

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

WAUSAUKEE SCHOOL DISTRICT EMPLOYEES, LOCAL 1752-D., AFSCME, AFL-CIO

and

SCHOOL DISTRICT OF WAUSAUKEE

[Dec. No. 29976-A]

WERC Case 41, No. 58807, Int/Arb-9015

APPEARANCES:

For the Union:

Mr. David A. Campshure, Staff Representative, AFSCME Council 40, AFL-CIO, 1566 Lynwood Lane, Green Bay, WI 54311.

For the Employer:

Davis & Kuelthau, S. C., by Mr. William G. Bracken, 219 Washington Ave., P.O. Box 1278, Oshkosh, WI 54903.

ARBITRATION AWARD

The Union has represented a bargaining unit of all support staff employees for many years. The parties' most recent collective bargaining agreement expired on June 30, 2000; on April 25, 2000, the Union filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to section 111.70 (4) (cm) 6, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order for binding arbitration dated Sept. 5, 2000. The undersigned arbitrator was appointed by Commission order dated Sept. 28, 2000. A hearing was held in this matter in Wausaukee, Wisconsin on December 7, 2000. No transcript was made, both parties filed briefs and reply briefs, and the record was closed on February 22, 2001.

Statutory Criteria to be Considered by Arbitrator

Section 111.70 (4) (cm) 7

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.

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.

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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, 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 or 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.

The Union's Final Offer

Exhibit A, Wages: Increase all rates by 3% effective 7/1/2000 and 3% effective 7/1/2001.

The Employer's Final Offer

2000-2001 Wage Schedule - (See Exhibit "B" attached).

2001-2002 Wage Schedule - The 2001-2002 wage schedule will be built using a cast forward costing methodology as shown on the enclosed form. The actual 2001-2002 wage schedule will be completed once the health insurance, dental insurance and retirement rates are known with certainty. An estimated 2001-2002 wage schedule is enclosed on Exhibit "B" for illustrative purposes only. The salary schedule enclosed on Exhibit "B" assumes an estimated 12% health insurance increase and 10% dental insurance increase. The District will build a salary schedule after the health insurance, dental insurance and retirement rates are known with certainty so as to produce a 4% total package increase using the cast forward methodology.

EXHIBIT B
WAUSAUKEE SCHOOL DISTRICT
WAGE SCHEDULE

2000-2001

Position	Increase: 1.91%			
	Probation (70%)	1-2 yrs. (80%)	3-4 yrs. (90%)	5+ yrs. (100%)
Maintenance Custodian	8.69	9.94	11.18	12.42
Custodian	8.37	9.56	10.76	11.95
Cook	7.03	8.03	9.04	10.04
Baker	7.64	8.74	9.83	10.92
Admin/H.S. Secretary	8.51	9.72	10.94	12.15
Teacher Aide (Instructional)	7.86	8.98	10.11	11.23
Teacher Aide (Non-Instructional)	7.53	8.60	9.68	10.75

Bus Driver*

Monthly:

Mileage:

Hourly:

Mileage:

Est. 2001-2002 wage schedule

Position	Increase: 2.34%			
	Probation (70%)	1-2 yrs. (80%)	3-4 yrs. (90%)	5+ yrs. (100%)
Maintenance Custodian	8.90	10.17	11.44	12.71
Custodian	8.56	9.78	11.01	12.23
Cook	7.19	8.22	9.24	10.27
Baker	7.83	8.94	10.06	11.18
Admin/H.S. Secretary	8.70	9.94	11.19	12.43
Teacher Aide (Instructional)	8.04	9.19	10.34	11.49
Teacher Aide (Non-Instructional)	7.70	8.80	9.90	11.00

Bus Driver*

Monthly:

Mileage:

Hourly:

Mileage:

Note:

1. All current employees will be placed in the 5+ lane.
 New hires after July 1, 1995 will begin at the
 probationary wage rate.

*2. Minimum trip payment shall be the greater between the
 mileage rate and the hourly rate.

The Union's Position

Initial Brief:

Both parties have proposed comparables beyond the athletic conference, including several on which they agree. The Union proposes in addition Crandon, Florence, Goodman-Armstrong, Laona, Marinette, and Oconto Falls. All of these districts are within the same CESA District as Wausaukee, and in addition to this community of interest factor they also are comparable to Wausaukee in teacher to pupil ratios, compensation of district administrators, district levy rates, per pupil revenues and costs, district revenue limits, district fund levies and district Fund 10 balances. The three additional districts which the District proposes as comparables, Lena, Niagara and White Lake, should be rejected as they are not unionized bargaining units and numerous arbitrators have rejected non-union comparables.

The District's proposal is not supported under the interests and welfare of the public criterion or as a question of ability to pay. It is in the interests and welfare of the public that the District be able to recruit and retain experienced employees, and the average length of service in this bargaining unit is 11 years. Meanwhile, the District has not shown any inability to pay, and this support staff unit accounts for less than 9 percent of the Districts overall budget. Over the two years of this contract, the parties are only \$19,255 apart, which compares to the District's commitment to spend \$300,000 over two years for a new football field.

The appropriate internal comparable is not the teachers, who are under a different law and are professional employees with many differences from this bargaining unit, but the unrepresented employees of the District, who have been given wage increases of 3.8 percent and better for 2000-2001. Almost all of these employees already earn substantially more than members of this bargaining unit.

All of the external comparables have settled for 2000-2001, and each has done so on the basis either of percentage wage increases or across the board cents per hour increases, with no district applying the type of package costing proposed by the District here. The District's approach counts the cost of wage progression through the schedule against the total package, a wholly inappropriate and unfair action which expects employees at the top rate to pay for movement of other employees through the schedule. That schedule has been in place since the 1995-97 agreement, prior to which there was a single wage rate for each job classification, and the cost of movement through that schedule is embedded in the prior agreements, not a new cost. Many arbitrators have found costing a step increases that were previously bargained for support staff employees to be improper. Furthermore, in this bargaining unit only half of the employees participate in the health and dental insurance plans. By basing its offer on a total package, the District would force the 50 percent of employees who have no health or dental coverage to subsidize any increased costs in that coverage for the 50 percent who are participants. The District's approach further exposes all employees to the possibility of a wage decrease in the event of a substantial rise in health insurance costs, while no comparable employer has taken such a step.

The "greatest weight" factor does not apply because the record contains no meaningful evidence indicating that state limitations on revenue or expenditures prevent the District from affording the Union's final offer. The "greater weight" criterion is not relevant in this case because the District has presented no evidence to indicate poor economic conditions in Wausaukee, either in absolute terms or compared to other districts. There is also nothing in the record concerning cost of living data that supports the District proposal of a 1.91 percent wage increase for 2000-2001 and an indeterminate wage increase

the following year. The CPI clearly supports the Union's offer of 3 percent wage increases in both years, as it was approximately 4 percent for both all urban consumers and for urban wage earners and clerical workers in the Midwest urban region. It exceeds either party's final offer on wages. Finally, the "other factors" criterion strongly supports the Union's proposal, because the District is attempting unilaterally to alter the manner in which the parties negotiate. The parties have always bargained specific wage increases, and the District's approach now would make previously existing steps cost against future wages, as well as health and dental insurance increases. This is a major change in the status quo and fails the commonly accepted test proposed by Arbitrator Sherwood Malamud in D.C. Everest Schools (Decision No. 24678-A, 2/88), which demands a demonstration of a need for the change as well as a suitable quid pro quo for the proposed change, both demonstrated by clear and convincing evidence. The District has not shown any need for the change in the manner in which the parties have historically bargained and has shown no evidence that it cannot pay the increased costs associated with the Union's proposal. The most that the District has been able to demonstrate is inconvenience.

Reply Brief:

The Glenwood City case cited by the District in support of its total package proposal is irrelevant, because the arbitration award of Arbitrator Zeidler clearly shows that that employer and union had a history of bargaining on a total package basis. Of the other two cases the District cites in support of its cast-forward method, one involved a teacher bargaining unit and the other involved improvements to the wage schedule. The District's citation of the statute and administrator rules concerning the QEO is inappropriate, because that statute and rules do not apply to this support staff unit. Meanwhile, numerous arbitrators have found against proposals that introduced unpredictability and uncertainty where none existed, and the District proposal here introduces these factors for wages. The District has failed to meet the burden of substantiating a need for this change.

The District has argued that the "greatest weight" criterion applies, but arbitrators have routinely required a specific showing that the selection of a certain final offer would significantly affect the employer's ability to meet the state imposed restrictions, and no such showing has been made here. The District has likewise not demonstrated any specific information that selection of the Union's offer would result in budget cuts, and the District has a Fund 10 balance of more than \$1 million, a significantly higher percentage of its overall budget than the state average.

The Union has earned its position as a wage leader and should not be compelled in arbitration to give back what was previously negotiated. In particular, in the negotiation that replaced a single wage for each job with a four step schedule in which new hires would now begin at 70 percent of the top rate, the parties also increased health insurance deductibles and reduced paid snow days, while capping the number of vacation days for new hires. In a subsequent agreement, employees gave up a 30 minute paid lunch and received a larger wage increase in compensation. All of these factors went into the District's current wage leadership, but the District now wants to take that back by costing step movement against the total package. Meanwhile, the Union's offer of a 3 percent wage increase compares favorably to wage increases among the comparables for 2000-2001 which range from 3 percent to 4.3 percent depending on classification. And the District's second-year language proposal is completely unsupported by the comparables. At the same time, each of the five non-union, non-professional employees of this District received at least a 3 percent increase in wages alone for the current year. This is a more appropriate measure than the comparison to teachers which the District urges, but which is routinely given less weight by arbitrators. Finally, the internal fairness and equity issue raised by the District does not favor the

District proposal, because so many of the employees in this unit do not receive health insurance and because this unit includes the lowest paid employees of the District, while the District now expects all of these employees to accept lower wage increases automatically whenever health insurance costs rise.

The Employer's Position

Initial Brief:

The Union has not introduced any evidence concerning the cost of the two final offers, and the District's cost figures must be accepted as accurate. The District's first-year wage offer amounts to 1.91 percent on the wage rates, but rolls up to an average wage increase per employee of 2.4 percent or 26 cents per hour. The Union's first-year wage offer of 3 percent amounts to an average actual wage increases 3.6 percent or 38 cents per employee per hour. The total package offers are 4 percent for the District and 5.1 percent for the Union. For the second year, the District Administrator's testimony estimating a health insurance increase of 12 percent and a 10 percent dental insurance increase is reasonable. Assuming these numbers, the District's 4 percent package for the second year generates a 2.34 percent wage rate increase and a 2.6 percent increase in total wages. The Union's 3 percent wage increase amounts to a 3.3 percent increase in total wages and a total package increase of 4.7 percent in the second year.

The Union proposal completely ignores the cost of fringe benefits, over 30 percent of the total compensation of an average employee in this bargaining unit. In Glenwood City School District (Support Staff), Arbitrator Frank Zeidler found it appropriate to consider total package costs in a support staff unit. The cast forward method of costing, meanwhile, accurately portrays the value of the proposed settlement, and has been used in hundreds of arbitration awards. The new collective bargaining law covering teachers actually requires that the cast forward method of costing be used, and it appropriate to do likewise in this case.

The District has a more appropriate set of comparables than the Union does, because the Union's reasons for rejecting Lena and White Lake, based on the facts that Lena is not organized and White Lake is bargaining its first contract, are irrelevant. The Union's proposed addition of Crandon, Florence, Goodman, Laona, Marinette and Oconto Falls would introduce schools which have a different community of interest, represent larger districts, and districts that are not in the same labor market as Wausaukee. Crandon, Florence and Laona are remote from Wausaukee, a factor arbitrators have taken into account particularly in support staff units, and Marinette and Oconto Falls are much larger than Wausaukee. The District's comparables are therefore preferable.

The "greatest weight" criterion favors the District's offer, because this bargaining unit is part of an employer which must limit both its revenue generation and its spending under the law in effect since 1993. While this bargaining unit is not directly covered by the QEO law, it cannot escape the impact of revenue controls and the internal settlement pattern of 3.8 percent package settlements for teachers and administrators. The District also has declining enrollment, a factor which is hit very hard under the "per pupil" revenue control formula. And while the District has a Fund 10 balance of \$1,185,081, this compares to a total budget of \$6.5 million and an unfunded retirement liability of \$814,837. The net reserve is only \$370,244. The fact that revenue controls exist has to be given top priority, because it changes everything about school district budgeting. And the fact that revenue controls exist requires the parties to bargain on a total package basis. This is the ultimate justification for the District's final offer.

The District cannot bargain an indeterminate second-year wage and benefit contract, because the old way of bargaining no longer works in a revenue control environment.

The District's offer is also preferable under the "greater weight" criterion, because Marinette County is adversely affected by consolidation of the paper industry, lower labor force participation rates than the state and United States generally, and below average population growth, as well as per capita income lower than the average of Wisconsin counties. The District's offer is in the best interests and welfare of the public, because it promotes accountability and promotes equity among all employees in the District, since currently only this bargaining unit has bargained without taking account of total package costs. Accountability is important because the cost of health insurance for this bargaining unit is so significant that the health insurance increase for 2000-2001, at \$14,000, exceeds the District's proposed increase on wages, and is almost as high as the Union's wage offer. The District has acted fairly in this respect; by comparison, when the District saved money due to a lower WRS rate for 2000-2001, the \$1514 savings is applied to wages in the District's offer. And the District's offer creates no hardship to employees, because the District is a wage leader, and will remain a wage leader under the District proposal, in which wages will continue to exceed comparable wage rates on minimum and maximum salaries. The District's offer also best matches the prevailing settlement total package increases that have been established among comparable school districts. The Union's 5.1 percent package offer, meanwhile, exceeds all of the comparable settlements except two; in the second year, the District's offer exceeds the median settlement rate. The District's offer is also above the cost of living, because the Non-Metro Consumer Price Index increased 3.5 percent while the National Consumer Price Index increased 3.3 percent in the relevant time period, while the District offers 4 percent on a total package basis. Finally, the overall compensation factor strongly supports the District's offer, not least because the District agreed to abandon its proposal to reduce the hundred percent employer paid health insurance contribution in the face of Union refusal to address the 16 percent increase in health insurance in the current year. Half of the comparable districts, by contrast, require employee contribution towards health insurance, of between 5 and 8 percent.

Reply Brief:

Contrary to the Union's assertion, the "greatest weight" criterion is relevant to the instant case, because the existence of revenue controls has altered the collective bargaining landscape. The arbitrator must take into account the existence of revenue controls. While the District has not pleaded inability to pay, it has argued that selection of the Union's offer would mean the District must find someplace in its budget to cut the \$20,000 by which the Union's offer exceeds the District's. The District is not proposing a substandard offer, but is arguing that the Union has not justified its relatively excessive offer of over five percent in total package increase under the revenue control circumstances.

The Union's argument in favor of CESA 8 as a community of interest would introduce a large geographic area which is not been accepted by most arbitrators as being a valid barometer, particularly in support staff units. Marinette, meanwhile, is not comparable due to size, like Oconto Falls. But since all employers must compete in a labor market to attract qualified candidates, and wages and fringe benefits are subject to normal labor market pressures, union status is not relevant to comparability issues, and Lena, Niagara and White Lake should be included.

The District agrees with the Union that retention of employees and adequate recruitment supports the interest and welfare of the public, but the Union has failed to show that the District's more modest offer would hurt this jointly held goal. The Union has presented no evidence showing excessive turnover due to

low wages or benefits, and the only evidence in the record of difficulty attracting candidates is for bus drivers and low-hours positions. The District did, however, contrary to the Union's assertion, present specific information regarding the District's finances. The District has projected a loss of income ranging from about \$91,000 to about \$188,000 over the next several years, demonstrating a precarious financial position. The School Board was entitled to decide that the District needed a new football field, and did so for good reason; this does not impact which final offer best meets the statutory criteria. It is, however, in the interest and welfare of the public that the cost of a settlement be known. No one knows the value of the Union's offer because it is open-ended and dependent upon the subsequent cost of fringe benefits. Taxpayers are therefore subject to a surprise if fringe benefit costs increase significantly.

The Union's exhibits and brief are conspicuously short of evidence as to the wage rates in comparable school districts, which is because those wages are almost uniformly lower than the rates Wausaukee pays. The non-represented employees in Wausaukee have not been so fortunate, and District administrator Methner testified that their relative underpayment was being addressed in the wage increases this year.

The District proposal is not a change in the status quo, because the District is merely emphasizing one way to bargain, total package, versus another way to bargain, wages only. In fact, school districts have always taken total package costing into account, and the two approaches are not mutually exclusive. But the District's approach is more appropriate now. Furthermore, the total package increase found among the comparables is much closer to the District's offer than to the Union's, and there is no reason for the extra 1 percent demanded by the Union when Wausaukee is already a wage leader. Even if the "wages only" approach were used, the Union's offer is not in the mainstream of the comparables. But overall compensation is the decisive factor. Step progression is a cost and must be included with other factors under the statutory criterion of overall compensation. Costing employee movement through the wage schedule has been widely used by school districts for many years. And arbitrators have regularly held that an employer in a wage leader position need not match the percentage increases of those employers who are trying to catch up. Meanwhile, it is unlikely that there will be a wage decrease as a result of the District's approach, because the District presented evidence showing that even if the health insurance increase was 20 percent, in the second year, employees would still receive an average of a 1.1 percent wage increase, which is still in line with the comparables.

The Union has inappropriately stressed wages only, once again, in valuing the parties' offers compared to the Consumer Price Index. Most arbitrators do not ignore the impact of fringe benefits when comparing the Consumer Price Index, partly because the CPI contains a health insurance component and would therefore be overstated for employees who pay nothing towards the cost of health insurance. The District's 4.0 percent package compares favorably to the national CPI of 3.3 percent or the regional CPI of 3.5 percent. Finally, the District's offer is supported by the history of bargaining in this District, because the Board has always reviewed and approved total package increases for support staff employees. The District proposal is not a change in the status quo, but simply a full utilization of the statutory criteria. Even if the Arbitrator were to believe the District is changing the status quo, the District has articulated compelling reasons to do so—particularly the presence of revenue controls and the District projected loss in revenue. The offer to maintain 100 percent payment toward health insurance, furthermore, constitutes a quid pro quo, given the superior wage and package offer the District provides. Finally, the District is not trying to force a QEO on the support staff Union, but has proposed a package larger than that, while the Union has proposed a still larger package which is not supported by the comparables.

Discussion

I will first assess the parties' positions in general terms, and then in order of the specific statutory criteria.

Comparables:

District	Why	Wage increase 2000-01	Package 2000-01	Wage 2001-02	Package 2001-02
Coleman	M&O	\$0.15	3.8%	\$0.20	3.2%*
Crivitz	"	\$0.28	3.8%	Not Settled	NS
Gillett	"	2%		NS	
Lena	"				
Niagara	"				
Peshtigo	"	\$0.12 to 0.15	4.98%	\$0.16 to 0.20	3.84%*
Suring	"	\$0.45	6.49%	NS	
WAUSAUKEE (U)	"	3%	5.1%	3%	?
WAUSAUKEE (E)	"	1.91%	4%	?	4%
Beecher-Dunbar-Pembine	Contiguous (agreed)	\$0.30	4.08%	\$0.30	4.17%*
Wabeno	"	\$0.30 to \$0.50	6.76%	NS	NS
Goodman-Armstrong	Contiguous	3%	?	NS	NS
(Marinette)	Contiguous	\$0.25	?	NS	NS

* Costed without knowing second year health insurance rates.

Package costs shown in the table above are as given in Employer's Exhibit 14. For 2001-02, however, these are estimates which depend on the final cost of health insurance, among other things. No comparable employer has a settlement that is actually expressed in package percentage terms.

There is value in stability of comparables, but two prior arbitrators addressing Wausaukee cases (both with teachers) have reached slightly different conclusions, with Arbitrator Stanley Michelstetter in a 1985 case using the athletic conference first and the much larger CESA 8 group second, and Arbitrator Byron Yaffe focusing on the athletic conference in a 1991 case. In both of those proceedings, the WEA was arguing for the use of statewide data, not an issue here, and in neither case did the District make a "labor market" argument as it does here.

The District's "labor market" argument is strained, since it includes White Lake, a 124-mile round trip commute from Wausaukee, and omits several closer districts. But the Union's approach includes districts that are equally far away and also not in the same athletic conference. While all of the districts that both sides have argued as comparables have some

relevance, I find it consistent with the purposes of the statute to follow the prior arbitrators' view and focus on those that are within the same athletic conference. Arbitrator Yaffe, however, noted that it becomes more appropriate to include other districts when there is only a small group of settlements to analyze within the athletic conference—not the situation in 1991, but true here, especially for the second year. I will therefore include the districts contiguous to Wausaukee, while noting that in practice, this has little effect, because of lack of data. Within that group, I find Marinette to be less comparable than most because it has more than three times as many students as the next largest district in this grouping. Still, because it is so close to Wausaukee, it is not completely irrelevant. Finally, I do not see any statutory grounds for entirely excluding evidence concerning districts that are not unionized; but as often happens, including them makes less difference than might be supposed, because the non-unionized bargaining units have generated little reliable data in the record.

Wage levels:

In general, the District has solid evidence to back its claim to be a wage leader within this group of comparables. At the top of the pay scales, for the base year of 1999-2000, Wausaukee paid aides more than any other district (that is, districts for which there is evidence in the record) except for EEN aides in Crivitz and for the less relevant Marinette; about the average for cooks;¹ about 10% more than the average, and at or near the top, for maintenance workers and custodians; and at the top, and about 12% more than the average, for secretaries.

This pattern does not hold good, however, at the starting rates. During the 1990's the parties negotiated a pay scale which set the starting rate for jobs in this unit at 70% of the full rate, with a five-year progression to the full rate. In consequence, as the District's relevant exhibits² show, on the District's preferred list of comparables Wausaukee is fourth at the starting rate for aides; fifth for cooks; sixth or fifth for maintenance and custodians; and fourth for secretaries. Although most of the employees are at the top of the scale, the size of the "spread" creates relatively large step movements; this in turn impacts the reasonableness of the District's offer, which includes the very unusual feature (outside teacher bargaining units) of costing step movement against the package.

¹ The District also employs a baker, at wages similar to the highest rate for cooks in the comparables.

² District's 16-22.

Degree of change:

The District's proposal is clearly a change in the status quo; the parties differ on how big a change it is. I find that the proposal amounts to unilateral imposition of much of the set of concepts which has governed Wisconsin disputes involving teachers in recent years, on a bargaining unit of a type conspicuously left out from that scheme by the Legislature. This is, as the Union argues, a major change.

The District's argument that all districts routinely cost their and their union counterparts' offers as packages (whether or not they can persuade the unions to look at the costs this way) has some logic behind it. Certainly, the argument rings true, as far as it goes. But it is a far cry from saying that one side routinely looks at bargaining in a certain way to saying that therefore, that view can appropriately be imposed on the other party. It is also important to note that while the concept of "total package cost" appears on the surface so obviously reasonable as to be blameless, in the District's usage—as in general usage in Wisconsin teacher bargaining—the concept is actually a construct which makes a number of assumptions, most of which are not general to labor relations.

The most salient of these is the "one-way" costing of employee movement, capsulated in the "cast forward" approach to costing required by the QEO law applicable to teachers. In effect, this inflates the apparent cost of a group of employees by costing every position's moves upward in a salary scale as long as there is an incumbent employee, but not costing the downward move of a given position when the incumbent leaves and is replaced, almost invariably by an employee earning much less. It is not necessary to discourse here on the reasons why this somewhat artificial construct has come into use or on the degree of distortion of the perceived cost of a package that can result; it is enough, to point up the fact that a convention has been established, to note merely that the year-to-year cash cost of a Wisconsin teacher bargain is rarely given the same degree of mutual attention in bargaining that the "cast forward" cost routinely receives.

Bargaining units not composed of teachers also have arrived at conventions as to costing, though these are less consistent. The one principally relevant here is that in bargaining multi-year agreements, the possible health insurance increases are estimated, but the parties most often bargain fixed wage increases rather than making these contingent on costs that will not be known till a later date. Compared to other Wisconsin support staff units generally, there appears to be nothing particularly unusual about the approach both parties have used prior to this bargain. What is most relevant here, however, is the comparison to the costing apparently used by the District's primary comparables.

There is no evidence that any of the District's comparables has settled on the basis of "total package costing" in the sense that the District uses it. And while a number of comparable units are not settled for 2001-02, those that have settled, in every case, have done so on terms that make the employer take the risk of an unusually large health insurance increase (as well as the employer enjoying the benefit of any unexpected reduction.) Moreover, step movement is not costed against the package in any of these districts.

For most bargaining units most of the time, the cost of health insurance looms as a much larger subject of discussion than the cost of step movement. Yet as the District argues, virtually all employers consider the cost of health insurance in making and evaluating proposals; it is rare indeed for a year of relatively large health insurance increases not to be extensively remarked on by any employer faced with wage demands, and in the bargaining, that cost usually ends up being a significant element. To that extent, the District can argue that the long-term effects of its proposal are something short of radical.

Imposing the “package/cast forward” method on a bargaining unit where all its peers are under a different convention, however, has its strangest effect not in health insurance-related issues, but on step movement. The reason is simply the paradox at the heart of the teacher bargaining units’ costing convention: If all employees are at the top of the schedule and stay there for an extended period, the employer by definition pays the maximum for each position. But if turnover is not steady but occurs in clumps—common enough—the years immediately following significant turnover create a significant paradox, as the employer then costs its next bargain high (because the step movement of the new employees costs against the package) while its actual costs have declined (because the new employees are being paid much less than the prior ones in the same jobs.) Where the spread between the starting rate and the ending rate for a job is as wide as it is here, and the time taken to move from bottom to top is five years rather than the ten to twelve years common for teachers, the effect can be significant. For example, with 34 employees in this unit, if a mere two senior employees quit in the same year and are replaced by new employees at the 70% start rate, the average wage for the whole unit goes down by about two per cent. Under the conventional costing approach used in this type of bargaining unit, such movement has not been much remarked on. But under the District’s proposal, just the step movement of those two employees would affect the apparent cost for each of the next five years, for the unit as a whole, by about .4 per cent.

This is neither right nor wrong, either as a moral proposition or as a matter of reasonableness in general terms; it merely reflects the results of a convention. Among teachers statewide, the phenomenon is well known, but not a major point at issue, because their comparables are all treated similarly. But when one party proposes that a convention with such noteworthy effects replace, for a single bargaining unit, the convention that is generally in use for that type of employee group, and further proposes that the new approach be introduced unilaterally through arbitration, the party proposing the change should expect such a change to be regarded as “major,” with the burden this entails.

That burden has been expressed in slightly different terms by different arbitrators, but is generally recognized as requiring a showing of need for the change, a showing that the proposed change will answer the need, and providing a suitable quid pro quo.

Here, the need for the change to a package approach is largely argued as a matter of principle. And in principle, there is an undeniable logic to the notion that bargaining should

explicitly recognize the very real, but often hidden, costs paid by employers in the form of benefits. In practice, the “need” argument is blunted by several factors. The fact that none of the comparable employers has bargained similar arrangements with this type of unit is one. Another is the relatively small difference between the parties’ offers (about one-fifteenth of what the District is spending on a new football field during this biennium.) A third is that when employers do have unexpected health insurance increases, there is a well-known tendency for that fact to become a conspicuous aspect of the negotiations in the following contract, so that subsequent bargaining does provide the possibility of some redress. Finally, the District has shown no need for the previously existing structure of step movement of blue collar and office employees to be costed afresh against a new contract.

To the degree that the District has shown some justification for the total-package proposal, it is appropriate to assess the degree to which the District’s proposal would answer that need. I conclude that it would answer the need for predictability of health insurance cost effects, but would go beyond that, by forcing existing employees to forego salary improvements to the extent that other employees left the District and were then replaced by new employees whose step increases would then cost against the package—while the District enjoyed the savings from such turnover. To force the employees to take the key financial risks not only of health insurance increases, but also of turnover, goes well beyond responding to need.

To the partial extent that the District’s proposal has addressed the other two elements in assessing the reasonableness of a major change, it is necessary to address whether it provides for a suitable quid pro quo.

There is no specific new item that the District offers. Its offer, however, in effect proposes to preserve Wausaukee’s relatively good wage and benefit position among the comparables—though by a smaller margin than the Union’s proposal. It is therefore necessary to establish whether the monetary size of District’s offer is not merely more responsive to the statute’s definitions of reasonableness than the Union’s, but more responsive by such a margin that it carries the burden of serving as a quid pro quo for the package-bargaining element in the District’s proposal. I conclude that the District’s offer does not carry that burden effectively.

The District uses its exhibits D6 and D7 to calculate a chart (#2) in its brief showing the Union’s proposal as generating 3.6% in the contract’s first year on “wages only” and 3.3% in the second year; the District’s own proposal is shown as generating 2.4% and 2.6% respectively. This appears to reflect the District’s policy of costing step increases, since the Union’s proposal was explicitly 3% exactly in each year and the District elsewhere valued its wage offer at 1.91% in the first year. As a result, the District’s calculation of the average cents per hour increases include step movement for Wausaukee but not for comparable districts, which distorts the comparison. I therefore rely on the Union’s estimation of the range of increases for Wausaukee, which appears consistent with the known percentages, at 19¢ to 25¢ for the District’s first-year proposal and 29¢ to 40¢ for the Union’s first-year

offer and 30¢ to 41¢ for its second-year offer. (The District's brief also reverses the dollar value of the Union's first year offer and the District's second year offer, but this is not substantive since the brief correctly identifies the total difference between the parties at just over \$19,000.)

The Union's offer for 2000-01 is the same as the Goodman-Armstrong settlement, and lower than Suring's or Wabeno's, but higher than the other six districts identified above. The District's offer is lower than all districts but Coleman and Peshtigo; and since a longevity improvement in Peshtigo may account for the fact that the District has estimated the package size in Peshtigo at almost 5%, it appears that the overall wage settlement there is higher than its across-the-board increases of 12 to 15 cents would indicate. For 2001-02 there are six unsettled districts; compared to the three that have settled, the Union's proposal is significantly higher. But none of the three puts employee raises at risk depending on the health insurance (or step movement) costs as the District's proposal does—so the District's 2001-02 wage equivalent is unknown till those numbers are established, and the record will therefore not support a clear comparison. As to the first year, the District has ably argued that as a wage leader, it need not match the increases of lesser paying comparables to put forth a reasonable offer. And the two districts which have 2000-01 wage settlements higher than the Union's proposal are among the lowest-paying of the comparables, and appear to be trying to catch up to the District.

I therefore conclude that if wage numbers are considered in the absence of other issues, the District's wage proposal for the first year would be more appropriate, because the Union's proposal is somewhat high for a setting in which it is already a wage leader and where comparable groups are generally settling lower. Significantly for the remainder of the discussion, however, the Union's three percent is not so high as to be extraordinary.

If the remaining districts settle the second year similarly to the three settlements already known, and if the District's prediction of its health insurance costs for the second year also turn out to be accurate, the expected 2.34% wage increase the District's offer would then generate would likely be closer to the balance of comparable settlements than the Union's 3%. I conclude that for both years, if wage numbers only had been at issue, I would find the District's proposal closer to the comparables.

Yet, though somewhat high under the circumstances, the Union's wage proposal is not outlandish for either year. The District's argument that it should get "quid pro quo" credit for maintaining full employer payment of health insurance, meanwhile, is up against the facts that this simply maintains the existing level, and that half the comparables have the same level, so while it is a highly valuable benefit, it is not extraordinary. The District, meanwhile, has proposed a major structural change with only a partial demonstration of a need for it. I find that the size of the District's wage offer, while the more reasonable of the offers if the numbers stood by themselves, does not constitute a quid pro quo for a structural change of any importance. For a change of this magnitude, the conclusion that the Union's proposal is slightly too high does not tilt the overall balance of reasonableness

in the District's favor.

The statutory weighing:

The "greatest weight" factor does not come significantly into play here, despite the fact that the Union's proposal is more expensive than the District's, because the District has made no showing of any particular impact the \$19,000 difference would make, because the difference is small as a percentage of the overall budget, and because the District's finances are clearly sufficient to allow substantial spending on discretionary matters such as the new football field. The "greater weight" criterion also does not come into play, because the District has presented no evidence of any difference between Wausaukee and other comparable districts' economic circumstances; the settlements among the comparables are therefore the best guide to the impact of economic circumstances in the area generally.

Under section 7 r., (a) and (b), the lawful authority of the employer and the stipulations of the parties are not the subject of any argument here, while the financial ability of the District to meet the costs is essentially the same for both parties' offers. Under (c), the "interests and welfare of the public" factor slightly favors the District's offer, because inclusion of all costs in a collective bargain does have some benefit to the public, while the wage leadership of the District would continue, undercutting any likely effect on recruitment or retention of qualified employees. The effect is minor, however, because as the parties have both argued, the case was brought largely as a matter of principle rather than because substantial dollars were at stake.

The section (d) overall comparison of Wausaukee wages and benefits to those of similar employees in comparable districts favors the District proposal. The section (e) comparison to other employees is neutral, because the teachers received less in Wausaukee in either wages or package terms than either party's proposal here, while the District's unrepresented employees received more, and in any event neither group is a strong comparable for this type of bargaining unit. The section (f) comparison to private employment was not argued. The section (g) CPI factor is close to neutral, because both proposals are close enough to the CPI that the District proposal would be considered closer if the total packages were compared while the Union's proposal would be preferable if wages only were compared; for reasons too complex to go into when the factor will not make a practical difference, I see relevance in both approaches. Section (h), overall compensation, favors the District's offer for the same reasons as the section (d) comparison. And section (i) was not argued.

Section (j), however, brings into play the major factor here. That is the degree of change to the parties' traditional bargaining represented by the District's proposal. Arbitrators have almost universally found that a substantial structural change will be supported in arbitration only if it is accompanied by a clear demonstration of need, a clear demonstration of proof that the proposal does actually answer the need effectively, and an appropriate quid pro quo. Here, the District's attempt to demonstrate need falls short, being based

mostly on theoretical principles and lacking both evidence that comparable districts have identified and acted on the same need, and any evidence that the District is somehow different from other districts such that it has a greater need to bargain with a support staff unit on a total package basis. The proposal further fails to demonstrate that the need to obtain recognition of health insurance costs, the clear reason why the District has made this proposal, cannot be effectively addressed by lesser means, including by simply presenting the total costs to an arbitrator, if need be. There is no basis in the record to believe that other public employers with support staff units have universally failed to make the obvious arguments in bargaining, yet all of the comparables have settled with such units without imposing the formulaic approach sought here by the District. Furthermore, the proposal's effect on step increases is completely unsupported in the comparables, is generally regarded as inappropriate in support staff units, and has no relationship to the problem the District was fundamentally trying to address. Finally, while advantageous wage rates and benefits are generally recognized as justifying a relatively small offer in dollar terms in a given year, the mere maintenance of existing benefits and of the relative wage advantage of Wausaukee employees is not a quid pro quo justifying a structural change. While the District is clearly irritated that the Union has resisted its initial proposal to cut back on the hundred percent level of contribution to health insurance, the fact remains that half of the comparable districts also contribute at that level.

Summary:

If the District's offer had been converted to straight economic terms as stated in its supporting calculations, including a firm offer equivalent to its projected wage increase for the second year, its proposal would be preferred compared to the Union's proposal. The Union's offer is somewhat high compared to the balance of settlements, particularly given the District's position as the wage leader. But the District has sought unilaterally to impose a substantial change in the structure of the parties' bargaining, has justified the need only partially, has gone beyond the demonstrated need by including effects on step increases which are not justified, and has offered no quid pro quo for such changes. I conclude that the Union's offer better meets the statute's demands.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Union shall be included in the parties' 2000-2002 collective bargaining agreement.

Dated at Madison, Wisconsin this 17th day of April, 2002 [2001]

By _____

Christopher Honeyman, Arbitrator