BEFORE THE ARBITRATOR

In the Matter of the Petition of	Case 53 No. 56764 INT/ARBITRATION-8557
WISCONSIN FEDERATION OF TEACHERS, LOCAL 395, AFSCME, AFL-CIO	Dec. No. 29510-A
To Initiate Arbitration Between Said Petitioner and	Heard: 3/17/99 & 5/3/99 Record Closed: 1/24/00 Award Issued: 2/3/2000
WISCONSIN INDIANHEAD TECHNICAL COLLEGE	Sherwood Malamud Arbitrator

APPEARANCES:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, Attorneys at Law, by Timothy E. Hawks, 700 W. Michigan, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Stephen L. Weld, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On January 7, 1999, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding Award pursuant to Sec. 111.70(4)(cm), 6.c., Wis. Stats., to determine the issues outstanding between the parties for a two year agreement commencing on July 1, 1998 and ending on June 30, 2000. Hearing in the matter was held on March 17, 1999, and May 3, 1999, at the administrative offices of the College in Shell Lake, Wisconsin, at which time the parties presented testimony and documentary evidence. A transcript of the hearing was prepared. Briefs and reply briefs were exchanged through the Arbitrator. By agreement of the parties and the Arbitrator, the record in the matter remained open for the submission of additional argument to January 24, 2000, at which time the record in the matter was closed. Upon reviewing the

evidence, testimony and arguments presented by the parties and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7., 7.g., 7.r., a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

BACKGROUND

The Wisconsin Indianhead Technical College is one of fifteen technical colleges which comprise the Wisconsin Technical College System. The Indianhead Technical College, hereinafter the College or the Employer, is located in the northwest quadrant of the state of Wisconsin. The College serves eleven counties. The broad scope of its educational mission include the provision of opportunities for students to earn: associate degrees going on to a four-year institution for a bachelor's degree, associate degrees in various technical and vocational fields of endeavor. The College provides adults with the opportunity to refine and retool their skills to meet the changing labor market. It provides courses to high school students over a T.V. network. In addition, the College provides Adults the opportunity to learn and master new skills in non-credit courses, such as, woodworking, quilting, the operation of various computer software programs and other skills and activities too long to list.

The College maintains and operates four campuses in the northwest corner of the state in the communities of New Richmond, Rice Lake, Ashland, and Superior. Approximately, 4,000 full-time equivalent students in credit programs and 28,000 in adult and continuing education programs are enrolled at the four campuses of the College. The bargaining unit consists of 156 full-time equivalent Instructors. In addition, the College employs self-funded instructors who go out to businesses in the community to provide instruction to meet the specific needs of a particular business and its employees. The College plays an important role in the education of the citizenry located within the boundaries of the College district. The College is an important force in the economic infrastructure of the northwest corner of this state.

ORGANIZATION OF AWARD

After citing the statutory criteria on which this Award is based, the Arbitrator sets out the set of comparables which serve as one measure for

weighing the final offers of the parties. The Arbitrator then determines the health insurance and wage issues. The Arbitrator turns to fully describe and determine the multiple work schedule issues presented by the parties' offers. The Award concludes with an extended discussion of the reasons underlying the Arbitrator's selection of the final offer of either the Union or the Employer for inclusion in the agreement, soon to expire, for the term of July 1, 1998 through June 30, 2000.

STATUTORY CRITERIA

Sec. 111.70(4)(cm)6.d. provides that:

> The arbitrator shall adopt without further modification the final offer of one of the parties on all disputed issues . . .

The arbitrator applies the following criteria found in Sec. 111.70(4)(cm)7 to the issues in dispute. The criteria are:

> 7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
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> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Comparables

Both the Union and the Employer include in the evidentiary record charts which reference all 15 colleges which comprise the Wisconsin Technical College System. Arbitrator Yaffe, in an interest award between these parties, Dec. No. 27114-A in July 1992, accepted the Employer's proposed two-tiered list of comparables. Arbitrator Yaffe rejected the Union's use of statewide comparables as a basis for determining the 1992 dispute.

The first or primary tier of comparables identified by Arbitrator Yaffe are those geographically proximate to the College, namely: Chippewa Valley, Northcentral and Nicolet. These three colleges are contiguous to Indianhead. Yaffe identified a secondary set of comparables which are located geographically in the middle of the state of Wisconsin running from its western to its eastern border: Western Wisconsin, Mid-state, Fox Valley, and Northeast. The Union suggests that the Arbitrator use all seven as a comparability set in the course of his analysis of the issues in this case. The Employer in its argument focuses on the seven comparables established by Arbitrator Yaffe, although, the Employer distinguishes the first from the second tier of comparables. To provide validity through the use of a larger comparability set, the Arbitrator does refer to the averages of the seven comparables. However, there are occasions when the Arbitrator takes special note of the three colleges geographically contiguous to Indianhead, Chippewa Valley, Northcentral and Nicolet.

I. INSURANCE AND WAGES

Health Insurance - Basic Plan

The Employer's final offer on health insurance reads as follows:

> For employees represented by this agreement, the Board will provide the following medical care benefits during the period of this contract:
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> **Basic Plan - As described in the WITC Master Plan Document (February 1, 1998). The Employer's premium contributions for July 1, 1998 to December 31, 1998, are $400.72 per month for family and $156.09 per month for single. The**

Employer's premium contributions for the period starting January 1, 1999 are $420.76 per month for family and $163.89 per month for single.

The Union proposes to update the dollar amounts stated for premium so that the amount set out in the successor Agreement equals the full cost of the premium, stated in a dollar amount, for the term of the Agreement.

Introduction

Since 1984, the Employer has self-funded its health insurance program for this unit of employees. The Employer and this Union, as well as the unions representing other employees of the college, participate in an Employee Benefits Committee which monitors the Employer's health insurance programs. The committee has recommended adoption of various amendments to the Employer's self funded program to contain costs. Some of the amendments involve cost shifting while others provide for tighter administration of the health insurance program. As a result, the health insurance premium for the basic plan together with the free standing prescription drug program in effect on July 1, 1998, the effective date of this successor agreement, were $400.72 for family and $156.09 for single coverage. The average premium for family coverage among the seven comparable colleges amounts to $536.34.

The Employee Benefits Committee of the College has been successful in restraining cost increases up to the effective date of the agreement which is the subject of this arbitration proceeding. The premium for family coverage in effect for the 1998-99 year at Indianhead was the lowest of the eight colleges, the comparables plus Indianhead. The Employer's proposed premium for family coverage for the basic plan effective January 1, 1999 is $496.76 which places it well below the average of the comparables with only Northeast with a premium level of $476.00 and Western Wisconsin with a premium level of $487.25 with lower premiums than Indianhead for the basic indemnity plan.

I.A. Employee Contribution for Health Insurance

The Employer introduced evidence and testimony at the hearing to substantiate the $496.76 premium effective January 1, 1999. The evidence,

particularly the escalating cost of prescription drugs which is included in the premium total, would justify a premium level in excess of $500. However, since the Employer desired to retain the premium in effect for the duration of this agreement, it had to estimate the premium level at a point in 1998 in which it appeared that $496.76 would be adequate to cover the costs of both medical and prescription drug plans maintained by the Employer.

The Employer's final offer eliminates its payment of the full premium for single and family coverage and replaces it with an employee dollar contribution of $28.17, 17% for single coverage, and $70 or 18% employee contribution toward the cost of premium for family coverage under the basic plan.

In addition, the Employer deletes language which appears in the expired agreement which provides as follows:

> If the premiums for these benefits increase during the term of this agreement, the Board will pay the increased amount.

The Employer points to Union Exhibit 508 to demonstrate that it increases the medical insurance premiums only once in a period of 22-24 months. The last increase in premium occurred on February 1, 1997, to $400.72 for family coverage and it remained in effect through December 31, 1998. The Employer maintains that the premium increase effective January 1, 1999, will remain in effect through December 31, 2000. The premium will remain in effect for the duration of this agreement which expires on June 30, 2000.

The Employer proposes that any further increases that may occur during the term of the agreement for the basic indemnity plan would be picked up by employees who participate in the basic plan rather than by the Employer. The Employer proposes that employees pick up the difference, in part, to steer employees to the Preferred Provider Network Plan that it established effective January 1, 1999. The Employer, which self insures the Preferred Provider Network Plan (PPN), set the premium on the basis of the advice of Midwest Security, its independent administrator of its insurance plan, and the College's independent advisor Larry Schreiber, who it employs to advise both Midwest

Security and the College. He recommended that the premium for the PPN Plan be set at $420.76 for family coverage.

The Arbitrator evaluates the Employer's offer to no longer pay the full cost of family coverage stated in a dollar amount and pick up the increase in premium that might occur during the term of the agreement under the statutory criteria.

The statutory criteria found at a., b., and g., do not serve to differentiate between the offers of the parties. The interest and welfare of the public criterion does not support a proposal that would introduce such a market dislocation and change during the term of the agreement and pendency of this Award. Effective January 1, 1999, the Employer not only puts into effect the PPN Plan, but increases the premium for the indemnity plan by an amount just short of $100 or 25% and requires employees to pick up 18% of that cost and back charge the employees that amount should the Employer's final offer be included in the successor agreement. The Employer does not propose that the new rate go into effect at or a short period after the issuance of this Award. Should the Employer's attempt at steerage work, there is the possibility of a substantial shift from one plan to another soon after the issuance of this Award.

The comparability criterion does not support the Employer's final offer. Five of the seven comparables pay 100% of the premium. Two of the geographically proximate colleges, Nicolet and Northcentral, pay 93% and 90% respectively of the family premium. Nicolet pays $565.63, 93% of the $608.20 premium for family coverage for instructors in that unit. Northcentral pays a premium of $463.50 of the $515 premium which represents the 90% cost of family coverage in effect July 1, 1998. The premium increased on January 1 to a total of $536 of which the Employer pays $486.40. The remaining comparable colleges not only pay the full premium, but they contribute an amount towards premium which, except for Northeast and Western Wisconsin Technical College, is greater than the $496 premium in effect January 1, 1999 at Indianhead. The Employer proposes to change the status quo relative to the payment of full premium, but, as a self-insured employer, no longer pay for any increase in premium during the term of the agreement. Not only does the Employer not offer any quid pro quo for the change, but as an employer with

one of the lowest dollar premium contributions, the Employer has demonstrated no need for this change. The comparability criterion provides strong support to the Union's position to continue the Employer's paying the full premium for family coverage, stated in a dollar amount, and pick up any increase in premium during the term of the Agreement.

The such other factors criterion has two components which apply to the consideration of the Employer's proposal to have employees contribute 18% of the premium for family coverage for a year and a half of the 2-year term of this Agreement. Internal comparability and the change of the status quo are the two components of the such other factors criterion that is applicable here.

Internal Comparability - The Teamsters represent the custodial unit of the College. The Employer agreed to pay 98.5% of the premium for 1998-99 school year and 98% of the premium in the 1999-2000 school year up to an increase of 8.5% in the premium and any further increase in the premium that exceeds 11.5% of the prior year premium for the Wausau and Security health plans.

This factor provides support for the Employer's proposal to no longer continue to pay the full premium for family coverage and pay for any increase in premium that might occur during the term of an agreement. However, the amount of premium paid by custodial unit employees may not exceed 5%. The Employer offer in the teacher unit generates an employee contribution of 17% or 18% rather than the 5% in the custodial unit. The Arbitrator rejects this aspect of the Employer offer because it goes too far.

The Employer and the Union agreed in the Office, Technical and Support employees negotiations on a substantial inducement of an Employer contribution of $25/month to an employee's Section 125 account to participants in the basic plan to switch to the newly established PPN Plan. The Employer does not offer that inducement in its final offer to this unit. The Arbitrator concludes that this portion of the such other factors criterion supports the Union's proposal to retain the language of the expired agreement, update the cost of the premium and retain the requirement that the Employer

pick up any increase in premium that may occur during the term of the Agreement.

Summary - None of the statutory criteria support the Employer's proposal to have employees with family coverage under the Basic Plan contribute approximately 18% toward the premium for the indemnity plan, and absorb any increase in premium that might occur during the term of the agreement. The Employer can point to no reason to sustain such a large cost shifting proposal. The Arbitrator concludes that the Union's proposal to update the premium amount at Article V.1. of the expired agreement is strongly supported by the statutory criteria.

I.B. **The Establishment of a Preferred Provider Network (PPN) Plan**

The Employer proposes:

> Starting January 1, 1999, the Employer will establish a **Preferred Provider Network Plan** which will provide the same benefits as the Basic Plan so long as employee stays within established provider network. Higher deductibles and co-pay apply when services are obtained outside of the provider network. Premiums for the period January 1, 1999-December 31, 1999 will be $420.76/family and $163.89/single.

The Union makes no proposal on this issue. It would continue the Basic Indemnity Plan.

Introduction - The Employer proposes to cover Instructor's children who are full-time students attending school more than 50 miles from the network and emergency room charges for service provided at least 50 miles from the network. The Employer added these features to the PPN Plan which it proposes as a result of discussions that occurred in the Employee Benefits Committee. Just as the Employer self insures the indemnity plan (the Basic Plan), it will self insure the PPN, as well. In addition, the Employer, through its independent advisor Schreiber, has put together the network of providers and

negotiated the discounts offered to participants in the network and charged to the Plan.

Three of the seven comparables, Chippewa Valley, Mid-State and Western Wisconsin, offer a managed care plan as part of the range of health insurance benefits offered to instructors. The other four comparables do not offer a managed care plan. The comparability criterion provides slight support for the Union's position.

The overall compensation criterion provides some support for the Employer's proposal in that it provides greater variety of health insurance programs to Instructors.

The Arbitrator gives greatest weight to the such other factors criterion in the analysis of this proposal. The Employer proposes a change to the status quo. The Arbitrator follows the status quo analytical paradigm in assessing offers. The Arbitrator determines whether the proponent of the change has established a need for the change. Does the proponent of change offer a quid pro quo for the change? The proponent of change must establish through substantial evidence both the need for the change and that the proponent offers a quid pro quo for the change.

In the testimony of its manager of benefits and the representative of the administrator of the health program, Midwest Security, the Employer has established the need for including a managed care component to the health insurance benefits offered members of this unit. Although the Employer self insures, it places insurance with a stop loss carrier in order to limit its exposure to unusually large claims. Stop loss carriers either will not offer to insure or will raise the premiums, if a managed care component is not included among the benefits offered to participating employees.

The evidence strongly supports a finding that managed care systems are better able, than indemnity plans, to resist the cost shifting that occurs as a result of the failure of Medicare to fully reimburse providers for services rendered. Premiums for health insurance are increasing and part of that increase is due to the disparity between Medicare reimbursement levels and

the shifting by providers the medicare shortfall in income to private payers for health care service. The evidence suggests that managed care plans absorb a 9-11% shift by providers in the charges made to the plan as a result of the Medicare shortfall; the usual and customary rate underlying charges made to participants in indemnity plans experience a 12-14% cost shift as a result of the Medicare shortfall. Managed care plans are able to resist the cost shifting of the Medicare shortfall by some 3%. Together with the discounts obtained from providers to the network, managed care programs are able to restrain increases in premium. It is on the basis of this evidence that the Arbitrator concludes that the Employer has established the need for the institution of a Preferred Provider Network Plan.

The PPN plan's coverage of student dependents away at school and emergencies that occur while traveling are benefits that frequently are not covered by most managed care plans. The only limitation of this PPN is the restriction inherent in a fixed list of providers. The list of providers includes providers in most of northern Wisconsin and northeastern Minnesota.

The Employer offers no quid pro quo to induce Instructors to participate in the PPN Plan. Instead, the Employer attempts to steer participants to the network plan from the indemnity plan by requiring participants in the indemnity plan to pay for the difference between the cost in premium set for the indemnity plan and that established for the network plan, which amounts to $28.17 for single coverage and $70 per month for family coverage. In settling with the Office, Technical and Support personnel represented by this same Union, the Employer offered to contribute $25 per month towards an employee's section 125 plan should the employee switch to the network plan. The Employer does not offer the $25 inducement as part of its final offer, here. It offers no quid pro quo for change. On the other hand, the Union, for its part, does not propose the establishment of the PPN plan or agree to offer the plan to the Instructors it represents provided they receive the $25 or $30 per month contribution from the Employer to the employees' section 125 plan.

The internal comparability component of the such other factors criterion provides strong support to the Union's position. The Employer attempts to achieve in interest arbitration the establishment of a PPN Plan without any

quid pro quo or carrot and establish this benefit in this unit, when it reached agreement on the PPN Plan in the OTS unit represented by this Union, but with a quid pro quo. Establishing the same PPN Plan without the contribution benefit can only have a negative impact on the parties' bargaining relationship.

The Union challenges the size of the disparity in premium which the self-insured Employer established for the Preferred Provider Network Plan. The correspondence of the Employer's administrator of benefits suggests that the premium for the PPN Plan should be approximately $471.00 rather than $420.00. On the basis of the evidence presented at the hearing concerning the Medicare shortfall and the size of the discounts negotiated, primarily 5 or 10%, the Arbitrator finds that a premium of approximately $450.00 rather than $426.00 would more closely approximate the cost of the Network Plan. In either event, the premium levels established by the self-insured Employer, $496 for the indemnity plan, or $426 for the PPN plan, substantially understate the sky rocketing costs of the freestanding prescription drug program.

The Union argues that the Employer's proposal does not commit the Employer to pay any premium for participants in the network plan from January 1 through June 30, 2000. The language of the Employer's proposal covers calendar year 1999. The Union insists that it should be able to look to a clear commitment to pay premiums should it need to enforce this provision in an arbitration proceeding.

At the arbitration hearing, the Employer attempted to introduce Exhibit 63a, a copy of a resolution of the Board of the Wisconsin Indianhead Technical College that it adopted and approved during the hiatus between the first and second day of hearing in this matter. The resolution, which the Employer seeks to introduce, was adopted and approved on April 12, 1999. The Union strenuously objects to the receipt in evidence of the Board resolution. The Union maintains that it represents a roundabout attempt by the Employer to modify its final offer.

The Arbitrator receives Employer Exhibit 63a over the Union's objection. The exhibit amplifies Union Exhibit 508, a history of the premium increases at

the College from the early 1980s to the present. In Exhibit 63a, the Board resolves to keep in effect the premiums it established for January 1, 1999 through December 31, 2000.

Furthermore, the Arbitrator rejects the Union's contention that the Employer need not contribute and pay the insurance premiums for those employees participating in the PPN plan. The Employer introduces its insurance proposal in its final offer with the following language:

> For employees represented by this agreement, the Board will provide the following medical care benefits during the period of this contract:

The Employer's proposal lists the premium levels for the network plan for calendar year 1999. However, it does not free the Employer from providing this benefit until the contract expires. The Employer's proposal may not be as precise and clear as one would expect, however, the Union's argument that the Employer need not provide the PPN Plan or pay the premium for the plan for the last six months of the agreement is not borne out by the language of the Employer's offer nor by the pattern of biennial review and establishment of premium levels followed by this Employer for many years.

Summary - The Employer established a need for the inclusion of a Preferred Provider Network Plan in the range of benefits it offers instructors of the College. However, the failure to offer a quid pro quo to this unit but rely on an exaggerated differential between the premium costs for the indemnity plan and the premium level established for the PPN Plan is the basis for the Arbitrator's rejection of the Employer's PPN proposal.

I.C. PRESCRIPTION DRUG PROGRAM

The Employer proposes:

> PRESCRIPTION DRUG PROGRAM:
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> Brand Named Product: Participant copayments change from a 20% payout with a maximum of $8.00 to 20% with a maximum of $15.00 per prescription or refill.

Generic: $3.00 to $5.00 per prescription.

The Employer proposes a cost shifting measure to partially offset the escalating costs of prescription drugs over the calendar years 1996 and 1997, as well as the experience for ten months in 1998. In 1996, the cost to the Employer of the free standing Prescription Drug Program increased by 13.1%; in 1997, it increased by 17.4%, and in the first ten months of 1998, it increased by 21.5%. The cost of prescription drugs is becoming a national issue and may become a subject of debate in the upcoming presidential elections. The present program in effect, 20% co-pay to a maximum of $8.00 for Brand Named prescriptions and $3.00 for Generics represents a substantial employee contribution to the cost of prescription drugs. The Employer's data certainly makes a strong case for increasing the maximum co-pay amount particularly for Brand Named prescriptions. The comparability criterion does not support the size of the increase proposed by the Employer. The Arbitrator suspects that may be due to the timing of settlements reached by comparable colleges with their units of instructors.

The College reached agreement with the Office, Technical and Support unit during the hiatus between the first and second hearing in this matter. In those negotiations, the parties agreed to increase the maximum co-pay for Brand Named prescriptions to $12.00 and cap Generic prescriptions at $5.00. Despite the differences between the Employer's proposal on prescription drugs that would be in effect should the Arbitrator select the Employer's final offer and the timing of the settlement with the Office, Technical and Support unit, the Arbitrator concludes that the escalation in costs supports the adoption of the Employer's proposal as contrasted to the Union's failure to recognize the need for an upward adjustment in the cap for prescription drugs. Some offer of a quid pro quo would seal the Employer's case. None is forthcoming. However, on this issue, the Employer has demonstrated a need for the change.

I.D. INCOME PROTECTION

The Employer proposes:

> INCOME PROTECTION: WITC will pay up to .48% of covered payroll toward an income protection insurance policy. An income protection plan will be provided to employees who become totally disabled due to a work-related illness. There shall be a 60-day waiting period.

There is no evidence to support the Employer's limitation on the percentage level of payroll that it will pay for an income protection program. There is no evidence that the premium level for the income protection plan in place at the College has increased dramatically over the last several years. The Employer proposal suggests that the moment the premium level increases from .48% to .49% or any level above .48% for income protection, the Employer will charge back to employees the differential. There is no evidence to suggest that the premium level paid by this Employer for the long-term disability insurance is substantially greater than that paid by comparables. Only Fox Valley and Northcentral pay a lower premium than Indianhead for this benefit. Here again, the Employer proposes to change the status quo. It demonstrates absolutely no need for the change. It adopts a premium level contribution which is one-tenth of 1% below its current contribution. The reason for this change is simply not explained.

The Employer proposes that the income protection plan only cover disabilities due to work-related illnesses. The Union emphasizes that such illnesses or accidents are covered by workers compensation. The Employer's proposal, at best, makes two insurance carriers libel for payment for one claim.

The Employer acknowledges that it erred in drafting its final offer. It intended that the income protection plan cover **non**-work-related illnesses. The omission of "non" is the basis of the Union's objection. The Arbitrator finds that the error made by the Employer introduces confusion into the administration of an important fringe benefit. In its brief, the Employer calls the Union's dogged adherence to the indemnity health insurance plan, an albatross weighing against its proposal. The bird appears to be following the Employer's ship. Its proposal is unexplained and not borne out by any record evidence. The Employer's proposal on income protection has such a negative impact on its offer, were its offer reasonable in all other respects, this proposal might well convince the Arbitrator to select the Union's proposal, **if** the Union's

proposal were reasonable in all other respects (a situation inapplicable to this case). The Arbitrator rejects the Employer's Income Protection proposal.

I.E. EQUAL VERSUS SUBSTANTIALLY EQUIVALENT

The Employer proposes to amend Article V 2. as follows:

> The Board agrees to confer with this committee prior to changing insurance carriers and in the event the Board decides to select a different insurance carrier during the term of this agreement, it agrees that the new plan will provide coverage ~~equal~~ substantially equivalent to or better than the plan previously in effect.

This Employer self insures. An Employee Benefits Committee has been in place since the 1980s. The Employer and its unions maintain representation on the committee. The committee has recommended changes to the indemnity plan, changes which have either shifted costs to employees or changed coverages in the interest of restraining the rate of premium increase. In the past, the parties have accepted the recommendations of the Committee. Should the Employer decide to no longer self-insure, the language it proposes would have greater importance. There is no evidence in this record that the Employer or the Employee Benefits Committee are considering terminating the Employer's self insurance of health insurance and purchasing insurance protection from an insurance carrier.

This proposal must be viewed in the context of the other proposals made by the Employer on health insurance. The Employer proposes a PPN Plans; it proposes to no longer pay the full cost of health insurance premiums for single and family coverages under the indemnity plan. It proposes increases in the prescription drug program. In the context of this final offer, the Arbitrator concludes that the Employer attempts too many changes. The such other factors criterion supports rejection of the Employer's proposal.

II. WAGES

The Employer proposes to increase each cell by 3.5% both in the 1998-99 and 1999-2000 contract years.

The Union proposes to increase each cell by 3.5% in the first year of the contract. However, it proposes an additional one-half percent increase in the first year of the Agreement for those Instructors at the maximum steps of the lanes of the salary schedule. The Union and Employer propose a 3.5% increase in each cell for the second year of the agreement, 1999-2000.

The cost differential between the two offers on wages only is .28% which amounts to approximately $19,000[1] on a budget for wages in the base year, 1997-98, of $6.78 million.

The comparability analysis yields the following results. For the first year of the agreement, 1998-99, all of the comparables have settled at an average of 3.23% increase per cell. This criterion provides strong support for the Employer's proposal. Only one of the comparables has settled for the 1999-2000 contract year, as of the close of the second day of hearing in this matter.

There are two dimensions to the salary issue. One dimension concerns the rate of increase provided to the group in arbitration as compared to the rates of increase received by other similarly situated employees. That element of comparability, as noted above, supports the Employer's final offer. The other dimension of the salary issue directs arbitral analysis to compare the level of compensation received by Instructors at various benchmarks. The relevant benchmark for this proceeding is the B.A. lane maximum step and the top step in the Masters and schedule maximum cells. In the B.A. lane, the Instructors at Indianhead would be at $44,920 under the Employer's proposal and $45,137 under the Union's offer. The average salary paid at this benchmark by the comparables in contract year 1998-99 is $46,093.

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[1] The Union computes the differential to be $18,824.00 and reflects that figure in Exhibit 335. The Arbitrator computes the difference between the parties to be $19,207.00 based on Employer Exhibits 8 and 9. The differential between the costs of the parties' final offers is the one-half percent that the Union proposes for those Instructors at the top steps of the schedule.

At the M.A. maximum, the salary level at Indianhead is $51,098 under the College's offer; it is $51,345 under the Union's. The average salary level paid at this benchmark by the comparables is $52,383. Finally, at the schedule maximum, the College pays $52,707 under its proposal; the Union $52,962 under its offer. The average schedule maximum salary level of the comparables is $56,232. The salaries at schedule maximum under either the Employer or the Union's final offers would be the lowest of the eight colleges.

Certainly, this evidence supports a Union proposal to raise each cell by **3.25%** and provide the .5% increase to Instructors at the top. Both the Employer's and the Union's final offers provide for an increase of .27% above the average salary increase provided by the comparables. The Arbitrator gives slightly greater weight to the salary level dimension of the comparability criterion in this analysis.

At the schedule maximum benchmark, Indianhead is last among the comparables by at least $500 under the Union's final offer and approximately $700 below the next lowest schedule maximum, Western Wisconsin, under the Employer's final offer. However, the parties have reached agreement and both final offers provide for a salary increase that is higher than any per cell increase provided by any other comparable for the 1998-99 contract year. On balance, the Arbitrator concludes that the comparability criterion provides the slightest preference for the Union's final offer on the wage issue.

The cost of living criterion provides substantial support to the adoption of the Employer's final offer on wages. The Consumer Price Index for 1997-98 increased by 2.1%. The Employer's total package offer is 4.44%, more than double the rate of inflation. This criterion provides support for the Employer's final offer which is slightly lower than the Union's, which the Arbitrator computes to be at 4.7%.[2]

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[2] The Union's proposal to increase the reimbursement level to Instructors teaching Adult Education courses is not retroactive. Hence, the real cost difference between the two offers in the first year of the Agreement, should be limited to the roll-up of the one-half percent for instructors at the top steps of the salary schedule. Since, at some point this cost will appear, it is best

explained and considered, as if it were put into effect in the first year of the Agreement.

The Union argues that the economic conditions in the Indianhead area of the state should be given greater weight under criterion 7g. of the statute. The Union points to the increase in property valuations in the eleven county district that serves as the tax base for financing the College. The Arbitrator finds there is insufficient evidence in this record from which the Arbitrator may infer the general economic conditions of this area of the state. Data of the income levels and the change in those income levels of citizens in the Indianhead area, the unemployment rate in this area of the state, and similar evidence demonstrating the economic condition of the area are not part of this record. The Arbitrator draws no inference concerning the economic condition of this area of the state in determining this Award.

Conclusion - The Arbitrator finds that the comparability criterion provides the slightest support for adoption of the Union's final offer on wages. The Arbitrator gives this criterion slightly greater weight than the other criterion which is relevant to distinguishing between the final offers of the parties. However, the cost-of-living criterion provides substantial support to the adoption of the Employer's final offer on wages in the successor agreement. On balance, therefore, the Arbitrator concludes that the statutory criteria provide equal support for the adoption of either offer. Accordingly, the Arbitrator concludes that the wage issue supports the inclusion of both offers in the successor Agreement. The wage issue does not provide a basis for distinguishing between the final offers of the parties.

III. WORKING CONDITIONS

Introduction

This portion of the arbitration award addresses an issue of great importance to both the Employer and the Union. For approximately 20 years, these parties have engaged in negotiations and discussions concerning the workloads of Instructors.

In the 1990s, the College, in response to research published in community college journals, determined to transform the paradigm underlying

the mission of the institution from an instructional to a learning model. In a learning model, the institution structures the process of teaching to provide the student with proficiencies. The methods adopted and selected by an Instructor are tailored to meet students' learning needs. For an Instructor to facilitate a student's achieving the necessary proficiencies, may involve hands-on workshops or work experience in the field under the observation/supervision of the Instructor. The method of instruction may involve student interaction under the guidance of an Instructor. The Employer has spent approximately $500,000 training staff in this new learning model.

The College determined that it must function in a competitive environment in which private sector and other public sector institutions provide instructional opportunities to students. To survive and to maintain appropriate levels of enrollments in the College's classes, programs and fields of study, the College must be able to meet the scheduling needs of a more diverse student body. Many of the College's students work and must fit study around their particular work day. Many of the students are parents, parents who work, and must fit studies within their busy schedules. In addition, the advent of the Internet and the availability of educational opportunities on the Internet require that the College do everything within its power to facilitate access of students to the offerings of the College. It is on this basis, the College determined that to be competitive it must be flexible in the manner in which it schedules classes and programs. As a result of the decision it made to transform the method it will use to serve its student body, the Board of the College adopted a policy in April 1998 which reads as follows:

> WHEREAS, The Wisconsin Indianhead Technical College's educational philosophy is to provide the opportunity to gain skill and knowledge at the time, place, and pace desired by the learners.
>
> WHEREAS, The mission of the College is designed to provide training services to business and industry, high school age students, high school and college graduates, and the general public.
>
> THEREFORE, be it resolved that the College Board of trustees directs administration to design faculty contracts to support this educational

philosophy, to serve customers on a 52-week, year round basis by:

1. Scheduling appropriate faculty position year round 52 weeks over the fiscal year. All new and vacated positions will be reviewed to determine if these positions will accommodate this directive.
2. Scheduling faculty based on an equivalent work year of 1330 hours.
3. Negotiating the impact of the decisions with the bargaining unit representing the college faculty.

On the advice of counsel, the College determined that it need not bargain over the decisions reflected in the above-quoted policy. Although the Union filed a Prohibited Practice complaint with the Wisconsin Employment Relations Commission, both the Union and the Employer entered into negotiations concerning the impact of the Board's policy decision.

In the beginning of the 1990s, the Union filed grievances and arbitration awards issued over the issue of averaging workloads within a semester and between semesters. Back in 1990, WERC staff member Mawhinney determined a grievance over the span of hours a teacher works on a teaching day. Arbitrator Bielarczyk, in a grievance arbitration between these parties (Case 45, No. 46119, MA-6875) issued in February 1993, determined that the parties had a well-established practice of averaging workloads within a semester. He concluded that the Employer did not violate the collective bargaining agreement when it assigned an Instructor a workload in excess of 22 contact hours, a full load under Article IV G.8 and 9 and less than 22 contact hours for the second nine weeks of a semester to average what is a full load for a lecture-discussion type class of 22 hours per week.

In a more recent arbitration award, Arbitrator Tyson affirmed Arbitrator Bielarczyk, Jr.'s decision that the Employer could average workload within a semester. However, Arbitrator Tyson found that the Employer violates the agreement when it attempts to average workload from one semester to the next.

When the Employer adopted the policy quoted above, Vice President of Human Resources Sabatke notified then president of the Union Mahrer that any new instructional positions created or existing positions that are vacated would be filled with 52 week Instructors who would have the following work parameters:

- 52 week work year
- Work year equivalency is based upon 1330 hours to include 950/836 instructional hours based upon the Lab shop/Lecture designation of assigned courses
- 190/304 office hours
- Minimum of 40 work days scheduled as noncontract

The Employer attempts to provide full loads to its full-time Instructors because it pays 100% of the scheduled rate of an Instructor whether the Instructor teaches a full load or a load over 50% but less than a full teaching load. Stated another way, the workloads of Instructors in this bargaining unit are <u>not</u> prorated based on percentages of load taught exceeding 50% but less than 100%. Rather, the Employer pays full salary to an Instructor so long as the Instructor's load exceeds 50%.

Furthermore, the Union and the Employer established a Contract Implementation Group (CIG) to resolve work schedule and load issues away from the bargaining table. The CIG was not successful in this effort. It is in this context of discussions, grievances and bargaining to address workload issues in the face of the Employer's paying 100% of salary to Instructors who teach above 50% of a full load and in the context of the Employer's unilateral decision to adopt a 52 week work year, the Employer's investment in excess of approximately $500,000 in training Instructors in the learning, rather than the instructional, paradigm, that the parties' final offers are before this Arbitrator.

The Employer proposes that Instructors on staff prior to July 1, 1998, shall continue to work under the work parameters of Article IV, Section G, paragraphs 1-11:

Section G. <u>School Day and Assignments</u>

1. Teachers will have their regular teaching days scheduled within a span of seven (7) working hours at all attending centers, . . .

a. . . .

2. Class hours of teaching shall be scheduled so that three (3) hours of consecutive lecture teaching or four (4) hours of consecutive lecture/lab combination teaching shall be maximum.

3. When more than one (1) section of a class is scheduled, the senior teacher shall have their choice of section assignment.

4. All teachers shall be entitled to one (1) duty-free lunch period during this regular teaching day.

5. Teachers shall express in writing preference in teaching assignments. Such requests shall be submitted at least twenty (20) school days prior to the completion of the preceding semester. If the instructor does not receive the assignment, they shall be notified in writing of the reasons.

6. Teachers may express in writing preferences for extracurricular assignments.

7. Emergency or temporary substituting by a contracted teacher beyond the regular work day shall be voluntary and shall be reimbursed at an hourly rate of contracted salary divided by 1330.

8. Teacher contact hours shall be as follows:

a.

Class Type	Periods Per Week
Lecture, Demonstration and Discussion	22
Lecture and Lab	25
Skill, Laboratory and Shop	25

. . .

b. No more than three (3) communication preparations shall be assigned to a teacher in any given semester.

c. A teacher should be assigned no more than (5) preparations.

9. A full-time teaching schedule shall be for a 38-week duration based upon classroom assignment of 22-25 hours per week in their area except for Cosmetology (30) in their area.

10. Section G-1 does not apply to Farm Training, Production Agriculture, and Circuit Teachers teaching non-credit courses.

11. Sections G-2, G-8, and G-9 do not apply to Farm Training instructors, Production Agriculture instructors, Circuit teachers, and Librarians teaching non-credit courses.

For Instructors hired after July 1, 1998, and one employee hired prior to July 1, 1998, but as a 52 week employee, hereinafter new Instructors, the Employer proposes the following work parameters:

1. Work year equivalency is based on 1140 hours to include 890 contract hours.

2. 250 office hours will be included in assignable hours.

3. Minimum of eight weeks, six of which will be consecutive, shall be scheduled as non-contract days.

4. Eight holidays . . . .

In addition, in the stipulations of agreed upon items, the parties agreed to modify Article IV, Section F., **School Year** by deleting the reference to two "Equal semesters - 18 weeks, 95 days."

The Union proposes changes to the expired agreement, as well. Its proposals fall in two categories. One category represents an attempt to restate the status quo in the context of a 52-week school year in which the 1330 hours an Instructor works in a school year may be spread out over 52 weeks. The second category of proposals the Union makes are changes to the expired Agreement. First, the Arbitrator identifies what is the status quo in terms of a 52 week contract year.

What is the Status Quo?

The Employer's policy establishing a 52-week school year is not subject to arbitral review. The parties are litigating that issue in a Prohibited Practice complaint before the Wisconsin Employment Relations Commission. The Employer established this policy under the authority provided by the Commission's decision in Racine Unified School District, Dec. No. 27972-C (Commission Decision, 3/18/96). The Arbitrator does address the impact proposals made by both the Employer and the Union. The Arbitrator determines whether a particular proposal of the Employer or the Union is supported by the statutory standards and should be included in a successor agreement.

The Union's proposals to maintain the status quo restated in terms of a 52-week year are addressed in the context of the analysis of the Employer's final offer. Those Union proposals which change the existing agreement are addressed later in this Award.

For new Instructors, the Employer's final offer eliminates the extended summer vacation, eleven consecutive weeks, that an Instructor at this College enjoys. It eliminates the workload parameters of 22 contact hours for a lecture discussion, 25 contact hours for lab, 3 communication preparations in a semester and 5 preparations. It eliminates the parameter that an Instructor's work day should not exceed a 7 hour span.

For its part, the Union attempts to redefine what is listed as a "normal" or "regular" workload work day with the word "standard." The Employer argues that changing "normal" and "regular" to "standard" is a change which

introduces confusion to the administration of the agreement. The Arbitrator concludes that the alteration of the word "normal" or "regular" to "standard" represents a restatement of the status quo in light of the Employer's decision to establish a work year in which there may not be fixed semesters, i.e., two 18-week semesters and summer school defining the school year. Should the Employer decide to offer programs and courses in units of nine or twelve weeks with variations occurring from program to program, it is inappropriate, then, to refer to a nine-week unit of learning as a "regular" or "normal" unit, when there may be segments of time in which programs and courses are given that differ from an eighteen week semester.

A. Semesters

Article IV, Section F. reads as follows:

> These parameters are fixed; however future adjustments to changing designated days will be allowed with the approval of the bargaining unit and administration at each region(.) **provided that the semesters are as equal as possible. . .**

The Union proposes to amend Article IV Section F with the language underlined and in bold. The Employer argues that the Union's proposal conflicts with the stipulation to delete the reference to two semesters in Section F's list of the parameters for building a calendar at each region of the College.

The Arbitrator concludes that the net effect of the deletion of the reference to semesters as a parameter for building a calendar is to eliminate semesters as a necessary building block in the construction of a calendar at a region. The Union's insertion of the proviso concerning semesters acknowledges the Employer's establishment of a 52-week school year. Faculty and administration may, establish semesters in the schedule. If they do so, the semesters need not be divided into 18-week semesters of equal length as specified in the expired 1996-98 Agreement. The Arbitrator concludes that this proposal restates the status quo in this area and introduces some additional flexibility for the Employer in its scheduling of programs during the contract year, i.e., July 1 through June 30.

Similarly, the Union's proposal that:

> The standard work week will be scheduled within 5 consecutive work days with 2 consecutive days during which no work is scheduled between each standard work week.

This provision permits the Employer to schedule classes on Saturdays and Sundays should it desire to do so, provided those Instructors who must each on Saturday and/or Sunday are provided with two consecutive days in which no work is scheduled. The Arbitrator concludes that this provision represents a restatement of the status quo in terms of the 52-week contract year.

The Arbitrator now turns to address the Employer proposals concerning the working conditions for Instructors hired after July 1, 1998.

B. Eleven versus Six Week Vacation Period

For new Instructors, those hired after July 1, 1998, the Employer proposes that they receive a minimum of non-contract eight weeks (vacation), six of which will be consecutively scheduled. Stated another way, the Employer proposes that new Instructors work no more than 44 weeks and that they receive vacations of no less than 6 consecutive weeks, of what the Arbitrator terms, "vacation."

The Union proposes the following language with regard to the 52-week school year:

> The standard teacher work year will include 190 contract days scheduled such that the teacher will have 14 weeks during which no work is scheduled including 11 weeks of which will be consecutive weeks. Individual contracts shall reflect these terms.

The 190 contract days represents the status quo. The Employer asserts that the Union's reference to "14 weeks during which no work is scheduled, 11 of which should be consecutive weeks," is not status quo. The Employer notes

that in years past, the parties have agreed to calendars in which a number of the consecutive weeks off were not whole weeks. The Arbitrator concludes that the reference to 14 weeks and 11 weeks in the Union's proposal does not preclude agreement by the parties to establish a calendar which includes partial weeks as part of the vacation periods allotted during the contract year, July 1 through June 30. The Union's proposal represents the status quo restated for purposes of the 52-week school year.

The Employer presented extensive testimony from its administrators and articles suggesting the need for increased flexibility in scheduling programs over a 52-week year. The Employer emphasizes that the student body has changed. Many students work. Parents with children who are returning to learn new skills cannot attend class during the traditional school day.

Furthermore, the transformation of the manner of delivery of service from the instructional to the learning paradigm and the adoption in more and more of the institution's programs of the accelerated model for the facilitation by Instructors of student learning to obtain and meet established standards of proficiency in a skill or knowledge based area, it is necessary for the Employer to schedule courses and programs in units of 9 and 12 weeks rather than in fixed 18-week semesters. The Employer's administrators testified to the need for flexibility in scheduling courses and programs at times that meet student needs. For its part, the Union pleads in its Reply Brief that the Employer's proposal deprives Instructors from enjoying their traditional and well-established summer vacation.

The Employer's proposal does not impact Instructors on staff prior to July 1, 1998, the 156 members of this bargaining unit. New Instructors were fully advised at the time they were hired of the Employer's establishment of a 52-week school year. The Employer emphasizes that no current employee's vacation arrangement will be altered. Employees who were incumbents on July 1, 1998 shall continue to have vacations as they had in the past. New employees knew when they were hired that they would not have the traditional college instructor vacation period.

There is no evidence that any campus adopted a totally different schedule in which all programs are in 9 or 12 week segments rather than 18-week semesters. Although the Arbitrator understands the difficulty of scheduling Instructors and providing them with full loads to justify their earning full pay in a contract year, there is no hard evidence that the Employer would be unable to do so by complying with the 11 consecutive week vacation for Instructors. There is no evidence that the Employer must reduce the number of consecutive weeks of vacation from 11 to 6 in order to have the necessary flexibility to schedule programs to meet student demand.

The Employer does not come to arbitration with a proposal for a modest reduction in the number of consecutive weeks a new Instructor should have off. It does not argue, that the unit of vacation should conform to the teaching units of nine week programs. For example, not scheduling a program during the week preceding Thanksgiving (deer hunting week) to the week following New Years, a period of approximately 6- 7 weeks, the length of a short unit of instruction.

The Employer offers nothing in exchange for reducing the vacation from 11 to 6 consecutive weeks. The Employer offers no bonus in money or time off or choice when vacations may be taken by 52-week Instructors. The Employer intends to expand the number of course offerings, and consequently faculty impacted by the 52-week school year. As of the date of the hearing, the College employs two 52-week Instructors on the Ashland campus, seven at New Richmond, six at Rice Lake, and two in Superior. From Employer Exhibit 33 there does not appear a pattern as to which particular programs will become subject to a 52-week schedule. The Employer replaces teachers as they retire. The expansion into 52-week programming will occur on an ad hoc and haphazard basis.

The Arbitrator's review of Employer Exhibits 37-40, excerpts from the course schedules at the four campuses of the College, include FLEX scheduling for certain courses. FLEX courses are structured around a lab. It may be open to the student from 2-9 p.m. on Monday and Wednesday. Courses in Microcomputer and financial accounting are scheduled and taught in this manner. Course materials are provided to the student who progresses at the rate at which she achieves proficiency. The Instructor is available in the lab for

the student. It is not apparent to the Arbitrator why a course in financial accounting scheduled on a FLEX basis from January 11 through May 17, 1999, requires that the Instructor's vacation be reduced by five weeks. The course provided on a traditional semester basis in the same financial accounting series is offered from January 11 to May 21, 1999.

Comparability - The Employer notes that the seven comparables all have some provision for extended contracts. The first tier of comparables, Chippewa Valley, Nicolet and Northcentral have provisions in their agreements that provide for year round programming. The Union and the Employer in Northcentral have negotiated a Memorandum Of Agreement under which administration and faculty review programs and determine which shall be subject to the year round programming and under what conditions and work parameters year round faculty will work.

Summary - The Employer attempts to meet competitive pressures and implement real changes in the manner in which it serves students. However, the testimony of the Dean and administrators who schedule these courses indicates that doing so within a 38-week work year in which the 190 contract days must be scheduled and an Instructor provided with 11 consecutive weeks off was cumbersome. The Employer has not established that the Employer cannot schedule the type of programming and offer the kinds of courses and learning experiences for its students within the 38-week school year.

Instead, the Employer overreaches and comes into arbitration with a request to spread a work year 1140 hours to include 890 contact hours within 52 weeks. Again, although it makes this request to provide these work parameters for the approximately 18 employees hired under these conditions and all new Instructors hired by the College, it provides nothing in its offer that would counterbalance the elimination of one of the most significant perks associated with college teaching, extended time off.

The Employer's reference to the comparables is well taken. However, the comparables either provide compensation for this type of schedule or, as in the case of Northcentral, reflect a deliberative joint approach to the challenge of transforming the manner in which a college operates and schedules courses to

meet student demand. It is apparent that the Employer, here, does not have a willing partner nor does it have a Union that recognizes the need for change. Nonetheless, the absence of a quid pro quo for the kind of change it proposes is not supported by the such other factors statutory criterion. Although the comparability criterion would support a less overreaching proposal by the Employer, the breadth of the Employer's proposal is not supported by the comparables. Consequently, the Arbitrator concludes that the 52-week school year as proposed by the Employer is not supported by the statutory criteria.

C. The Elimination of the Work Load Definition

The breadth of the Employer's proposal eliminates the definitions of a full-time teaching load. For example, in the expired Agreement, a full-time teaching load is defined as Lecture, Demonstration and Discussion 22 periods per week. A Lecture and Lab is defined as 25 periods per week. President Hildebrand in his June 17, 1998, memorandum to Union President Kearns described the work parameters for new staff under the 52-week school year as follows:

> The current work parameters for scheduling a 38-week equivalency work contract within a 52-week window are as follows:
>
> - the work year equivalency is 1330 hours
> - the assignable class room times are:
> - Lecture 836 hours
> - Lab/Shop 960 hours
> - a minimum 40 work days off scheduled within the 52-week window
> - overtime compensation is paid once maximum assignable time is exceed
> - Additional considerations to be developed are listed below. This list is not to be considered as all inclusive.
> - Define the maximum, minimum work span (7 hour span)
> - Define the time off between work assignments for consecutive work days
> - Define Assignable and Professional time
> - Define the changing role of faculty
> - Define how current and potential students needs are determined and validated . . .

The Employer's proposal states the definition for a full load in the context of a 52-week school year by stating the number of hours of lecture, lab/shop that constitute a full load when taught within a 52-week period. The Arbitrator finds that this Employer proposal restates the status quo in terms of a 52-week school year. Since there is no change to the status quo this portion of the Employer's final offer of stating a work year equivalency in terms of 1140 hours of which 890 are to be contact hours and 250 office hours represents another way of setting forth what exists, however, in terms of a 52-week school year.

The Union's recognition of 1330 hours in a 190 contract day school year is but another way of setting forth the status quo in terms of a 52-week school year. Both parties' final offers do define workloads. They do so in annual terms.

D. Seven Hour Span

The dispute between these parties over work schedules for new employees comes to a head at this issue. The rubber meets the road, here. Article IV, Section G.1. of the expired Agreement provides:

> Teachers will have their regular teaching days scheduled within a span of seven (7) working hours at all attending centers . . .
>
> a. Evening classes conducted by the adult education administrative units which are not part of state approved full-time programs shall not be considered part of the regular teaching day. . . .

In the stipulation of agreed upon items, the parties agreed to amend Article IV, G.1.a. as follows:

> Non-credit courses are appropriate for teachers' standard workload.

The College's administrative policy identifies Adult Education courses which were not to be included in an Instructor's workload as those taught past the hour of 6 p.m. The stipulation agreed to by the parties now permits an Instructor's workload to be filled out by teaching non-credit courses. The stipulation accentuates the issue of the span of the Instructor's work day.

The Employer's proposal sets out no parameter for the new Instructor's work day. The Employer notes that Study Skill Instructors and Counselors have worked under this "parameterless" structure without incident, grievance or complaint. The Employer argues that new Instructors subject to the 52-week work year as proposed by the Employer will not be put upon nor expected to work extraordinarily lengthy teaching days.

In testimony given on direct examination, one Dean volunteered that when he schedules seven Instructors within his administrative area, he ignores the seven hour span requirement for incumbent Instructors who are covered by Article IV, G.1. under the expired agreement. He testified that this parameter is cumbersome.

Administration's violation of a clear provision of the agreement in the past, should not provide new Instructors with any assurance that they would not be subject to teach 10 or 11-hour days should the scheduling of courses in an Instructor's program become cumbersome. Again, the Employer proposes no work day parameter. It does not propose to increase the span of the work day to 8 or 9 hours in light of the stipulation to permit non-credit courses to be taught by Instructors as another device to bring up underloaded Instructors to a full course load.

The comparables, Chippewa Valley and Northcentral, two of the three first tier comparables, specify a 9-hour work span. Nicolet has no work span provision. The remaining four comparables maintain work spans of 8 hours. In light of the stipulation to include Adult Education courses as part of a full load, the Arbitrator would sustain an Employer proposal to extend the work span from 7 to 9 hours.

Both the Union and the Employer presented testimony concerning the accelerated child care program and its success in attracting many new students. The child care program at New Richmond is taught on an accelerated basis. Two years of coursework are digested by students in one year. For students to accomplish the necessary proficiency in child care in half the time, the teacher engages students in many different ways in order to meet the learning needs of each student. It is apparent that this form of teaching is intense and changes from one group of students to another based on the individual needs of the students. The teacher, Mary William Green, testified to the enormous amount of preparation necessary to teach in this manner. In order to be present during the student's practicum, there are days in which she teaches beyond the 7-hour span. As a result, she receives overload pay. The overload pay serves to compensate for the extra work.

The Instructor reflected, in her testimony, her commitment to the Board's adoption of the learning paradigm. However, the Employer's overreaching proposal on the seven-hour work span fails to compensate new Instructors for the extra work inherent in the preparation of a course in an accelerated program. The Employer's work span proposal provides no additional compensation to Instructors who supervise a lab to which students in various sections studying different subject matter are assigned. For example, the microcomputer lab Instructor will have students working on learning Microsoft Word, while others learn WordPerfect, and others work through learning other programs. A lab may be scheduled for seven hours. Should the scheduling result in an overload, the Employer's proposal does not provide for additional pay.

Summary-The Employer has not established a need for an overreaching proposal to eliminate all teaching day work span parameters. Except for Nicolet, the comparables do not support its proposal. The Employer's proposal appears to work counter to its efforts to transform the College to a learning paradigm. The Employer's proposal does not recognize the intensity and additional work involved in meeting the instructional needs provided by the new learning paradigm. Obviously, the Employer proposes no quid pro quo for its proposal. Its proposal is not only rejected but serves as a major impediment to the adoption of the Employer's final offer.

E. 22-25 Classroom Assignment Hours per Week

New Instructors would not be subject to the parameter applicable to incumbent faculty at Article IV, G.9. which reads as follows:

> A full-time teaching schedule shall be for a 38-week duration based upon classroom assignment of 22-25 hours per week in their area ...

This permits the Employer to schedule teachers for more than 22 or 25 hours per week. The Employer has not demonstrated a need for this proposal nor does it offer a quid pro quo for its inclusion in the successor Agreement.

The schedule which President Hildebrand attached to his June 17, 1998 memo (Employer Exhibit 32) reflects an underload in one semester or segment of the work year. The schedule appears to keep a running count of underloaded and overloaded situations, with the intent of balancing underloads and overloads over an undefined period of time. To a great extent, this issue was the subject of the arbitration decided by Arbitrator Tyson. He found that averaging loads from semester to semester violates the Agreement. He encouraged the parties to resolve the matter in bargaining or interest arbitration.

The Employer proposal eliminates the limitation on the number of courses that may be assigned to new Instructors. The Employer refuses to pay overload when Instructors do not carry a full load but may teach more than 22 periods/week of lecture.

The Arbitrator agrees both with Arbitrator Tyson and the Employer. The interest and welfare of the public justifies the Employer's attempt to insure that Instructors earning a full salary carry a full load. However, by eliminating one guidepost and definition of a full load, the Employer eliminates a tool for defining what a full and reasonable weekly workload is for a full-time Instructor. Instead, the Employer relies upon the work year equivalency parameters of 1140 hours which includes 890 contact hours and 250 office hours.

The Employer proposal overreaches. It fails to provide a parameter for the number of assignment hours a teacher carries in a particular week. The Employer position merits adoption in that it does not provide overload pay simply because an Instructor is overloaded for a limited period of time, so long as, over the course of the 52-week school year the Instructor is not overloaded. The Employer prevents an Instructor and scheduling administrator from looking to a parameter of a reasonable load in a particular week when it eliminates that frame of reference from the agreement for new Instructors. (The Arbitrator discusses the Union's proposal to retain the requirement of overload pay when the 22-25 hour classroom assignment parameter is exceeded in the context of the Arbitrator's analysis of the Union's proposal on working conditions.)

Finally, the schedule of the Rice Lake Instructor attached to President Hildebrand's letter suggests the possibility of balancing overloads against underloads for a period beyond a particular contract year. There is no basis or support for such a proposal. Inasmuch as the record is unclear as to whether this reflects the Employer's interpretation of "averaging between semesters" as litigated before Arbitrator Tyson, the Arbitrator does not include the possibility of year-to-year averaging in this analysis of the Employer's final offer.

In conclusion, the Arbitrator finds merit to the Employer's attempt to average workload over a school year and only pay overload pay when a teacher's schedule and coursework instruction exceed a full load for a school year. However, the Employer overreaches when it attempts to eliminate the frame of reference of what is a full load when one looks at a particular week of a schedule. On balance, the Arbitrator finds that the Employer has not established a clear basis for including the full scope of its proposal in the successor Agreement.

F. Number of Preparations

The Employer's proposal eliminates Article IV, G.8.b. and c. which limits the number of preparations a teacher shall be assigned: 3 communication preparations a semester and five a school year. The Employer does not provide

evidence of a need for this proposal nor does it provide a quid pro quo for the elimination of a limitation of five preparations to a teacher. There is no evidence in the Employer's proposal of an attempt to limit during any particular unit of instruction whether it's nine weeks or twelve weeks within the period of a 52-week school year the number of preparations assigned during such time segments.

In addition, the Employer proposal for new Instructors contains no provision for the payment of overload pay. The Employer witnesses indicate that Instructors working under the 52-week work year are receiving overload pay. However, there is no contractual provision that provides for overload pay should an Instructor have six preparations in a year. Again, this Employer proposal is overreaching. The Employer has not demonstrated a need for this proposal. It offers nothing in exchange for adoption of this proposal. It, too, serves as a major impediment to the adoption of the Employer's final offer for inclusion in the successor agreement.

SUMMARY

There may be some hint of need for the Employer to reduce the number of weeks of consecutive vacation in order to schedule the variety of units of time: six, nine, twelve or eighteen week schedules. The Employer justifiably attempts to schedule its Instructors with full loads, since it pays its Instructors a full wage regardless of whether the Instructor works a little over 50% of a full load or a full load. Certainly, the interest and welfare of the public supports the Employer's vigorous attempts to fully schedule its full-time staff. Its failure to do so, could undermine public support for the institution, should a significant portion of its faculty receive full pay but be substantially underloaded.

The Employer seeks flexibility through its proposal for a 52-week contract year with few parameters. Scheduling should be less cumbersome with no parameter as to the number of preparations a teacher should be assigned at any particular time; no work span limitation; no limit on the number of contact hours per week. The Employer claims that the expired Agreement does not work. It is either ignored when administrators schedule

Instructors or administrator and Instructor execute waivers to overcome the contract's restrictive parameters. However, in this proposal the Employer leaves the parameters in place for incumbent faculty. Its 52-week offer is limited to new Instructors.

The Employer notes that it does not make unreasonable demands on Study Skill Instructors, Counselors and the new Instructors already subject to the 52-week school year, in the absence of such parameters. Study Skill Instructors' and Counselors' preparation needs and working conditions differ substantially from that of the regular Instructors of the College. There is nothing in the Employer's proposal to suggest that once its offer is incorporated in the successor agreement, new Instructors will be subject to any of the Article IV G parameters. If a dispute did arise, what contractual provision would be enforced? How does an admission that a Dean ignores the work span parameter in scheduling staff hired before July 1, 1998 engender the trust implicit in the Employer's argument?

Furthermore, the Arbitrator notes in his review of the course schedules at the four campuses that a course is offered and taught both in the traditional manner and under the new FLEX schedule. Should student enrollment in the traditional course decline, it may lead to the further involvement of incumbent Instructors in the College's new programming efforts or layoff. The Union's witness testified to this concern. There is no basis for ignoring this Union concern.

At best, the Employer's final offer in the area of working conditions for new Instructors is overreaching. At worst, it ignores the expectations of full-time Instructors to teach under working conditions extant in the Technical College system. The comparables make provision for an extended work year, but they either provide faculty input in identifying the programs subject to an extended year, or some adjustment in teaching load is made in recognition of the Instructor's working an extended work year.

The Employer does not provide a quid pro quo for the many changes it wishes to make. What is worse, the Employer does not provide positive reinforcement either through compensation, choice in scheduling the vacation

break for summer or winter or through some other positive change in working conditions to encourage participation in the 52-week school year. The Employer's proposal on working conditions for new Instructors does not merit inclusion in the successor agreement.

IV. THE UNION'S PROPOSALS TO CHANGE WORKING CONDITIONS

Introduction

The Union proposes to change the expired agreement for all Instructors, both new, and incumbent hired prior to July 1, 1998. All the Union proposals for changing working conditions are effective the date of the Award. The Union does not propose retroactivity for any matter other than salary schedule.

The Union argues that its final offer, for the most part, attempts to respond to the Employer's unilateral change of the school year from 38 to 52 weeks. The Arbitrator, in the above discussion, notes which provisions of the Union's offer the Arbitrator considers to be restatements of the status quo. In the analysis that follows, the Arbitrator addresses the many changes to the agreement proposed by the Union.

A. Payment of Contract Salary to Teachers Teaching Adult Education Courses

Article IV, Section D. 3., of the expired Agreement provides:

> When courses such as part-time adult education courses, JTPA or apprenticeship courses in the cities of Ashland, New Richmond, Rice Lake and Superior are offered by Wisconsin Indianhead Technical College that are outside of the normal work day, full-time contract teachers under this contract shall be given first option of applying, providing said teacher is qualified. Seniority shall be the determination factor in filling positions for said courses. Rate of pay shall be adjusted annually to correspond with regular staff. . . .

b. For JTPA and part-time adult education instruction the student contact hourly rate of pay shall be

Baccalaureate Step 1
1330

The Union proposes to delete Baccalaureate Step 1 and insert Contract Salary in its place. In other words, under the Union's final offer, the Employer would pay an Instructor teaching non-credit Adult Education courses additional compensation computed on the basis of the Instructor's salary lane and step rather than the BA Step 1 rate. The Employer argues that the BA Step 1 rate, the lower rate, reflects the absence of any requirement for student assessment in teaching Adult Education courses, such as, woodworking, as opposed to teaching a general education credit course.

The Union notes that the parties agreed and included in the Stipulation of Agreed Upon Items, that Adult Education courses could be included in an Instructor's workload and count in the computation of a full-time load. This stipulation principally allows the Instructor to use what may be viewed as easier teaching assignments in bringing the Instructor's workload up to a full-time schedule. The Union then takes the stipulation and argues that since Adult Education courses count as regular courses in computing a teacher's load, it follows, in the Union's view, that any time an Instructor teaches an Adult Education course the Instructor should be paid at the Instructor's full-time rate.

There is a common thread present in many of the proposed amendments to the expired agreement made by the Union in its final offer. The Union does not accept the right or the need of the Employer to balance underloaded Instructors to the point that they are carrying a full load for the full salary they receive.

Here, the Union takes that stipulation and turns it on its head. There is no evidence to support the drastic increase in cost of having Instructors receive their regular rate of pay to teach Adult Education courses. The Employer computes the potential cost of the Union's proposal to be $159,000 by

assuming that all its Instructors will teach Adult Education courses. Tenuous assumptions generate bloated cost figures. However, the unintended consequence of the Union's proposal may be that many full-time Instructors may volunteer to teach Adult Education courses in areas tangential to their expertise and certification simply to earn extra cash. This trend would increase the cost of providing Adult Education courses to the public. The Union claims that the language of its proposal does not mandate that the Employer offer such courses to full-time Instructors. However, the language of the expired agreement which the Union's proposal amends by changing the rate of pay, provides that such courses offered outside of the standard work day shall be first offered to teachers covered by this Agreement.

The increased cost of requiring the College to pay full-time Instructors their full-time rate may make scheduling certain Adult Education courses uneconomical. It may require the Employer to increase the minimum student enrollment before it will run a course. There is a potential unintended consequence to the Union's proposal of either eliminating or limiting the number of Adult Education courses provided by the College.

The Adult Education program constitutes the service offered by the College to the greatest number of individuals residing within the counties serviced by the College. There are 4,000 full-time equivalent students enrolled in the College's credit programs. There are 28,000 serviced by the Adult Education and JTPA courses provided by the College. Faculty have a right of first refusal to teach Adult Education courses. Under the expired Agreement, this has a negligible cost impact. However, should faculty exercise their right of first refusal to teach these courses, the cost of running the Adult education program may increase, substantially. If it impacts the Adult Education program, it may impact a program which engenders public support for the tax supported College. Accordingly, the Arbitrator concludes that the criterion the interest and welfare of the public does not support this Union proposal.

The Union provides no supporting evidence that demonstrates the existence of a need to increase the rate of reimbursement of full-time instructors teaching Adult Education courses from the BA Step 1 salary level to the Instructors' regular rate of pay. Just as the Employer provides no quid pro

quo for its proposed modifications of the working conditions of Instructors of the College, similarly, the Union provides no quid pro quo for this demand. Accordingly, the Arbitrator concludes that the such other factors criterion does not support the adoption of the Union's final offer.

The Arbitrator concludes that the Union's demand is not supported by the statutory criteria. The potential unintended consequences of the Union's proposal are such that it serves as a substantial negative impediment to the adoption of the Union's final offer for inclusion in the successor Agreement.

B. Continuous One-Hour Duty-Free Lunch

The Union proposes to amend Article IV.G.4. through the insertion of the phrase "continuous one hour" to this provision. The proposal would mandate that teachers get a one-hour duty-free lunch period during the teaching day. The Union claims that this proposal merely clarifies the status quo.

The Employer introduced evidence how the Union's proposal could interfere with the presentation of "ITV," teaching via TV courses to high school students over a TV hookup and network. The Employer must provide the course to accommodate the high school schedules. It may require that the Instructor break their lunch period into two segments.

The Union presents no evidence of any problem associated with Instructors receiving a duty-free lunch. In fact, for the most part, the length of the duty-free lunch period is one hour. The Union offers no quid pro quo for the change. Accordingly, the Arbitrator concludes that the such other factors criterion does not support this Union proposal.

C. Lunch for Counselors and Study Skill Instructors

The Union proposes to include a continuous one-hour duty free lunch for Counselors and Study Skill Instructors as part of the 1330 contact hours these employees work in a year. The proposal reduces by 190 hours the number of hours these employees spend with students.

The working conditions of self-funding contracting Instructors, Counselors and Study Skill Instructors were changed in the negotiations leading to the expired agreement. The supplement which had been in effect for many years and covered Instructors whose source of funding was "soft money," were not subject to the rigorous parameters of the agreement. In the expired agreement, the parties agreed to integrate the supplement and those employees covered by the supplement into the regular agreement. The parties accomplished that integration through the addition of Section H to Article IV. In addition, the self funding contracting Instructors, Counselors, and Study Skill Instructors working conditions are established in the expired Agreement on the basis of the 52-week school year. In setting out the working conditions of Counselors and Study Skill Instructors, the parties agreed to provide them with a meal break approximately in the middle of their work assignment, but they did not include the meal break as part of the 1330 contact hours.

The parties extended the 1991-92 and 1992-93 Agreement to cover 1993-94 through an addendum. In that addendum the Employer agreed that it, ". . . will when necessary, average the Instructors' workloads by semester only." Similarly, in an addendum to the 1991-92, 1992-93 Agreement covering the 1994-95 and 1995-96 school years, the parties agreed, again, that, "during the 1994-95 and the 1995-96 school years the Employer will, when necessary, average the Instructors' workloads by semester only."

In the June 20, 1996 tentative agreement, Exhibit 50, which formed the basis for the expired agreement, the Arbitrator can find no reference to an agreement by the Employer to limit averaging within a semester and refrain from averaging between semesters. The Employer then proceeded to average between semesters soon after the parties ratified the expired Agreement. The Union viewed the Employer's conduct as a violation of the tentative agreement. The Union explains its proposal; the Employer reneged on a verbal commitment to refrain from averaging workloads for teaching Instructors during the term of the expired Agreement. Since averaging was part of the consideration for the agreement on the working conditions for Study Skill Instructors and Counselors, the Union proposes that these Instructors receive a paid lunch.

This is an interest arbitration proceeding; it is not a grievance arbitration forum. If, indeed, the Employer violates either a written or verbal commitment to refrain from averaging during the term of the expired agreement, the Union's remedy lies in the processing of a grievance and the remedy afforded in that forum. In the interest arbitration forum, the Union must establish a need for its demand. There is absolutely no evidence that Counselors or Study Skill Instructors are not receiving a lunch break. The Union's demand that the lunch break be part of their work hours is not supported by the offer of a status quo-quid pro quo analytical framework. Accordingly, the Arbitrator concludes that the such other factors criterion does not support the adoption of the Union's offer. The Employer's proposal to retain the status quo is supported by the statutory criteria.

D. What is an Overload Under the Union's Offer?

The central theme in the Union's argument is that THE EMPLOYER MAY SCHEDULE INSTRUCTORS AS IT PLEASES, SO LONG AS IT PAYS THEM OVERLOAD PAY FOR ANY OVERLOAD, i.e., FOR ANY WORK BEYOND THE CONTRACTUAL WORK PARAMETERS.

The Union proposes that Article IV, Section G.8.d. be amended to reference and keep in force the award of Arbitrator Tyson, which prohibits averaging from one semester to the next and which affirms averaging within a semester. The Union proposes that the following language be added to Article IV, Section G.9, as follows:

> Work beyond the standard teaching load, standard work day, the standard work week or the standard work year will be compensated at an hourly rate of their contracted salary divided by 1330.

The Union maintains that this sentence merely states the status quo. The Employer may continue to average within a semester but not between semesters. The Employer vigorously disagrees. It argues that the use of the term "standard" and the reference to work week prevents the Employer from averaging within a semester.

In the discussion above, the Arbitrator determined that the use of the term "standard" by the Union represents a restatement of the status quo to conform the language of the expired Agreement to the 52-week school year unilaterally adopted by the Employer. The Union, by its proposal to keep in effect the holding of Arbitrator Tyson's Award during the term of the successor agreement, acknowledges that the Employer may average loads within a semester. However, that commitment is short-lived. In its amendment to Article IV, Section G.9., the Union's reference to work week and the provision of overload pay for loads that exceed 22 periods of lecture and discussion or 25 hours of lecture and lab precludes the Employer from averaging an Instructor's load within a semester. Under the Union's proposal an Instructor who is underloaded for nine weeks of a semester may be overloaded in the second nine weeks of the semester to compensate for the first nine weeks of underload, if, and only if, the Instructor receives overload pay for the nine weeks the Instructor is overloaded. This represents a material and substantial change to the status quo. It reduces the flexibility of the College in scheduling Instructors to institute the FLEX courses/labs. It represents the Union's resistance to the legitimate concern of the Employer that Instructors receive full-time pay for carrying a full-time load. This proposal is not supported by the interest and welfare of the public criterion.

The Union introduced the testimony of Instructor Mary William Green concerning the Child Care program she developed. A student completes the coursework and obtains the proficiencies for an Associate Degree in this area in one, rather than two, years. It is under this accelerated method of teaching the scheduling of an overload in one semester and an underload in the other, results in the payment of an overload. This overload pay compensates for the extra preparation necessary to teach in the accelerated method. Green's testimony supports an effort to provide additional recognition in computing the load factor or compensation for teaching an accelerated course. It does not support the use of overload pay as an efficient method of compensating a teacher for the extra preparation involved in having an accelerated preparation. The Union has not established a compelling reason for this change. Again, the Union attempts to resist the Employer's ability to justify the payment of full salary through assignment of a full load to an Instructor.

E. Assignment of Overloads by Seniority

The Union's proposal to amend Article IV, Section G.9., continues with the following language:

> This work will be offered to qualified teachers by seniority. In the event of no qualified volunteers, the district may assign work by inverse seniority.

The Union's proposal does not distinguish between overloads in which Instructors carry a full course load and the Employer offers the Instructor(s) an opportunity to teach an additional class, and overloads intended to counter balance an underload within a semester or a contract year. The Union offer would require that overloads peculiar to an Instructor, such as work span or weekly contact period overloads be offered to qualified Instructors by seniority.

Under the Union's proposal, the Employer would be precluded from scheduling an overload to counterbalance the underloaded Instructor without first offering the overload to teachers generally and awarding the "overload" on the basis of seniority. The Union's proposal ignores the Employer's legitimate responsibility for attempting to provide full-time Instructors with full-time loads in exchange for full pay. What is worse, the implementation of this Union proposal can only lead to confusion and grievances. The Union's proposal, in this regard, strongly supports rejection of the Union's final offer. It serves as an albatross to the adoption of the Union's final offer in the successor Agreement.

F. Retirement

The present early retirement provision in the expired agreement contains a sunset clause. Under the terms of the sunset clause, the provision expires and is no longer in effect subsequent to June 30, 1998. The Union proposes to keep the sunset in place but to extend it to the date the successor Agreement expires, June 30, 2000.

The seven comparables all have some form of early retirement program in place. Certainly, this criterion supports the inclusion of the Union's proposal to extend the sunset.

The Employer argues that the effect of a sunset is to terminate the benefit unless the parties agree to renew it. The party seeking to extend the benefit must do so by showing a need for the benefit and by providing some quid pro quo to secure the benefit. The Arbitrator agrees. Since 1992, when Arbitrator Yaffe selected the Union's final offer that included an early retirement provision with a sunset, the parties extended the sunset through agreements and extensions of the 1991-92 and 1992-93 Agreement. There is no evidence that anyone has taken advantage of the early retirement program during the approximately six to seven years it has been in place. The Arbitrator concludes from this evidentiary record that there is no need for the program. The Union offers no quid pro quo for the early retirement program. The such other factors criterion supports the Employer's position. To maintain the credibility of a sunset provision, the Arbitrator finds that the such other factors criterion should be given greater weight than the comparability criterion. Accordingly, the Arbitrator rejects the Union's proposal to extend the sunset date for the early retirement benefit to June 30, 2000.

SUMMARY

The Arbitrator concludes that none of the Union's proposals to change the working conditions of the entire unit of Instructors has any merit. Its proposal to increase the salary rates paid to full-time Instructors teaching adult education courses may increase the cost of such courses to the point that higher student enrollments are necessary or the Employer may determine to offer fewer Adult Education courses. The Union's proposal eliminates averaging within a semester.

By requiring the Employer to offer all overloads to Instructors on the basis of seniority complicates the Employer's ability to provide all Instructors with full teaching loads. This proposal serves, by itself, as the basis for rejecting the Union's offer. It, like the proposal to increase the wage pay to Instructors teaching Adult Education courses, flirts with the principle of

unforeseen consequences. The Union's proposals for continuous hour lunch breaks for Instructors, Counselors and Study Skill Instructors do not meet the status quo- quid pro quo analytical paradigm. The Union has failed to demonstrate a need for such proposals; it offers nothing in exchange to secure this benefit. In short, the Arbitrator concludes that the statutory criteria do not support the inclusion of the Union's final offer in a successor agreement.

V. SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator determines that neither final offer merits inclusion in a successor agreement. Neither party shows any regard for the status quo-quid pro quo analytical framework. The language of the such other factor criterion directs the Arbitrator to weigh, "such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining. . ." The Employer offered a quid pro quo in reaching agreement with the Office, Technical and Support personnel unit of the College. It offered to pay employees in that unit $25.00 a month to induce them to switch from the health insurance indemnity plan to the Employer's Preferred Provider Network Plan. The paradigm reflects the conduct of parties in voluntary collective bargaining. The adage, "you don't get something for nothing" governs. Here, except for the Employer's proposal on the Prescription Drug Program and the creation of a Preferred Provider Network Plan, neither the Union nor the Employer have demonstrated a need for the many changes they propose to the working conditions of new and incumbent teaching personnel. Neither party identified the existence of any quid pro quo.

In the City of Verona (Police Department), Decision No. 28066-A (Malamud, 12/94) p. 17-22, this Arbitrator engages in an extensive analysis of the status-quid pro quo analytical framework. In line with that analysis, the Arbitrator found the College established a compelling need to adjust the free standing Prescription Drug program. A modest quid pro quo would insure its adoption in the face of the Union's stonewalling.

The adoption of either final offer will be **destructive** to the operation of the College. The Arbitrator will not repeat or summarize the above analysis.

This Award should be long enough. A broad overview should be enough to make this point. If selected, the Employer's Income Protection proposal would require back charging to the unit the difference between .48%(the proposed limit of its contribution) and .49% the cost of the program in 1999. The Employer's Income Protection proposal is inexplicable. Instructors with family coverage in the indemnity-basic plan would see approximately half their wage increase offset by the $70.00 per month back charge to January 1, 1999 for health insurance. The Employer's proposal on working conditions for new Instructors teaching in the College's 52-week environment overreaches. It does not reward new or incumbent Instructors who create new methods of teaching in accordance with the College's "learning paradigm." Not all programs and courses are taught in segments other than 18 week semesters. For some programs, the semester will continue as the time unit of instruction.

On the other hand, the Union's proposal applies to both new and incumbent Instructors. Its proposals on working conditions effectively eliminates the Employer's flexibility in its legitimate attempt to schedule underloaded Instructors with full teaching loads for a full salary.

The Arbitrator finds it difficult to select the final offer to be included in the successor Agreement. The Employer's proposals on insurance and working conditions are not supported by the statutory criteria. The Union proposes changes that impact the working conditions of the entire unit. The Union's offer does not begin to address the change in the manner and timing of the delivery of service to the College's students. Unlike the Employer's narrow focus, the Union's offer applies to the entire unit. Its offer retains the status quo on insurance. However, the Union's offer fails to acknowledge the escalating cost impact of the Prescription Drug program.

Since this Award issues after the beginning of the second semester and only four months prior to the expiration of the Agreement which is the subject of this Award, if the Union's offer is selected most of its proposal would not be immediately implemented. It would go into effect during the hiatus, should the parties be unable to reach agreement to the terms of a July 1, 2000-June 30, 2002 Agreement. The positive aspect of the Employer's offer stems from the limited number of Instructors initially impacted by the Employer's offer, the new Instructors on staff. Although the Employer's health insurance proposals

impact most of the staff. Its Income Protection Plan does impact the entire staff.

The statute places on the Arbitrator the burden of selecting the final offer and justifying the selection made. The Arbitrator finds that the Employer attempts too much change, and it offers nothing in exchange. It has failed to establish a need for the changes it proposes to operate a 52-week school year. However, the Employer recognizes the need for flexibility in scheduling and the importance of having teachers teach a full load for full pay.

The statutory criteria provide greater support to the Union's proposals to retain the status quo on insurance than the Employer's proposal to make multiple changes to its Health and Income Protection programs. With regard to the many proposals each makes to change working conditions, the College's proposals, albeit overreaching, impact a small segment of the faculty. The Union's proposals create confusion and may well generate grievances in the process of scheduling. The statutory criteria provide less support for including the Union's proposals to change the Working Conditions of the College than the Employer's proposals on this subject. The working conditions and scheduling issues lie at the heart of this dispute. Therefore, the Arbitrator selects the Employer's final offer for inclusion in the successor Agreement.

Based on the above discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7, 7g. And 7r. a.-j., Wis. Stats. and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Wisconsin Indianhead Technical College, for inclusion in the Agreement between the Wisconsin Indianhead Technical College and the Wisconsin Federation Of Teachers, Local 395, AFSCME, AFL-CIO for the contract years commencing on July 1, 1998 and expiring on June 30, 2000.

Dated at Madison, Wisconsin, this 3rd day of February, 2000.

Sherwood Malamud
Arbitrator