurance coverage would be reduced from 765 hours to 720 hours.

(2) Holidays For Bus Drivers. Previously, bus drivers did not have a holiday benefit of any type. Both parties' Final Offers provide a new holiday benefit for the bus drivers. Bus drivers will be paid for six (6) holidays.

(3) New Dental Insurance Benefit. Both parties' Final Offers provide for a new dental insurance benefit. The Association and the District both propose that the District pay 90% of the monthly premium costs for single or family dental insurance coverage. Under the parties' offers, employees will receive prorated dental insurance premium contributions based on 1,950 work hours per year, with a minimum eligibility level of 720 work hours per year.

(4) Increase In Sick Leave Benefits. Both parties' Final Offers increase the sick leave accrual benefit for twelve-month full time employees from 10 days per year

to one day per month that is worked. The parties' Offers also increase sick leave for school-year full-time employees from 9 days per year to one day per month that is worked. Twelve-month and school-year part-time employees accrue sick leave on a prorata basis based upon the number of hours worked in each month.

(5) Contract Duration. The parties both propose a contract duration of July 1, 1997, through June 30, 2000.

The final offers differ on the following issues:

(1) Bus Driver Compensation. The School District's bus drivers are currently paid a monthly salary for regular routes that are driven, $6.66 per hour for extra trips, and $.10 per mile for miles driven on regular routes in excess of 1,000 in a month. The Association proposes that effective July 1, 1997, all bus drivers be paid an hourly rate of $8.25 for 1997-98, $8.50 for 1998-99, and $8.80 for 1999-2000. In addition to the hourly rate, the Association proposes that the bus drivers receive $.15 per mile for each mile driven over 50 miles per day for regular routes. The District proposes that the bus drivers be paid an hourly rate of $8.25 for 1997-98. Any bus driver currently paid above $8.25 per hour would receive a 3.25% wage increase in the 1998-99 and 1999-2000 contract years. The District proposes to delete the $.10 per mile provision. Both parties have proposed to delete the $6.66 per hour provision for extra trips and utilize the new proposed hourly rates (i.e., $8.25 in 1997-98) for extra trips.

(2) Wage Increases For Non-Bus Drivers. The Association is proposing a 3.5% wage increase in 1997-98, a 3.0% wage increase in 1998-99, and a 3.5% wage increase in 1999-2000 for non-bus drivers. The District is proposing a 3.25% wage increase in each of the three years of the contract for these employees.

(3) Payment Of Health Insurance For Certain Employees. The predecessor agreement at Article VIII provided that the School District pay 90% of the monthly premium costs for employees who work at least 1,950 hours per year. The School District's contribution for employees who work less than 1,950 hours per year is prorated based upon 1,950 work hours per year. The predecessor agreement also contains a 'Memorandum of Understanding' that essentially exempts certain employees who do not meet the 1,950 hour threshold from proration of the employer's contribution for health insurance. It provides that the District pays the full 90% of the health insurance for an enumerated list of seventeen employees. Since this proceeding started, three of these employees have retired. The list includes bus drivers, aides, custodians, cooks, and secretaries ranging from 728 hours to 1,873 hours per year. The District proposes to eliminate the Memorandum of Agreement. The association proposes to incorporate the Memorandum of Agreement into Article VIII as a new section (Section E).

III. ARGUMENTS OF THE PARTIES (SUMMARY)

1. The District

The District first addresses the issue of which districts will be used for purposes of comparisons. In this regard, they note that this bargaining unit has not gone to arbitration before; thus, no pool of "comparables communities" for the support staff employees has been established. The District has proposed that the comparable pool consists of the school districts in the Central Wisconsin Athletic Conference. These school districts are: Almond-Bancroft, Bonduel, Bowler, Iola-Scandinavia, Manawa, Marion Menomonee Indian, Port Edwards, Rosholt, Shawano-Gresham, Shiocton, Tigerton, Tomorrow River, Tri-County, Weyauwega and Wild Rose. The school districts of Almond-Bancroft, Marion, Port Edwards, Tigerton, Tomorrow River, and Tri-County are non-union. They believe inclusion of the non-union schools is appropriate because not only are they similar sizes to Wittenberg-Birnamwood, but also because not one non-union school district "sticks out" or is a "red flag" as providing less benefits or pay to its employees due to the fact it is non-union. Regarding the Association's inclusion of three larger non-athletic conference schools (Antigo, D.C. Everest and Mosinee), the District draws attention to the following: (1) arbitrators in cases with the Wittenberg-Birnamwood teachers have rejected such attempts; (2) the Association has provided no data to support their inclusion; (3) none of the employees in the bargaining unit lives in either of these three districts; (4) only very small portions of the Wittenberg-Birnamwood District lie within Marathon County; and (5) two of the three schools have a significant industrial base.

On the merits of the final offers, the District addresses the factor which, according to the statute, must be given the "greatest weight" by the arbitrator; namely, State law which limits revenues or expenditures. In this regard, they note that the Association is asking for a very expensive and special health insurance fringe benefit for seventeen of its members. They estimate this will cost the District $126,000 over the next three years to provide a significantly better health insurance benefit for these seventeen members of the support staff. In addition to this very expensive benefit, the Association is asking for an extra mileage payment of $.15 per mile over 50 miles per day for bus drivers on regular routes. The amount of this benefit is $22,275 over the next three years. The Association is requesting this additional payment even though the bus drivers will be receiving an hourly wage rate, rather than a monthly salary, which will significantly increase their compensation, and will also be receiving a new holiday pay benefit. The District also asks the Arbitrator to recognize that the School District has also agreed to provide the employees with a new dental insurance benefit which, over the three year contract term, will cost approximately $69,000 and, also the fact that they have agreed to provide twelve-month employees with two additional sick leave days per year and, in accordance with the parties' tentative agreements, a new sick leave payout provision that allows for prorated payout of unused sick leave at retirement. Without including the additional holiday pay for bus drivers, additional sick days for twelve-month employees, the new sick leave payout benefit for all employees and the overall wage increases, the Association's Final Offer will cost the District an additional $218,227 over the next three years. Against the backdrop of these increased costs, the District argues that selection of the Association's Final Offer, with its special health insurance benefit proposal for certain employees, would cause a financial burden on the District and significantly increase property taxes which is inconsistent with the "greatest weight" factor.

The statute requires the Arbitrator to give "greater weight" to the economic conditions in the District. In this regard, Wittenberg-Birnamwood is primarily a farming community located

in Shawano County with the exception of one elementary school which is in Marathon County. To summarize, the District reviews the economic pressures on the farming sector, including high property taxes, rising costs, and fluctuating milk prices. As for the service sector which generates most of Shawano County's total personal income, in 1993, the median household income was $21,772. Thus, they conclude Shawano County residents and, hence, the District's residents, are not affluent and the District's local economic conditions do not support adoption of the Association's Final Offer. The District's offer is viewed as generous and more fitting to this criteria.

Next, the District argues its offer should be awarded because it is consistent with the internal comparables. In this regard, they assert that arbitrators have long held that internal settlements and internal consistency in fringe benefits are proper factors for consideration under criteria "d" and "j" of Section 111.70(4)(cm)7r. The teachers do not have a contract provision which gives certain employees a health insurance benefit that other members of the unit don't provide. In contracts, the Association's offer creates a unique health insurance benefit for a select group of employees and consequently, their final offer does not maintain internal consistency. The District, however, has attempted to establish internal consistency in fringe benefits for all of its employees by offering the following benefits either by final offer or through the tentative agreements: (1) a new dental benefit consistent with that provided the teacher bargaining unit; (2) additional sick leave days for full-year employees consistent with that of teachers who work during the summer months; and (3) a sick leave payout at retirement provision consistent with that of the teacher bargaining unit benefit.

It is also the position of the District that the external comparables support adoption of the District's final offer. This is true, first with respect to the health insurance proposal for part-time employees (those less than 1,950 hours per year). With the change from 765 hours per year to 720 hours for health insurance eligibility, all support staff employees will be able to participate in the health and dental insurance plans and receive prorated premium contributions based upon 1,950 work hours. The Association is proposing that following support staff employees receive 90% monthly health insurance premium contributions even though they do not meet the 1,950 hour standard entitling them to this level of District contribution. The evidence demonstrates that the Association's second level health insurance benefit proposal is not supported by the external comparables. Only 2 of the 16 comparable school districts pay the health insurance premium in full for employees who work less than full-time. All of the other school districts prorate their health insurance premium contributions based upon the number of hours worked per year, assuming the employee is eligible for benefits at all. For instance, in one district, an employee who works less than 30 hours per week receives no health insurance. In three others, employees must work full-time to receive health insurance. Moreover, in one of these districts, if a full-time school year employee wishes to participate in the health plan, they are subject to a wage freeze for three years. In another district, employees working less than full-time full year receive a contribution to the single plan only. Seven districts do exactly what the District is proposing and none of the school districts in the Central Wisconsin Athletic Conference have established a two-tier health insurance benefit system as the Association is proposing.

The District also argues that the external comparables support the District's approach of granting health insurance on the same basis as dental insurance. Where dental insurance is provided, it is generally implemented in the same manner as the health insurance benefit in a

school district. In this respect, the Association's proposal also is unsupported by the external comparables.

The external comparables also support the District's proposal regarding bus driver compensation. The parties offers are very similar with respect to the hourly wage. The parties have also agreed that any bus driver who currently earns more per hour than the above wage rates will maintain their current rate and receive the overall percentage wage increases each year. The main difference is the Association's proposal not only to keep a mileage component, but to change it from a monthly limitation to a daily limitation and to raise it from $.10 per mile to $.15 per mile. This is not supported by the comparables as only one district provides any mileage payment to bus drivers. Additionally, several districts don't provide bus drivers with health or dental insurance or holiday pay. Thus, the District takes the position that the additional compensation that the Wittenberg-Birnamwood School District provides its bus drivers, combined with the fact that only one school district pays mileage to its bus drivers, supports adoption of the District's final offer.

On the issue of wages, the District argues that its offer is supported by the external comparables. First, the District's wage offer is quite comparable to the settlements in the Central Wisconsin Athletic Conference. Second, the District's wage offer exceeds the Shawano and Marathon County settlements of 3.0% Third, the evidence shows that the Wittenberg-Birnamwood support, in all wage classifications, are paid above the average. Only the educational assistant is paid less than average and even so, is only $.02 per hour behind. Further, even if the unionized school districts are separated from the non-union school districts for wage comparison purposes, the Wittenberg-Birnamwood employees remain at the above average rate mark.

Addressing the offers as a whole, the District next takes the position that the Association has the burden to justify the proposed changes and is simply asking for too many costly benefits without justification or quid pro quo. They note, in this respect, that the District's final offer, which includes a new dental insurance benefit, a new sick leave payout provision, holiday pay for bus drivers, additional sick leave for twelve-month employees, a generous wage increase for the bus drivers, and numerous contract language changes which benefit the employees, is very reasonable. But the Association wants more including the special health insurance benefit for certain employees. There is no justification for permanently entrenching the Memorandum into the contract without a corresponding quid pro quo.

The District also argues that other statutory criteria supports its offer; namely (1) the interest and welfare of the public; (2) private sector comparisons; and (3) cost of living.

B. The Association

In its brief, the Association indicates that the key issue that caused the impasse was the dispute regarding the continuation of the 90% health insurance premium payment for the above-referenced employees. Therefore, during the course of their brief which evaluates the offer in the context of each of the statutory criteria, the greatest attention is paid to this issue. Before starting its criteria-by-criteria analysis of the offers, the Association first contends its selection of its comparability grouping is consistent with arbitral authority and provides the proper basis for

comparison in this dispute. They only look at unionized schools in the Athletic Conference and the unionized contiguous districts of Antigo, D.C. Everest, and Mosinee. These schools should also be included even though they are not in the Central Wisconsin Conference. This is because: (1) these districts are contiguous; (2) Wittenberg-Birnamwood is located close to the cities of Shawano (on the East), Antigo (on the North), and the metro area consisting of Wausau, Rothschild and Schofield (on the West); and (3) these cities define the local labor market for individuals who would be most likely to seek employment as non-professionals with the Wittenberg-Birnamwood School District. They cite cases in support of this "labor market view." Additionally, they contend there is also ample arbitral precedence against using non-unionized (non-organized) school districts as comparables.

Like the District, the Union first addresses the "greatest weight" factor. In this regard, they contend that at no time during the pendency of the bargaining for the 1997-2000 collective bargaining agreement – including the impasse resolution process – has the Employer claimed that it has an inability to pay the additional cost of the Association's final offer. Additionally, neither the Employer nor the Association submitted any evidence regarding the impact of state revenue limitations on the ability of the Employer to pay for the Association's final offer. Therefore, they argue that it is appropriate for the Arbitrator to conclude that the Association's final offer should not be negatively considered when measured against this statutory factor.

Concerning factor 7g "greater weight," the Association argues the evidence on this criteria supports their offer. The economic health of Marathon and Shawano counties continues to be robust and growing. Also, in the decline is the unemployment rate for both counties. From a high of 7.0% in 1991, the rate in Shawano County has declined to 4.4% in 1996. Also clear from the data provided for both counties is that the non-farm elements of the economy are increasing at a healthy rate, thus creating more and more jobs to more than offset the decline in the number of residents who operate dairy farms. Beyond this, neither the Association nor the Employer has provided any data from which to base any significant conclusions regarding the current status of the farm economy within the school district.

Regarding criteria 7r.a. (Lawful authority of the municipal employer), the Association avers that this factor is not in dispute between the parties. As for 7r.b. (Stipulations of the parties), the Association contends that the tentative agreements reached between the parties were designed either to bring this collective bargaining agreement in line with collective bargaining agreements among the external comparables or to solve specific minor problems or inconsistencies found within the school district.

With respect to factor 7r.c. (The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement), they note again that the District has not raised "ability to pay" as an issue in this dispute. To the extent that the Employer did put in evidence on total package cost, the Association contends it is seriously flawed. These relate primarily to incorrect assumptions on the part of the Employer. These are detailed in the Association's Brief. Their evidence, argues the Association, is the only information in the record which outlines the cost impact of maintaining this existing benefit or eliminating the benefit. It shows that if the Employer's final offer is accepted, the future impact on these fifteen employees will be devastating. Affected employees would have to make up the difference between the 90 percent premium and proration which would range between

approximately $4,000 and $248 per year. The total take-home pay of the employees would go down dramatically. Only two of the fifteen employees would actually experience an increase in take-home pay. The other thirteen employees would lose a total of $29,618 during the 1999-2000 contract year, an average of $2,278 in 1999-2000. This saves the District over $37,000 per year. To put the impact of these savings in perspective, the District estimates that its proposed wage increase for all employees for 1997-98 would cost only $30,401, and only $26,966 for 1998-99. Assuming a 7percent increase in health insurance premiums for 1999-2000 (with all other factors remaining the same), the District would save $39,861 in increased premium costs and spend only $27,498 for increased salaries for all employees during the third year of the Collective Bargaining Agreement. This is not in the interest or welfare of the public to have these employees be without health insurance because of a decision by the District to reduce its existing insurance costs. Most of these employees will no longer be able to afford to enroll in the health insurance plan, or they will be forced to seek other employment with employers who are willing to pay for a greater share of the health insurance premium.

The Association contends its proposal will cost the District less over time because of attrition. Initially, in 1992 the Memorandum covers twenty-one employees. Now it covers only fourteen. The District's proposal to eliminate the mileage payments to bus drivers also has a significant negative impact on this group of employees because many of them are bus drivers. For example, in 1996-97, twelve of the bus drivers were paid a total of $4,950 for excess miles driven. While important to the individual driver's income, the cost impact on the District is negligible. If the Association's final offer is chosen, the cost impact for 1997-98 will be only .88 percent of the total wages paid to all bargaining unit members.

Regarding its wage proposal, the Association stated it should not be surprising that the differences in estimated costs between the two proposals are also minimal. Even assuming the District's data is correct, there would only be a $2,100 difference in the salary costs of the two proposals for 1997-98 (.25%), $195 (.022%) in 1998-99, and $1,936 (.21%) in 1999-2000. Therefore, the public interest and welfare would be well served (in terms of costs) if either wage proposal was adopted.

The Association also suggests that the Employer overestimates the cost of dental insurance. First, it will not cost the Employer anything until the award is received. Second, the District assumes all employees will take dental insurance. However, first this is too high because thirty-four of seventy-two employees currently do not enroll in the health insurance plan and it is reasonable to assume that they will also choose not to enroll in the dental insurance plan. Secondly, it is reasonable to assume that, if the District's final offer is chosen, that bus drivers will not be able to afford to add the dental coverage premium payment to the list of their payroll deductions. The actual total package increase when correct assumptions are used will be (for 1999-2000) 5.03 percent for the Association and 2.46 percent for the District. Based upon this analysis, the Association avers that the offers of both parties are favored when this statutory criteria is applied.

The next criteria analyzed by the Association is 7r.d. (external comparables). First they contend that because neither the factor with the "greatest weight" nor the factor given "greater weight" is determinative. In this case, factor 7r.d. takes on greater importance in the determination of which final offer is more reasonable. Moreover, the Association argues that, unless restricted by other factors, arbitrators have traditionally given the most weight to this

factor. Concerning the health insurance memorandum, the Association believes that the traditional method of applying the contract standards found in comparable school districts with the final offer in the instant case should not apply to this issue. This is because benefit was initially agreed to by the parties in 1991 because of a mutually agreed-upon desire to continue to provide a level of benefits that existed prior to the unionization of these classifications of employees. This was in spite of the fact that it was well understood at that time that the comparables did not support the continuation of this benefit into the first collective bargaining agreement between the parties. But the parties agreed to do it anyway. After three years had passed, the parties again mutually agreed to retain the Memorandum of Understanding without regard to whether or not the comparables supported that action. Therefore, the Association argues that it would be unreasonable to apply a comparability test at this time.

The Association also contends the external comparables support its mileage proposal for bus drivers. Three of the five unionized districts who provide bus service provide mileage payments for excess mileage. One district currently pays $.15 per mile for all miles over 1,000 miles per month – thus providing additional support to the Association's final offer. These facts favor acceptance of the Association's final offer regarding this issue.

Regarding the addition of dental insurance, the Association contends that the external comparables overwhelmingly support addition of this benefit. While most districts in the comparability group provide this benefit to their full-time employees, they contend the addition of this benefit was long overdue and was agreed to out of a mutual desire of the parties to bring the Wittenberg-Birnamwood roster of benefits more in line with the comparables. Therefore, the mutual agreement of the parties to add this benefit is fully supported by the comparables and does not represent a "reach" beyond the ordinary.

As they suggest earlier, the parties are so close on the issue of wages that it shouldn't be a factor. Nothing in the external comparison shows this not to be true. Although they do argue that over the three-year period, the Association's offer is slightly favored because it brings wages in Wittenberg-Birnamwood slightly closer to the average in the comparability group.

As for internal comparability, the Association maintains this analysis is not relevant in this dispute. They believe the same thing is true for public sector and private sector comparisons as well as the cost of living and factor 7r.i. To the extent the District submitted data on either criteria, the Association does not find it persuasive.

The next to last criteria which is addressed by the Association is 7r.h. ("overall compensation"). Overall compensation will be reduced under the employer's offer because of the elimination of 90 percent paid health insurance and the elimination of mileage for bus drivers. The Association believes that its final offer is more reasonable when this statutory criteria is applied because the Association's offer maintains both the existing standard for payment of the insurance premiums for bus drivers and the system of payments for excess miles driven.

Last, under the umbrella of factor 7r.j., the Association suggests that, among other factors arbitrators often apply is the so-called "reasonableness test." The question that is asked is "Could the parties to the impasse reasonably have been expected to agree to these proposals as part of a voluntary settlement?" Because of the impact of the health insurance issue, it is argued

that the Association could not have reasonably been expected to agree to eliminate the Memorandum of Understanding regarding the payment of 90 percent of the health insurance premium for fifteen employees without regard to their total yearly hours of employment. This benefit has been maintained by the parties and should continue. The Association argues that eliminating this benefit produces an unduly harsh result and overturns seven years of reliance on this provision by the fifteen affected employees. The Association further contends that the District proposes to eliminate mileage for the bus drivers without meeting any of the recognized "tests" traditionally applied by arbitrators in such matters. The issue in question, is the District's proposal to eliminate the excess mileage payment currently provided to a majority of bus drivers currently employed by the District. No need to change this benefit has been demonstrated and no quid pro quo has been offered. Out of seventeen bus drivers, two drivers' wages remain the same, and four drivers receive a reduction in wages. Two other drivers receive only a 3.4 percent and a 3.0 percent raise.

IV. OPINION AND AWARD

Given the construction of Wis. Stats. 111.70(4)(cm)7, it is appropriate for the Arbitrator to consider the first two factors (7 & 7g) at the outset. The first of these criteria is to be given the "greatest weight." The second is to be given the "greater weight." In addressing these two factors, the Arbitrator draws guidance from the following comments by Arbitrator Petrie from a case cited in the Employer's Brief:

> "In applying the two new criteria, it is emphasized that the specified limitations on expenditures or revenues must be present to trigger the application of the "greatest weight" criterion, but the "greater weight" criterion does not require such limitations and it can apparently be applied in at least two ways: first, by ensuring that an employer's economic conditions are fully considered in the composition of the primary intraindustry comparables; and, second, by ensuring that the economic costs of a settlement are fully considered in relationship to the "...economic conditions in the jurisdiction of the municipal employer." In other words, like employers should be compared to like employers, and undue and disparate economic burdens should not be placed upon an employer without appropriate statutory consideration of comparable economic conditions. Rusk County (Highway), Dec. No. N/P, (10/17/98).

With respect to limitations on expenditures or revenues (the greatest weight criteria), this factor is not present and not "triggered" in this case because the District has not pointed to any specific limitation that the Association's offer would cause them to exceed. Their arguments in this regard are the most general of generalizations. Certainly, the Association's offer will require more money than the District's offer, but this doesn't mean it causes the District to exceed revenue or expenditure limitations. Without specifics this criteria as suggested by Arbitrator Petrie is not applicable in this case.

As for the "greater weight" criteria, Arbitrator Petrie seems to suggest this factor can be applied by carefully choosing comparisons to other employers on the basis of their relative economic conditions. Certainly this is true since jurisdictions, if shown to have the same, similar or comparable economic conditions, can be expected to provide similar compensation to

employees. However, since such comparisons were already a factor at the time the "greater weight" criteria was added, it seems something more was intended.

In this case, there is no economic evidence that truly distinguishes the Wittenberg-Birnamwood School District from other school districts in the Employer's comparable pool. There are some meaningful differences between Wittenberg-Birnamwood and D.C. Everest and Mosinee with respect to their economic bases. For this reason, as well as traditional comparable considerations, they will not be used.[1] To the extent that the greater weight criteria requires more than (1) full consideration of economic conditions in the composition of intraindustry comparables and (2) that "like employers should be compared to like employers," it can be said that the Arbitrator is unimpressed that there are any special independent economic factors evidenced in the Wittenberg-Birnamwood District that merit favoring one offer over the other. The general kinds of data on record do not warrant special attention for this District. Yes, the number of farms is down statewide, and other farm costs have risen. However, milk prices are up, according to the economic data. Unemployment is also down in Shawno County, while the work force has grown.

The Employer did stress that the economic factors do not support the adoption of the special health insurance benefit at the tune of $60,000. However, this ignores the fact this is not a new benefit. It is a benefit the District has agreed to for several years and its continuation will not result in a new or additional cost. The economic news is mixed, at worse, and more importantly nothing seems to distinguish Wittenberg-Birnamwood from the rest of the region in relative terms as economically distressed or particularly robust. This factor on the evidence of this record favors neither offer.

Turning to the remaining factors, it is noted that there are three issues in contention. The offers on the wage rates are virtually indistinguishable, being only different on their face by 1/4 of 1 percent over three years. The slight and marginal difference in the offers is not enough, looking ahead to the more important issue on which the parties dramatically differ (health insurance for the group of 14), to control the outcome of this case.

Before getting to the critical issue in this case, the Association's offer on bus driver wages deserves a comment. The parties offers on the hourly wage are like the wage increases for non-bus drivers, virtually the same. The difference relates to the Association's demand for a mileage payment at the rate of $.15 for every mile driven over 50 miles in a day. This is clearly unreasonable in three respects. First, the old system of a monthly salary plus mileage will be replaced with an hourly system which will result in an increase in earnings. Second, a mileage component is not justified on equitable grounds under an hourly wage rate system as it was under the salary system. Under the hourly system, excess miles are paid for on the basis of the time it takes to drive them. Third, a daily mileage component is more restrictive on Management's ability to run the buses as was the old monthly component. Indeed, it can easily be seen that without rearrangement of routes, several drivers will receive mileage bonuses in addition to the extra time consumed in certain routes. In short, this proposal is unreasonable, if not greedy, particularly given that the health insurance proposal affects so many bus drivers.

[1]For traditional reasons, Antigo will not be utilized.

This proposal is a significant negative consideration that must be weighed along with the health insurance issue.

On the health insurance issue, a preliminary issue must be addressed. Both the Association and the District treat the opposing proposal as if it were a change in the status quo. The District claims its proposal of not providing 90 percent District-paid health insurance to the group of 14 is the status quo. Similarly, the Association argues that the District faces the traditional test of changing the status quo, i.e. providing a sufficient "buy out" of the benefit.

The arbitral status of the health insurance for the group of 14 is unique. This relates to its history. Prior to the organization of the bargaining unit, employees were not paid on the basis of a wage schedule and most employees received the benefit of 90 percent payment of the health insurance premium regardless of the number of hours that they worked per year, although there was no written policy prior to 1991 regarding the payment of health insurance premiums. In the initial collective bargaining agreement which covered 1991-1994, the parties agreed, in effect, that the Employer health insurance contribution would be prorated for new part-time employees working less than 2,080 and more than 765 hours per year. However, the current employees, those that had unilaterally received employer-paid insurance prior to the formation of the Union, were grandfathered-grandmothered at the 90 percent level pursuant to a Memorandum of Agreement. There were 21 employees listed. In the next collective bargaining agreement covering 1994-97, the number of covered employees through attrition had been reduced to 17. The proration basis was changed from 2,080 to 1,950 hours. The parties signed another Memorandum providing a 90 percent contribution during the contract term and hiatus, but added the following sentence: "Receipt of this benefit does not represent the status quo."

This unique language concerning the "status quo" status of the Memorandum is technically based and it at least relieves the District of the burden of arguing that it faces the traditional tests applied to a party seeking to change the status quo contract. While this is true, the Union under these circumstances, does not face the burden of arguing that this is a new benefit. The upshot of the language, in the Arbitrator's opinion, is that both parties face the burden of persuasion of convincing the Arbitrator that its proposal is the more reasonable in light of the relevant statutory criteria.

The comparable data under criteria (d) clearly favors the District. Indeed, the evidence so clearly favors the District on this issue that the Arbitrator is convinced that the issue isn't really <u>if</u> there should be a change in the contract toward proration of the health insurance contribution for these part-time employees, but <u>when</u> and <u>how</u> the change should occur. The Association tried to argue that comparisons under criteria (d) should have no bearing on this issue. However, the Arbitrator is hard pressed to find a rational reason why comparables shouldn't have a bearing on the adjustment of a benefit, the same as it would on the establishment of a benefit. It would be difficult to believe that in arguing for dental insurance, the Association members have not appealed to the fact that other Districts provide it. Indeed, it was argued in the Union's Brief that several of the improvements in the contract were not quid pro quos because they were justified by the comparables. The tyranny of compatibility is a two-edged sword.

Clearly, full and complete retention of the benefit is not reasonable. However, the question is whether, at this time, an abrupt complete elimination of the benefit is more or less unreasonable. Of course, given the nature of the offers (all or nothing) and the mechanics of the statute, the Arbitrator must pick between these extremes. The Arbitrator is not authorized by the Statute or the parties to fashion some middle ground that balances the competing considerations by providing some safety net and/or a modified proration or a gradual implementation, or any number of other alternatives, particularly for employees most dramatically impacted by the District's proposal.

Of course, the District's answer to the question of when and how the transition to complete proration is to do it now and do it completely. The Association argues that there would be a dramatic decrease in the home pay under the Employer's proposal.

There is indeed an extremely significant impact on many individuals. This impact should not be measured in terms of total package costing (and all the associated debates about whether the cast-forward approach is appropriate in this case). The important questions are how is a change going to affect individuals and how is not making the change going to affect the operation of the District. Because the District has been paying 90 percent of the premium during the last contract and the hiatus, continuation of the benefit will not require the generation of new money. There is no evidence or convincing argument taxes will have to be raised above the level that has supported this benefit for years. Neither has the District argued that it has an inability to pay or that there is some realistic financial constraints which will require sacrifices of personnel, programs or property maintenance if the Union's proposal is accepted.

On the other hand, the sacrifices and the impact on certain of the 14 employees if they had to pay for insurance beyond the current 10 percent contribution dramatically speak for themselves. For instance, Norbert Szews a 72-year-old bus driver scheduled to work 720 hours per year, was in 1998-99 anticipated to earn $6,405. If his health insurance is fully prorated in 1999-2000 (assuming a 7 percent increase in premiums), he will have to pay an additional $3,577 per year toward his insurance. This represents slightly over 54 percent of his total wages. In fact, 4 of the other 14 covered employees will also see similar, if not identical, reductions in pay even after the 1999-2000 wage increases. Four others will suffer reductions between $1,680 to $2,899. Three employees will experience tolerable reductions of $633 to $848. Two employees will have a net increase (because they work more hours) in take home pay of $822 and $710.

The Association argues that employees might have to leave the District for other employers who are willing to pay a greater share of the health insurance premium or they may not be able to enroll in the plan, thereby losing coverage. The District says this is speculation and that there is no evidence to support it.

Some things are self evident. First, employees aren't going to leave for other employment with better benefits because, at least according to this record, few public sector employers offer such a generous health insurance contribution to part-time employees. Private sector employers are even less likely to do so. Thus, a market-based response to the Association's argument that many might leave the District would be "let them leave if they can find a better deal." This sounds cruel, but such is the operation of the labor market. If

employees did leave and the Employer couldn't attract replacements, the market would conversely punish the District.

There is some temptation to let the market dictate the outcome of this debate as to the impact of the District's proposal on the total compensation of the fourteen employees. However, two factors cause great hesitation and concern. First, the Statute directs the Arbitrator to consider total compensation (criteria h) and other factors traditionally taken into consideration in collective bargaining (criteria j). As for traditional factors, dramatic roll backs in collective bargaining usually occur in desperate times. As for total compensation, any proposal that would cut total compensation of the majority of the fourteen covered employees by 4 to 54 percent ($610 to $3,577) would be approached with great caution and circumstances would have to be compelling to adopt such a change.

The Arbitrator has already tipped his hand and indicated the comparables were compelling enough to effect a change in the basic proration from 90 percent. He is also impressed with the many improvements made in other areas of the contract such as dental insurance, holidays, and bus driver wages, to name a few. It is also not lost on the Arbitrator, that the District agreed to lower the minimum eligibility for employer health insurance contribution from 765 to 720 hours, a common threshold for bus drivers.

The Employer has no doubt financed many improvements in this contract. The Association says, however, in trying to quantify the net result, the District is still saving money. The District, of course, stresses how much money this will cost them.

It has already been mentioned that there is a natural reluctance to impose such a dramatic reduction in total compensation for many of the 14 covered employees. The fact the District wants it to happen all at once makes their position even more difficult to accept. This would be true even if this case were just about money.

The fact is, this case isn't just about money. It is self evident that the District's proposal would more than likely force some employees to let their health insurance coverage lapse. How can a sixty-two year old employee earning $6,700 per year, afford $3,577 for health insurance? Beyond the dollars, there are many unanswered questions about eligibility, pre-existing conditions, the relative adequacy of Medicare for those old enough, the cost of Medicare supplements, etc.

These concerns are heightened because so many of the 14 covered employees are older workers who are particularly in need of health protection, particularly vulnerable on eligibility issues, and are in a difficult position with respect to finding other, or additional, employment to take up the slack. For instance, one of the covered workers is only 43 years old and is in a better position to find alternatives.

Five of the fourteen covered employees are 65 years old or older. Another three are between 62 and 65. It is also true these employees are hit the hardest in terms of having to go from 90 percent to a less liberal proration. The reductions in take-home pay range from $1,680 per year to $3,577. The average hit is nearly $2,900 per year out of an average salary for these six employees is approximately $8,900 per year. On average, the new health insurance payment under the District's proposal would be over 32 percent of their salary. It is this group the

Arbitrator is most concerned about. The other six employees are between 38 and 59 and five of these six work significant enough hours that the new proration wouldn't dramatically affect them.

The District's proposal does nothing to soften the blow or to provide a safety net. If one person has their life savings wiped out or suffers significant health consequences because they can't afford insurance, it is one too many. One of the factors taken into consideration under criteria (j) is simple equity, fairness and reasonableness. The District's all-at-once proposal comes up short.

The Arbitrator is faced with two alternatives. On one hand, he can accept a proposal that puts insurance vulnerable adults at significant risk of economic ruin, with all the health implications, of having no insurance or he can require the District to continue, for the next fourteen months of the contract, the premium contributions they have voluntarily made for more than the last 8 years and that there is no indication they can't afford. In the later case, the District may benefit from additional attrition during the rest of the contract term. Just during the pendency of this arbitration, the group of 17 has been reduced to 14 and it will never get bigger, only smaller. The District will also have the opportunity to recover from the continuation of this benefit. If one or more employees lose health insurance and suffer the consequences, they may not have a chance to recover their health or their economic well being.

When the parties meet again in bargaining, the District will be well positioned to make a strong argument that a proration more in line with the comparables is appropriate so long as they have made a reasonable and measured proposal that addresses the dramatic impact this change will have. Moreover, as far as this Arbitrator is concerned, this issue, to restate it, is not if but when and how. The District will not have overcome "status quo" arguments as the need has been demonstrated and the price has been paid. The Association, for its part, will have to face the realities of the comparables market and accept they have received, for years, something most others don't and accept that reasonable sacrifices will have to be made.

There are many ways to find a middle ground on this and perhaps it is best in retrospect that the Arbitrator can't fashion it, for the parties are in the best position to find the best solution. They can also address the unreasonable mileage payment provided under the Association's offer, which ultimately is deemed not as significant as the District's health insurance proposal.

AWARD

The final offer of the Association is selected.

_____

Gil Vernon, Arbitrator

Dated this 26th day of April, 1999.