EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of	:	
	:	
Clintonville ESP	:	
	:	
To Initiate Arbitration	:	Case 37 No. 56881 INT/ARB-8577
Between Said Petitioner and	:	Dec. No. 29575-A
	:	
Clintonville School District	:	

Appearances: United Northeast Educators by Mr. James A. Blank Executive Director and Ms. Suzanne Dishaw Britz UniServ Director, for the Association Wisconsin Association of School Boards by Mr. Barry Forbes Staff Counsel, for the Employer

By its Order of May 17,1999 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Association] or the total final offer of the [Employer]."

A hearing was held at Clintonville, Wisconsin on August 19, 1999. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed on December 6, 1999 with receipt by the arbitrator of the parties' reply briefs.

The sole issue in dispute is the wage increase for employees in the second year (1999-2000) of the parties' two year Agreement. The Association's final offer is to increase wages by $ .35. The Employer's final offer is to increase wages by $ .23. The parties agree that the Association's final offer for the second year is a 4.91% increase, and the Employer's offer is a 3.9% increase. The cost difference between the two offers is $ 17067.74.

For purposes of wage comparisons the Employer uses those districts which were designated as comparables by Arbitrator Weisberger in 1986 in the only prior interest arbitration case between the parties: Bonduel, Manawa, Marion, New London, Shawano-Gresham and Shiocton. The Association uses these districts as the "primary comparison group" but urges that a secondary comparison group be used also: Ashwaubenon, De Pere, Howard-Suamico, Marinette, Pulaski, Seymour, West De Pere, Freedom, Hortonville, Little Chute, Oconto Falls and Waupaca.

In making his decision the arbitrator is directed by statute to use the criteria set forth in Section 111.70(4)(cm) 7. The statute at paragraph 7 designates the 'Factor Given Greatest Weight', which directs the arbitrator to "consider and 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 Employer argues that its offer is supported by the greatest weight criterion:

> ...Clintonville is currently experiencing and is expected to continue to experience declining enrollments. That decline in enrollment results in increasingly smaller increases in Clintonville School District tax revenues. The district is facing budgetary problems as a result. The district is cutting staff and canceling or delaying other expenditures to deal with the budget problems. The District has voluntarily settled with its teachers for a minimum QEO in 1999-01. Administrators received a 2.4% increase in 1999-00. The Board and CESP are $ 17,000 apart. That is admittedly a small amount of money in comparison to the Clintonville School District budget, but the district is already giving other staff minimum pay increases and is cutting staff and cance ling expenditures. CESP's demand to spend $17,000 more will result in $ 17,000 more in budget cuts - this is inappropriate when the Board's offer already had been made a tentative agreement between the parties and is supported by the settlements in comparable school districts.

The Employer addresses the Association's emphasis on the existence of a fund balance of almost 2.5 million dollars. These funds, the Employer argues, are to cover the cost of the support staff settlement, repairs in the roof at the high school, and to be a reserve for carry over accounts, "...money that is not spent in 1998-99 is made part of the 1999-2000 budget." In its reply brief, the Employer argues:

> The Association asks...why a district with a cash balance of $ 2.5 million that does not borrow money for operations and that reduces the district tax rate claims that it cannot afford the $ 18,000 [sic] difference between the two offers...
> • All school districts have fund balances.. . .
> •The District does not have to borrow money because it is cutting its expenditures to match its expected revenues...
> • The District has lowered the tax level because state law (the revenue limit) requires it. The district has levied the maximum amount of property taxes allowed by law. Since Clintonville enrollments are declining, the rate of increase in the property tax level is much smaller than the rate of increase of property values in the Clintonville area. As a result the tax levy goes down.
> • The district never claimed that it could not afford the

> Association's final offer. The District has put a number of items on hold in its 1999-00 budget...If the Association's final offer is selected, $ 18,000 of those items on hold will be converted to budget cuts. If the Board's final offer is selected, the Board will have that $ 18,000 to spend on some of those...items.

The Association argues that "...the financial situation in Clintonville is not as dire as the Board would like the Arbitrator to believe." It argues:

> The District ...enjoys a healthy Fund 10 balance. Fund 10 is the general fund used to account for district financial activities for current operations, such as staff salaries...
>
> ...The Treasurer's Balance Sheet as of June 30, 1998 [shows] cash available in excess of $ 2.5 million. The Treasurer's Balance Sheet found in the 1999-00 Annual Report shows a cash balance of almost $ 3.7 million...These District-generated reports clearly demonstrate that the District maintained a cash balance well in excess of that necessary to pay support staff wage increases.
>
> [Superintendent] Harness and the Business Manager testified that certain purchases have been put on hold and several support staff employees were laid off. They did not testify, however, that the District must borrow money to operate. These are measures taken to contain costs.
>
> ...The Employer attempts to paint a grim picture of what is occurring in Clintonville - threats of program cuts, budget reductions, support staff layoffs, and purchases being put on hold. However, it failed to adequately explain why, in the face of such tremendous financial burden, that it could afford to increase administrative staff by one additional full-time employee in each of the two years at issue here. Further, the District has engaged in capital improvements such as replacement of the roof at a cost of $ 140,000, which did not reduce the Fund 10 balance because it was able to put the money aside in anticipation of this costs [sic]. The District attempts to argue that its money is better spent on areas other than support staff salaries. But at th e same time it sees nothing wrong with spending $ 154,000 for two new administrators and maintaining the salary of the former high school principal who was reassigned to the middle school in 1999-00.

The Association notes also that the Employer has reduced the school district tax rate "by $ 1.11 per $ 1,000 from $ 11.50 in 1997-98 to $ 10.39 in 1998-99." It argues further:

> ...there is nothing by way of testimony or exhibits...which even hints that borrowing will be necessary to meet current expenditures...It is a shame that the District chooses to hide behind cost controls and revenue limits in a weak attempt to justify paying its support employees a below average wage increase. District testimony and the exhibits submitted by the Association support the Association's position that this is not an ability to pay case, but rather a misplaced preference not to pay case."

In addition, the Association argues that the Employer's revenues will increase under the 75% hold-harmless provision in the 1999-01 State budget:

> Harness indicated...that if the Governor signed the provision into law there were several things he planned to do...the 75% hold-harmless provision would allow the District to refill an instructional media center aide position that was eliminated at a cost of $ 15,000 in addition to various capital expenditures of $ 36,730 and a staff development budget of $ 45,000 for a grand total of $96,730...
>
> ...Making the 75% hold-harmless provision a permanent part of the state aid formula will result in an increase of $96,730 for the Clintonville School District. At the writing of this brief, [October 27, 1999] the 75% hold-harmless provision remains in the budget and is awaiting the Governor's signature.

In its reply brief, the Association states:

> ...While the issue of revenue controls cannot be ignored, it nevertheless has little meaning in the ...District where the Fund 10 balance is increasing, the tax rate is decreasing, administrators are receiving increases better than 4%, and the District is operating with a cash surplus...Clintonville has operated with a cash surplus for years and there is nothing on record which indicates any significant change in its financial status in the forseeable future...

The greatest weight factor favors the Employer's final offer, since State law has constrained the Employer's ability to raise more tax revenue. The arbitrator is required to accord this factor the greatest weight, but it is clear that this is not a case in which the difference between the parties' final offers has any significant bearing on the Employer's financial health. There is no question about the Employer's ability to pay what the Association has requested. What would be required would be, at most, a slight

reordering of the Employer's budget priorities.

Paragraph 7g directs the arbitrator to "consider and...give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r" In support of its position with respect to the greater weight factor, the Employer argues:

> ...The Board presented evidence showing that the average income reported on Wisconsin income tax returns in the Clintonville School District is lower than the average in districts in the comparison group. The Board also presented evidence showing that the district's largest employer -FWD Seagrave Corporation- had just concluded a long and bitter strike with its labor union. Many taxpayers with good paying jobs permanently lost those jobs as a result of the strike...The greater weight criterion is probably not decisive in this case, but to the extent any weight is given to it, this criterion supports selection of the Board's final offer.

Data presented by the Employer from the Wisconsin Department of Revenue show that among the comparable school districts, the median figure for "mean taxable income" for the latest year reported, 1997, is $ 31,230 which compares to the figure for Clintonville district taxpayers of $ 28,715. Clintonville has the second lowest mean taxable income of the seven comparison districts.

Data presented by the Employer from the Wisconsin Department of Workforce Development, for 1997, the latest year reported, show per capita personal income in Wisconsin to be $ 24,048. The Clintonville School District lies mainly in Waupaca County, but is also in Outagamie and Shawano Counties. The per capital personal income figures for those counties in relationship to the State average are: Waupaca $21,445 (-$2603); , Outagamie $ 25845 (+$1797), Shawano $17090 (-$6958).

The Association did not present evidence or arguments about the greater weight factor. The Employer' states, "The Association presented no evidence indicating that local economic conditions provide any support for their final offer. They apparently recognize that the greater weight criterion does not support selection of their final offer."

In its reply brief the Association again cites administrative increases, lowered tax rates, and a solvent school district as supporting its position. With respect to the local strike, it argues, the Employer "has not proven that there are any long-term impacts of that strike on the school district." The Association cites a lack of compelling evidence presented by the Employer to show that the District is in need of economic relief.

In the arbitrator's opinion, the greater weight factor favors the Employer. Given a choice between two reasonable final offers, the economic conditions in the area as reflected by the data presented weigh on the side of the smaller offer. The importance of this factor,

however, is tempered by the fact that the magnitude of the parties' differences is very small and payment of an additional $ 17,000 will have no significant impact on the economic condition of Clintonville taxpayers.

Paragraph 7r of the statute directs the arbitrator to "give weight" to the factors enumerated there. The parties did not submit evidence or arguments about several of them, and they will not be considered further: (a) the lawful authority of the employer; (b) stipulations of the parties; (f) comparison of wages, hours and conditions with those of employes in private employment...(i) changes in circumstances during the pendency of the arbitration. The other factors will be discussed below.

As mentioned above, the parties do not agree about which school districts should be used for comparisons. The Employer believes that the appropriate comparisons are those school districts which are contiguous with Clintonville and which were used by a previous arbitrator. The Association views these districts as a "primary comparison group." That it does so reflects the parties agreement that these districts should be used for comparisons. In addition, however, the Association argues that a secondary comparison group should be used. The Employer disagrees, adding in a footnote to its brief, "This suggestion to add a secondary group is without any rationale other than to include districts that will appear more favorable to [the Association's] claims, compared to the primary group..."

In arguing for use of a secondary comparable group, the Association notes that the support staff at Marion (one of the districts in the primary group) is not unionized. In its reply brief, the Employer argues against excluding Marion from the comparisons because its employees are not unionized:

> ...If this arbitration were over fair share or just cause or some other issue unique to union contracts the Board could understand the Association's reluctance to compare to non-union schools. Non-union schools do not have just cause or fair share provisions. But this is an arbitration over pay increases for support staff employees. Both Board and Association exhibits show that Marion has support staff employees...There is nothing unique to a Union contract about an hourly pay rate or hourly pay increase for support staff employees. The Association would point out that the wage rates for non-unionized employees are determined without the benefit of the collective bargaining process-they are determined unilaterally by the employer. But analysis of the M arion wage rates in either the Board or Association exhibits shows that those wage rates are in line with the wage rates of the unionized schools in the primary comparison group...

The Association's proposed secondary grouping also has districts in it which are not

unionized: (Marinette, Seymour, West DePere, Hortonville and Little Chute). The Association argues that "those schools have offered little or no reliable wages and benefit information with which to compare in this matter," and are of diminished importance as a result.

In the arbitrator's opinion, the existence of one non-union district in the primary comparison group does not lend support to the need to expand the comparison group, and in particular when nearly half of the proposed secondary group is also non-union.

The Association notes that effective with the 1999-00 school year, Clintonville has changed athletic conferences, from the Bay Athletic Conference to the Valley Eight Conference. This fact would be more significant if the primary comparison group were an athletic conference, but it is not.

While arguing for an expanded comparison group, the Association cites arbitral precedent to show that districts in an athletic conferences which are not public schools should not be considered, yet two of the districts in the proposed group fall into that category: Fox Valley Lutheran and Xavier Catholic are private schools, unlike any of the districts in the primary grouping.

In 1986 Arbitrator Weisberger designated the districts contiguous to Clintonville as comparables. She did not use the athletic conference , even though the Association urged that she do so. She stated:

> ...Since it is well established that comparable districts for teacher arbitration cases may be significantly different from appropriate comparables for non-certified school employees and in view of the data presented concerning the six contiguous school districts, the undersigned believes that the Employer's approach...is a reasonable one.

In the present case the Association has not presented persuasive arguments for expanding the list of districts used by Arbitrator Weisberger. It has not shown that the characteristics of the proposed districts are such that they are better comparisons th an the primary group, or even equally as good. Weisberger noted also that the Employer's exhibits presented to her showed that "...the majority of unit members live in the City of Clintonville with only one unit employee living outside the Employer's comparable pool." In the present case there is no evidence that this situation has changed.

The arbitrator has concluded that the Association has not presented a persuasive case for expanding the comparable districts beyond those used in the 1986 arbitration.

Paragraph 7r (d) directs the arbitrator to give weight to "Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with ...[those] of other employes performing similar services." The parties have presented wage data for several categories of employees which are represented

in the bargaining unit: maintenance, custodian, secretarial, aides and food service.

Wage comparisons between districts are difficult to make for support staff because for each category of employee the districts do not necessarily use the same titles. Some districts have one title for each category while others have two or more titles. For purposes of making comparisons with Clintonville, the arbitrator has looked at each category of employee (maintenance, custodian, secretarial, aides and food service) and within each category has looked at the title with the lowest wage rate and with the highest wage rate, and at the minimum and maximum rates paid within each of those titles, exclusive of longevity payments. In the analysis which follows, it must be remembered that the parties are in agreement with respect to the wage rates to be paid in Clintonville in 1998-99. There disagreement is over the rates for 1999-2000.

	1998-99	1999-2000
Maintenance, minimum rate [comparison with 3 districts for which data are available]		
comparables median	$ 9.73	$ 9.88
Clintonville	9.45	
Assn offer		9.79
Employer offer		9.67
Clintonville compared to median	(-.28)	
Assn offer		(-.09)
Employer offer		(-.21)
Maintenance, maximum rate [comparison with 3 districts for which data are available]		
comparables median	$ 13.37	$ 13.57
Clintonville	12.45	
Assn offer		12.80
Employer offer		12.68
Clintonville compared to median	(-.92)	
Assn offer		(-.77)
Employer offer		(-.89)

Custodian, lowest paid
classification, minimum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 8.72	$ 8.87
Clintonville	6.37	
Assn offer		6.70
Employer offer		6.58
Clintonville compared to median	(-.2.35)	
Assn offer		(-2.17)
Employer offer		(-2.29)

In each of the tables presented above, both offers result in improvements in 1999-2000 in relationship to the 1998-99 comparables median, with the Association's offer bringing Clintonville closer to the median than does the Employer's offer. The Employer's offer more closely maintains the relationship with the 1998-99 comparables median.

Custodian, lowest paid
classification, maximum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 10.64	n.a.
Clintonville	9.20	
Clintonville compared to median	(-1.44)	

For 1999-2000, the median of the maximum rates of the five comparable districts cannot be ascertained because New London has not yet settled and its rate will probably affect the median. In some of the tables below, New London is included in the calculation of the median, even though there has been no settlement for 1999-2000, because it is clear that the eventual settlement is unlikely to effect the median.

Custodian, highest paid
classification, minimum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 9.86	$ 10.20
Clintonville	8.50	
Assn offer		8.84
Employer offer		8.72
Clintonville compared to median	(-1.36)	
Assn offer		(-1.36)
Employer offer		(-1.48)

The Association's offer for 1999-2000 keeps the identical relationship with the 1998-99 comparables median, while the Employer's offer results in further deterioration from the median.

Custodian, highest paid classification, maximum rate
[comparison with 5 districts for which data are available]

comparables median	$10.76	$11.10
Clintonville	11.45	
Assn offer		11.80
Employer offer		11.68
Clintonville compared to median	(+.69)	
Assn offer		(+.70)
Employer offer		(+.58)

Both offers for 1999-2000 are above the comparables median. The Employer's offer is closer to the median than is the Association's, although the Association better maintains the relationship to the 1998-99 median.

Secretarial, lowest paid classification, minimum rate
[comparison with 5 districts for which data are available]

comparables median	$ 7.93	$ 8.23
Clintonville	6.22	
Assn offer		6.56
Employer offer		6.44
Clintonville compared to median	(-1.71)	
Assn offer		(-1.67)
Employer offer		(-1.79)

The Association's offer in 1999-2000 results in a slight improvement in relationship to the 1998-99 comparables median, while the Employer's offer results in a slight deterioration in that relationship. The Association's offer for 1999-2000 is closer to the median than is the Employer's.

Secretarial lowest paid classification, maximum rate
[comparison with 5 districts for which data are available]

comparables median	$ 10.01	$10.35
Clintonville	9.95	
Assn offer		9.40
Employer offer		9.28
Clintonville compared to median	(-.06)	
Assn offer		(-.95)
Employer offer		(-1.07)

Both offers for 1999-2000 result in substantial deterioration from the 1998-99 comparables median, although the Association's offer is closer to the median.

Secretarial, highest paid classification, minimum rate
[comparison with 5 districts for which data are available]

comparables median	$ 8.23	$ 8.38
Clintonville	8.36	
Assn offer		8.69
Employer offer		8.58
Clintonville compared to median	(+.13)	
Assn offer		(+.31)
Employer offer		(+.20)

Both offers for 1999-2000 result in improvement in relationship to the comparables median, although the Employer's offer is closer to the median than is the Association's.

Secretarial, highest paid classification, maximum rate

[comparison with 5 districts
for which data are available]

comparables median	$ 10.76	$ 11.10
Clintonville	11.30	
Assn offer		11.65
Employer offer		11.53
Clintonville compared to median	(+.54)	
Assn offer		(+.55)
Employer offer		(+.43)

Both offers for 1999-2000 are above the median. The Employer's offer is closer to the median than is the Association's, although the Association maintains the relationship to the 1998-99 comparables median.

Aides lowest paid
classification, minimum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 7.38	$7.53
Clintonville	6.13	
Assn offer		6.46
Employer offer		6.35
Clintonville compared to median	(-1.25)	
Assn offer		(-1.07)
Employer offer		(-1.18)

Both offers for 1999-2000 result in improvement in relationship to the median, although the Association's offer is closer to the median than is the Employer's. The Employer's offer more closely maintains the relationship with the median which existed in the prior year.

Aides lowest paid
classification, maximum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 8.96	$9.16
Clintonville	8.95	
Assn offer		9.30
Employer offer		9.18
Clintonville compared to median	(-.01)	
Assn offer		(+.14)
Employer offer		(+.02)

Both offers for 1999-2000 result in improvement in relationship to the comparables

median, although the Employer's offer more closely maintains the relatiohship with the 1998-99 comparables median.

Aides, highest paid
classification, minimum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 7.88	$ 8.03
Clintonville	6.60	
Assn offer		6.94
Employer offer		6.82
Clintonville compared to median	(-1.28)	
Assn offer		(-1.09)
Employer offer		(-1.21)

Both offers for 1999-2000 result in improvement in relationship to the comparables median, although the Employer's offer more closely maintains the relationship to the 1998-99 comparables median.

Aides highest paid
classification, maximum rate
[comparison with 5 districts
for which data are available]

comparables median	$9.58	n.a.
Clintonville	9.45	
Clintonville compared to median	(-.13)	

For 1999-2000, the median of the maximum rates of the five comparable districts cannot be ascertained because New London has not yet settled and its rate will probably affect the median.

Food service lowest paid
classification, minimum rate
[comparison with 5 districts
for which data are available]

comparables median	$ 7.54	$7.69

Clintonville	6.13	
Assn offer		6.46
Employer offer		6.35
Clintonville compared to median	(-1.41)	
Assn offer		(-1.23)
Employer offer		(-1.34)

Both offers for 1999-2000 result in improvement in relationship to the comparables median, although the Employer's offer more closely maintains the relationship with the 1998-99 comparables median.

Food service lowest paid classification, maximum rate [comparison with 5 districts for which data are available]

comparables median	$ 8.55	n.a.
Clintonville	8.95	
Clintonville compared to median	(+.40)	

For 1999-2000, the median of the maximum rates of the five comparable districts cannot be ascertained because New London has not yet settled and its rate will probably affect the median.

Food service highest paid classification, minimum rate [comparison with 5 districts for which data are available]

comparables median	$ 7.59	$ 7.69
Clintonville	7.08	
Assn offer		7.41
Employer offer		7.30
Clintonville compared to median	(-.51)	
Assn offer		(-.28)
Employer offer		(-.39)

Both offers for 1999-2000 result in improvement in relationship to the comparables median, although the Employer's offer more closely maintains the relationship with the 1998-99 comparables median.

Food service highest paid classification, maximum rate [comparison with 5 districts for which data are available]

comparables median	$ 9.65	n.a.
Clintonville	9.20	
Clintonville compared to median	(-.45)	

For 1999-2000, the median of the maximum rates of the five comparable districts cannot be ascertained because New London has not yet settled and its rate will probably affect the median.

This analysis demonstrates that in most cases Clintonville is below the comparables median, in many cases substantially, but there is no evidence presented to suggest that the relationship with the comparables is different from what it has been in recent years and/or that there is a need to restore Clintonville to some postition which existed previously. Both offers result in wages closer to the comparables median in 1999-2000 than was the case in 1998-99. As shown below, the parties in 1998-99 gave larger cents per hour increases than were given by the comparables. Their rationale for doing so, if they agreed upon one, is not part of the record. One may only speculate about whether the agreement for 1998-99 reflected a conscious decision by the parties to improve the wages of the bargaining unit in relationship to the comparables.

Where the figures for both 1998-99 and 1999-2000 allow a determination of the comparables median, the Employer's final offer for 1999-2000 maintains Clintonville's relationship with the comparables 1998-99 median in more of the comparisons (9) than does the Association's (5). That is, where Clintonville was below the comparables median in 1998-99, the Employer's offer for 1999-2000 maintains that relationship more closely than does the Association's final offer which improves Clintonville's position in relationship to the comparables median. Similarly, where Clintonville was above the comparables median in 1998-99, the Employer's offer for 1999-2000 maintains that relationship in 1999-2000 more closely than the Association's final offer which places Clintonville still further above the comparables median. If 1999-2000 is considered in isolation, the Association's final offer is closer to the median in more instances (10) than is the Employer's final offer (4).

Another measure of comparison is the wage increase in cents per hour. The following table shows the median increases in wages at the top of the wage range, among all categories and classifications considered together, in each of the comparables for 1998-99 and for 1999-00.

	Median Cents per hour Wage Increase	
	1998-99	1999-00
Bonduel	.15	.20
Manawa	.33	.34
Marion	.23	.26
New London	.29	n.a.
Shawano	.24	.19

median of comparables	.24	will not exceed.26 or be below .20
Clintonville	.35 (+.11)	Employer offer: .23 (-.03 to +.03) Assn offer: .35 (+.09 to +.15)

For 1998-99 the parties agreed to a wage increase which was higher than the median increases paid by each of the comparables. For 1999-2000 the Employer's offered wage increase will be closer to the comparables median than will the Association's final offer. Both final offers are reasonable but the Employer's offer more closely reflects what is occurring in the comparable districts.

Another measure of comparison is the percentage increase.

	Median Percentage Wage Increase, 1999-2000
Bonduel	2.4%
Manawa	3.4
Marion	3.83
New London	n.a.
Shawano	1.93

median of comparables will not exceed 3.4% or be below 2.4%

Clintonville	Employer's offer: 2.6% (-.8% to + .2%)
	Assn's offer: 3.96% (+ .56% to + 1.56%)

No definitive conclusion can be reached about which party's final offer will be closer to the median percentage increase. The Employer's offered percentage increase will rank third or fourth among the six districts, and the Association's offered percentage increase will rank first or second, depending upon the result in New London.

Based upon this wage analysis with the comparable districts, the arbitrator has concluded that the Employer's wage offer for 1999-2000 is more in line with the wage increases given in the comparable districts, and it better maintains the relationship with them which existed in 1998-99. The Association's wage offer is a reasonable one and reduces the gap between Clintonville and the comparables, but it is not clear to the arbitrator why the Employer should have to pay a larger wage increase at this time than it has already offered, since its offer is in line with the increases which the comparable districts have given, and no case has been made for a need to catch-up in order to restore some other relationship with the comparables which existed previously. The parties' past bargaining has apparently resulted in the current relationship with the comparables, and the Employer's offer maintains it.

Paragraph 7r (e) directs the arbitrator to give weight to "comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with [those]... of other employes generally in public employment in the same community and in comparable communities." In this connection the Employer cites the voluntary settlement of the Clintonville Education Association for a 3.8% total package increase in 1999-00 and 2000-01, and an increase of 2.77% average total

compensation increase for Clintonville administrators in 1998-99 and a 2.4% increase in 1999-00. The Employer then argues:

> The CESP is getting 3.91% in 1998-99 and 3.9% in 1999-00 under the Board's final offer...They are already getting more than the other employees of the district are...

The Association notes that the support staff unit is not controlled by the QEO guidelines which apply to professional ad administrative staff. It argues, "Second, and more important, is the fact that a 3.8% package increase translates to substantially more in the way of salary increases to the other District employees than the ESP unit." It argues:

> A $.35 increase to a 12-month support staff employee working 2,080 hours translates to a $ 728 increase to his/her annual salary. Administrative increases, on the other hand, range from $1,187 to $ 3,300 in 1999-00.
>
> The bottom line is, the District claims it cannot afford to pay its support staff $ .12 more an hour, yet it can afford to add two new administrators at a salary cost of more than $117,000 and at a package increase of almost $ 154,000.

In reply, the Employer agrees that the QEO law and its limit of a 3.8% package increase does not apply to support staff. It states, "The [Employer] does not claim that the teacher settlement is in itself sufficient justification for selection of [its]...final offer. But that settlement does lend some support to the [Employer's] final offer." With respect to the Association's arguments about increases in administrative staff, the Employer states, "The argument is without merit. Wisconsin law leaves decisions regarding appropriate staffing levels to the Clintonville School Board. The Association has presented no evidence indicating that the decision was inappropriate..."

The parties' analysis of internal comparisons is in terms of package increase.The package increase offered in each of the two years by the Employer is higher than the increase in percentage terms offered by the Employer to its other group of unionized employees, as well as to administrators. The justification offered by the Association for why the bargaining unit should get a higher percentage increase is that it translates into smaller dollar figures because the wages of the bargaining unit are lower than those received by other employees. That rationale could be used to justify much larger percentage increases for the bargaining unit, but the argument is not persuasive and particularly because, as previously noted, the wage increase offered to the bargaining unit is of the same magnitude as wage increases offered in the comparable districts to employees who do comparable kinds of work.

The Association's arguments emphasize that the Employer has opted to spend a large amount of money to fill new administrative positions, money which the Association argues could have been better spent on a larger wage increase for the bargaining unit, and which is an indicator that the Employer has funds available. The arbitrator has no

authority to make judgments about the Employer's decision to fill administrative positions. Also, as he has stated above, this case does not involve issues of whether the Employer is able to pay the cost of the Association's final offer. The question for the arbitrator is which final offer is more reasonable when the statutory criteria are applied to the existing situation. The arbitrator does not regard the filling of a dministrative positions as justification for either greater or smaller wage increases for the bargaining unit.

Paragraph 7r (g) directs the arbitrator to give weight to "the average consumer prices for goods and services..." The dispute in the present case is over the years 1998-99 and 1999-00. For purposes of looking at what has happened to the cost of living and how it may have affected the parties' bargain, the most relevant period is the year 1997-98, immediately before the period of the new Agreement. In that year, the Consumer Price Index rose 1.6%. During the following year, which would have relevance to the 1999-00 bargain, the index rose 2.2%

The Employer argues that its offered total package, and its wage increases whether calculated based on the probationary rate or the maximum rate, and with or without longevity, exceed the increase in the cost of living. The Employer states, "Members of the CESP bargaining unit are getting significantly more in compensation and fringe benefit increases than would be justified by the rate of inflation." The Association did not address the cost of living factor.

Clearly, both final offers result in wage and package offers in excess of the increase in the cost of living index. The Employer's offer being closer to the increase in the index is the more reasonable offer when measured against this criterion.

Paragraph 7r (h) directs the arbitrator to give weight to "The overall compensation presently received by the municipal employes..." Anticipating Employer arguments that its improvements in non-wage areas support the Employer's offer with respect to total compensation, the Association argues, "Taken individually, the improvements to fringe benefits incorporated in the parties' tentative agreements amount to nothing more than bringing the Clintonville ESP benefit package closer to the average of the comparables." The Association argues further that the reduction of service requirements by one year for three week and four week vacations, "merely provides the employees with what is considered a standard benefit in the comparable districts." Similarly, it argues, adding a 5th holiday for 9-month employees, "brings the unit closer to the average, but it certainly does not move the school-year employees into a leadership position." The Association views this as merely catching up to comparable groups. In the Association's view, these benefit increases to bring the unit closer to the average of the comparables, do not justify the Employer's "below average wage offer."

The Employer argues in reply that it made no initial arguments with respect to total compensation. The Employer argues that the Association's contention with respect to the vacation improvements is erroneous. It argues that the vacation benefit for the bargaining unit was already "better than the schedule for all comparable schools except

New London even before the improvement in vacation benefits was made." The Employer argues, "That is one of the reasons why the Board found the Association's refusal to honor the tentative agreement so offensive. The Board did not have to improve the vacation benefits to meet some labor standard set by comparables. We already had the second best benefit in the comparison group. But the [Employer] offered the vacation improvement to get the Association to accept the 23 ¢ per hour increase."

The arbitrator does not view the total factor as favoring either final offer. The focus of the dispute is a wage increase, not an increase in other compensation elements. Moreover, neither party views the total compensation factor as decisive or signficant. The Employer didn't make any arguments at the hearing or in its initial brief about this factor, and the Association argued only that the total compensation factor should not be weighed in the Employer's favor.

Paragraph 7r (j) directs the arbitrator to give weight to, "such other factors..which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through...arbitration..." It is undisputed that in their bargaining with the assistance of a mediator, the parties reached a tentative agreement for 1998-99 and 1999-00 encompassing what subsequently became the Employer's final offer in this proceeding. The Employer ratified the tentative agreement, but the Association rejected it. In its final offer the Association proposed a second year wage increase of $.35 while the Employer's offer maintained the $.23 increase from the tentative agreement.

The Employer argues that this bargaining history is supportive of its position. The Employer is aware that many arbitrators, including this one, have not viewed rejection of a tentative agreement as grounds for selection of a final offer, but it cites arbitral authority to support its argument that "the [Employer's] final offer is reasonable and, absent some significant change in circumstances [should] be given weight in the selection of a final offer." One of the decisions quoted is by this arbitrator, in a 1992 case in City of Marshfield, Decision No. 27039-A, and the arbitrator maintains the view which he expressed there:

> Both parties have made arguments about the relevance of the tentative agreement which was rejected by the Union. It is the arbitrator's view that a rejected tentative agreement should not be controlling of the outcome of interest arbitration cases. This is because either party's negotiators must have the freedom to attempt to negotiate a tentative agreement, even at the risk that it will be rejected by their constituents. For an arbitrator to decide that a rejected tentative agreement must be implemented through arbitration without seriously considering other evidence, would have the effect of making negotiators reluctant to take the risk of trying to reach a voluntary agreement, because

> the price of a rejection would be viewed as too high.
>
> A tentative agreement which has been rejected is entitled to some weight, however, in the arbitrator's opinion. It is one of the things which is appropriately considered under statutory criterion (h)...The reaching of a tentative agreement is evidence that the negotiators mutually viewed the tentative agreement as a reasonable compromise of their differences. Neither party can then sustain an argument in arbitration to the effect that the terms of the tentative agreement are unreasonable.

The Employer argues that its 23 cent offer in the second year should not be viewed in isolation. The reasonable package, of which the wage offer is a part, included new holiday, vacation and bereavement leave improvements in lieu of further wage increases. The Employer adds, "Nothing has changed since the tentative agreement to justify the Association's refusal to ratify the contract."

The Association argues that the bargaining history is not relevant to a determination of which final offer is most appropriate. It argues for the right and importance of a membership being able to reject the tentative agreement reached by its negotiators. It argues, "A party should not be penalized, or rewarded, because an unpalatable TA was rejected." The Association cites numerous interest arbitration awards in support of this argument, including three by this arbitrator (in addition to the one cited by the Board, above). Moreover, in its reply brief, the Association takes issue with the Employer's characterization of the bargaining, and specifically the Employer's assertion that it made improvements in holiday, vacation and bereavement leave in lieu of a further wage increase. The Association argues:

> The District did not structure its final offer to make the tentatively agreed to items contingent on the outcome of this proceeding. Had that been the District's intent, it should have included the so-called District concessions in its final offer and made each item contingent upon an all or nothing arbitration award. The District has not done that. It *voluntarily* agreed to the changes found in the tentative agreements without conditions or certain other promised outcomes. Having done so, it is now precluded from advancing a quid pro quo argument.

The Association argues further that what the Employer gave in language and benefit changes should not be viewed as "concessions" since "...[the] changes only bring this unit closer to the average of other comparable support employees." The Association argues also that it agreed to certain give backs, in the area of probationary periods and job transfers, in the process of reaching a tentative agreement. The Association emphasizes that this is not a situation in which "the Association gained everything and

the District nothing in the tentative agreements...[there were] concessions by both sides and the only remaining issue is what the wage increase will be for the second year of the contract."

The arbitrator views the tentative agreement as evidence that the negotiators viewed a second year increase of $ .23 as a reasonable outcome to their bargaining, even though the bargain was subsequently rejected by the Association membership. Beyond that, the arbitrator does not view the existence of the tentative agreement as weighing in favor of either final offer.

The arbitrator's obligation under the statute is to select one party's final offer in its entirety. Both final offers are reasonable. Having weighed the final offers against the statutory criteria, the arbitrator has concluded that the Employer's offer is preferred.

Based upon the above facts and discussion the arbitrator hereby makes the following AWARD:

The Employer's final offer is selected.

Dated this _13th_ day of January, 2000 at Madison, Wisconsin

_____
Edward B. Krinsky
Arbitrator