

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

In the Matter of Interest Arbitration

between

TOMAHAWK SCHOOL DISTRICT

Case 56

No. 58978

INT/ARB - 9042

and

Decision No. 30024-A

NORTHERN EDUCATION SUPPORT TEAM

**Gil Vernon,
Arbitrator**

APPEARANCES:

On Behalf of the District: Barry Forbes, Staff Counsel - Wisconsin
Association School Boards

On Behalf of the Union: Gene Degner, Director - Northern Tier Uniserv -
Central

I. BACKGROUND

The parties were unable to agree on the terms for a collective bargaining agreement to cover the 2000-2001 and 2001-2002 school years. On June 16, 2000 the District filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On August 2 and September 7, 2000, a member of the Commission's staff, conducted an investigation which reflected that the parties were deadlocked in their negotiations, and, by November 3, 2000, the parties submitted to the investigator their final offers, written positions regarding

authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. Thereafter, the investigator notified the parties that the investigation was closed and advised the Commission that the parties remained at impasse.

On December 22, 2000 the parties were ordered by WERC to select an arbitrator to resolve their dispute. The parties selected the undersigned. The WERC certified his appointment on January 22, 2001. A hearing was scheduled and held on May 23, 2001. Post-hearing briefs and reply briefs were filed with the record being closed on July 30, 2001.

II. ISSUES

The parties were able to resolve all issues but two: one major issue and one minor issue. The major issue relates to the amount of the wage increase to be granted to support staff employees in each of the two years in dispute. The minor issue relates to the salary level for the Fiscal Assistant position created in 1999-00. The impact of the wage level for this position is limited to one year because the position was eliminated at the end of the 2000-01 school year. Thus, the difference in the parties offers are only at issue for the one year plus the position existed.

With respect to the amount of the wage increase, the District proposed that the wage increase be based on a total package (wages and fringe benefits) increase of 4.2% in each year. Essentially, this means that an increase in fringe benefits will be paid for first out of the monies generated by applying a 4.2% increase over the cost of wages and fringes the prior year and the remainder will be applied as a wage increase. Because the cost of fringe benefits for the first year is known, the Employer's offer amounts to a 1.8% wage rate adjustment in 2000-01. The fringe benefit cost for the second year is not known. The District assumes a 20% increase in health insurance and a 10% increase in dental insurance. Based on this, a 0.14% wage rate adjustment is projected for 2001-02. The Board also proposed that the Fiscal Assistant position be placed at Wage Level III and thus be paid \$10.71.

The Union proposed that a 3% wage increase be applied to the contract rates of pay in each of the two years of the contract. The Association also proposes that the Fiscal Assistant position be placed at Wage Level VIII and be paid \$12.98/hour.

III. POSITIONS OF THE PARTIES (SUMMARY)

A. The District

As background, the Board notes that the Association's offer will cost \$21,706 more than the Board's offer in 2000-01 and \$68,446 more than the Board's offer in 2001-02. The total difference in cost is \$90,152. The total package cost under the Association's offer is 4.65% in 2000-01 and 7.09% in 2001-02.

It is the position of the Board that its offer should be selected because it cannot afford the Association's final offer. In general terms, they note the District is experiencing declining enrollment and is having a shortfall of revenue. In 2001-02 the Board expects to receive only \$250,000 in new revenue. This is problematic for a number of reasons. For instance, its added cost for teachers under a 3.8% total package in 2001-02 will be \$285,000. This means that the district cannot pay for a teacher minimum QEO, much less any other increased expense, without spending its fund balance. The Board has already made budget cuts for 2001-02 to deal with its revenue short fall. If the Board is required to spend \$90,152 more over 2000-01 and 2001-02, additional budget cuts will have to be made which could impact student learning. Under their offer, its support staff employees will still be wage level leaders even if the wage increases under the Board's offer do not keep up with the comparables wage increases in 2000-01 and 2001-02.

Beyond this, the District offers a factor-by-factor analysis of the dispute, addressing the "greatest weight" factor: revenue limits. The key under the legislative revenue limits is enrollment since revenue is based on a certain amount per student. The district is experiencing declining enrollments. From 1999-00 to 2000-01 enrollment decreased from 1,748 to 1,710 students. The District expects enrollment to decrease by 50-55 students in 2001-02. This trend is expected to continue at the rate of about 1.5 to 2% per year for the next 3 to 4 years. The declining enrollments has caused revenue problems. In 1998-99, the District was allowed to raise revenue by \$445,000 or 4.05%. In 2000-01, Tomahawk's revenue increase was capped at 388,000 or 3.28%. In summary, Tomahawk's total revenue declined \$57,161 for the 1999-00 school year as its enrollment declined from 1,748 students to 1,710 students.

To meet its obligations, the District must dip into its fund balance and make budget cuts. In summary, the District will have difficulty paying for a 7.09% total

package cost increase for NEST in 2001-02. This difficulty, in their opinion, is reinforced by a forecast of the financial future of the District provided by Robert W. Baird & Associates.

The District also analyzes a number of arbitration awards and concludes that to prevail under the reserve limit criteria the Board must show that it is taxing at the maximum permissible mill rate and is currently having financial difficulties which it is addressing. The Board contends it has met this burden. It taxed at the maximum in 1999-99, 1999-00 and 2000-01. It has also made a number of budget cuts totaling \$325,824 in 2001-02. They detail these cuts. Generally speaking, the Board has laid off employees, given modest pay increases to teachers and administrators and has reduced non staff expenditures. If the Association's offer is accepted, the Board will have to make more drastic financial decisions. For example, teachers may have to be laid off. Such a measure may affect class size and student learning. The Board does not want to make any other cuts which may affect student learning.

The District next addresses the greater weight factor: local economic conditions. In this regard the District believes that one of a District's vitality may be seen in the income of the people living within the District. The average taxable income of the residents in the Tomahawk school district was \$33,297 in 1999-00. This is only slightly higher than other districts in the athletic conference. However, its personal income is low compared to the state's and the nation's personal income. In fact, personal income in the entire region in which Tomahawk and the other Lumberjack schools are located is below the state average. The District also notes that the Association presented no evidence indicating that local economic conditions support their final offer. Thus, they conclude the Association does not believe that this factor supports their offer.

The next factor they review are the wages, hours and other conditions of employment in other school districts. In this regard the Board proposes that the comparable group be the other six school districts in the Lumberjack Athletic Conference (Ashland, Lakeland Union High School, Medford, Northland Pines, Park Falls and Phillips. The Association proposes these same schools be used as comparable along with the Lakeland K-8s which are Arbor Vitae-Woodruff, Lac du Flambeau, Minocqua-Hazelhurst-Lake Tomahawk and North Lakeland. Additionally, the Association also proposes that Antigo, Merrill and Rhinelander be included as comparables. The Board asserts that Antigo, Merrill and

Rhinelanders are too big to be considered comparable to Tomahawk. All three employ nearly twice as many FTE teachers as Tomahawk. While Tomahawk's pupil enrollment is 1,735, the pupil enrollment of Antigo, Merrill and Rhinelanders exceeds 3,000 students. Similarly, while all of the Board's comparables including Tomahawk (except Northland Pines and Lakeland Union High School), spend in the \$6,000-\$7,000 range per pupil, Antigo, Merrill and Rhinelanders spend a little over \$7,000 apiece per pupil. On the other hand, the K-8 districts are too small, in the Board's opinion, to be comparable.

In terms of wage comparisons, the District recognizes that there are three ways to compare wages: (1) the average cents per hour wage increases under both offers; (2) the average percent hourly wage increases under both offers; or (3) the wage rates under either final offer. With respect to the first and second of these, the Board recognizes that the Association's offer is more aligned with the comparables. Even so, the Board's offer is greater than one other settlement and one other employer offer for 2000-01. However, the Board asserts that it has been forced to make wage rate determinations based on its financial condition, not based on the comparables.

The Board's position is that the arbitrator should select its offer despite the fact that its percent and dollar increases are lower than both the Board's and the Association's comparables. This is because wage levels of NEST employees under the Board offer will still keep Tomahawk a wage leader. For instance, the rankings are the same under either final offer. In other words, in 2000-01, the Board's final offer does not depreciate Tomahawk's rankings compared to the Association's offer despite the fact that the Board's final offer is lower. The base and the maximum wage rates for the Clerk/Typist, Cook and Special Education Assistant, Tomahawk remains ranked number one. All three districts employing someone in the Clerical/Typist position and the Special Education Assistant position have reported a settlement for 2000-01. For the Teacher Assistant position, the Board remains ranked at number 2 out of 7 for both the base and the maximum (with all schools reporting.)

For the Maintenance classification, only three other schools have reported a settlement in 2000-01, Ashland, Lakeland Union High School and Phillips. Tomahawk remains behind Ashland who was ranked number one for the base in 1999-00 and falls below Lakeland which was number two for the base in 1999-00. Tomahawk remains ranked at 3 for the maximum for Maintenance in 2000-01.

Also, Tomahawk remains number one for the base rate and number three for the maximum rate for the Building Custodian. Medford and Northland Pines Building Custodians remain unsettled. Regarding the Building Secretary position, with all relevant districts reporting a settlement in 2000-01, the Board remains ranked at 3 for the base and 4 for the maximum.

The Board also asserts that the limited 2001-02 settled data indicates that Tomahawk's rankings remain about the same under the Board's offer. Tomahawk is also third for the maximum Maintenance position under both offers in 2001-02 as it was in 1999-00. In 1999-00, Ashland and Lakeland, who are both settled in 2001-02, were ahead of Tomahawk at the maximum. In summary, in 2001-02, Tomahawk does not lose in rankings for the Maintenance position compared to 2000-01 under the Board's offer. For the maximum rates for custodians, Tomahawk falls from three to four under the Board's offer but retains the number three ranking under the Association's offer. Even with changes, under the Board's offer, Tomahawk remains relatively well ranked for this position. It is interesting to note that the Building Custodian is the only position that Tomahawk loses rankings under the Board's offer that it would not lose under the Association's offer in 2001-02.

For the Building Secretary position, only Northland Pines and Park Falls have settled for 2001-02. Under the Board's offer, Tomahawk remains behind both of them for the base and the maximum. However, they were already ranked one and two for both the base and the maximum in 1999-00. Only Park Falls has reported a settlement in 2001-02 for the Clerk/Typist position. Under the Board's offer, Tomahawk remains above Park Falls for this position at both the base and the maximum in 2001-02. Medford, the other comparable employing someone at this position, paid a base amount of \$7.31 and a maximum amount of \$9.02 in 2000-01. Tomahawk paid a base of \$9.50 and a maximum of \$10.80 under the Board's offer in 2000-01. For the Cook position, Ashland and Park Falls have settled for 2000-01. Under the Board's offer, Tomahawk remains above both schools for this position. For the Teacher Assistant, only Northland Pines and Park Falls have reported a settlement in 2001-02. Under the Board's offer, Tomahawk remains below Northland Pines, which was ranked number one at the base and the maximum in 1999-00, and above Park Falls, which Tomahawk was above in 1999-00.

The Board also asked the arbitrator to put more weight on the 2000-01 settlement pattern than the 2001-02 settlement. Very few schools are settled

during this time frame making fair comparisons difficult, if not impossible. Lastly, in terms of factor 'd', the Board contends its proposal is more reasonable because the Fiscal Assistant position is more appropriately paid at a Wage Level III position. According to Mr. Sarnow, while the skills of a Secretary and a Fiscal Assistant are different, the skill level required to hold the Fiscal Assistant position is roughly equivalent to that of a trained secretary who is also at a Wage Level III. Level VIII positions require a BA degree which is inconsistent with the job description. The Fiscal Assistant position requires "an associate degree or higher in accounting or equivalent experience."

The District also addresses the cost of living factor contending that it supports their offer. The Board is offering a total package cost of 4.2% which exceeds the CPI by .78 %. The Association's total package cost is 5.65% in 2000-01 and 7.09% in 2001-02 which well exceeds the CPI. While the Association may argue that its wages will only increase 1.8% in 2000-01, which is below the CPI, arbitrators recognize that health insurance, dental insurance, retirement and social security are a part of an employee's total economic benefit from employment. For this reason, arbitrators tend to compare the total package cost increase to the CPI rather than just the wage increase. Another reason the arbitrator should compare total package costs to the CPI rather than just the wage increase is that the Bureau of Labor Statistics has explicitly stated that it considers employer paid health insurance premiums part of a consumers income. In this regard they note that Tomahawk employees pay very little for medical care costs.

Last, the District addresses other statutory factors. In this regard, they anticipate that the Association will likely argue that the Board's final offer is flawed because it is calculated on a total package cost basis and that there may be some dispute over how the wage increase should be divided among NEST members. First, they note arbitrators recognize that total package increase comparisons are important. The Board also asserts that it is unlikely that any dispute will arise between the parties regarding how the 4.2% total package cost should be split among NEST members. Both parties know all 2000-02 school year costs and have calculated the wage increase under the Board's final offer and 1.8%. This translation is done with the teachers after it completes its bargaining.

B. The Union

First, the Union addresses the ancillary issue of which other school districts should be considered comparable. The variation between the parties relates to the Union's inclusion of the elementary schools that feed Lakeland Union High School and the use of the larger contiguous districts as a secondary comparable to show the pattern of settlements that is emerging in the area. It is their opinion the inclusion of Lakeland Elementary School is appropriate because the taxpayers in the Lakeland area must pay property tax to both the high school and an elementary school. For all practical purposes, they are, by comparison, K-12 taxpayers as are taxpayers in the Tomahawk School District. Because of the lack of a clear settlement pattern, it is necessary to slightly expand the comparables to contiguous schools.

In addressing the statutory criteria, the Union notes from the outset that the legislature did not impose the QEO upon the support staff when they extended it to K-12 teachers in Wisconsin. They reject any suggestion that support staff should have to follow the format the WERC uses in the cast forward/total package method for teachers. The utilization of such a method, it is argued, needs mutual agreement between the parties. They argue that such a method has a much larger adverse affect on support staff who only earn half the salary as teachers but have the same health premiums and health care needs. Moreover, teachers have a more universal salary schedule based on lanes and steps. The parties in the Tomahawk and the Lumberjack Athletic conference simply have not bargained the cast forward/total package cost method in the past nor have they ever agreed to that method of costing. Instead, they have always bargained on a percentage increase per cell or a dollar increase per cell based on what they are trying to accomplish for their respective constituents.

As a general matter, the Union asserts that the District has not presented any evidence that prevents them from affording the Union's final offer. To the contrary, the Union contends it submitted evidence that the District has an ample amount of money to meet either final offer. In fact, the present superintendent testified that the District would have the ability to pay either final offer. As a result, they argue that the greatest weight factor as outlined in Wisconsin Statutes, 111.70(4)(cm)7 should not be given the greatest weight in comparison to the factors under 7r of this same section of the statute. Based on this the Union in its brief, turns to a point-by-point analysis of the 'other factors considered' under Subsection 7r of Wis Stats 111.70 making no further argument on factor '7' (greatest weight) or '7R' (greater weight).

Concerning the host of other factors to be considered under 7r, the Union starts with the ‘Law Authority of the Municipal Employer’, contending that there is no doubt that the municipal employer has the lawful authority to strike a voluntary agreement or to have an arbitrator’s decision imposed upon them.

Concerning the ‘Stipulations of the Parties’ the Union emphasizes that there is no stipulation between the parties concerning the costing method to be used in this case. It is the Union’s position that the cast forward method needs to be mutually agreed to or the long time practice of raising the rates by a percent or dollar amount per cell should remain in effect.

In this connection the Union contends that the District’s final offer is fatally flawed because the 4.2% is not defined as to how it will be distributed among individual employees. The fallacy of the Employer’s approach, the Union says, is that it tries to apply the QEO approach applicable to teachers. The total package concept also takes away the previous year’s bargaining on increments that employees are entitled to and forces the employees to pay for those twice—once in the previous bargain and again in the present bargain. The total package concept treats the educational support employees in a different fashion inasmuch as it uses a procedure that teachers bargain over. Teachers also have a rather rigid matrix and the Board tried to apply that concept to a pay package that does not have this matrix. This can’t be done says the Union because there is a big difference between the two groups.

School employees (teachers) who are covered by the QEO have a time certain in which the base year must be set. However, there is no time certain when the base year is set for ESP employees since they are not covered by the statute. For instance, the Union believes the base cost of health insurance for 1999-00 is \$269,257 whereas the Employer contends the cost is \$276,376. The Union also has lower cost figures for dental insurance and other fringe benefits. They believe the difference relates to an employee named Deb Wolff. When the District gave the Union costing data, there was no insurance cost associated with her. Yet, the District did include her in their costing exhibits for the arbitration. The Union contends that under the rules the teachers have the Qualified Economic Offer, this could not occur. The Union also notes that the District did not present any total package cost for the comparables in the Lumberjack Athletic conference for those schools settled. Therefore, the Board doesn’t even have an infrastructure of how to

evaluate total package cost given other educational support employees.

The Board's whole approach has been recently rejected in arbitration. The Association cites a decision by Arbitrator Honeyman, School District of Wausaukee (April 17, 2001). Following his analysis, the Union contends the Employer's approach is a major change and because it leaves the parties without any criteria by which the total package could be applied to individual employees, the Board's offer is fatally flawed. There is also no quid pro quo for this major change.

The next factor 'R' criteria addressed by the Union is the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement. With respect to this factor, the Union points to the testimony of one of its witnesses at the hearing – the former District Administrator. More specifically, they direct attention to the fact the District received PILT money. At least half of it, \$75,000, was not budgeted for any kind of expenditure and is outside the revenue controls.

The Union also contends that the comparisons to other comparable school districts favors their offer. They offer the following charge on percentage of wage increases in other districts.

SCHOOL	2000-01	2001-02
Ashland	3-5.75%	2.9-3%
LUHS	3.5%	5%
Park Falls	3-7.72%	3-4.42%
Phillips	3%	NS
Medford	.7%	NS
Northland Pines	Union 3-3.25% Board 2-3%	Union 3-3.25% Board 2-3%
Tomahawk	Union 3% Board 1.80%	Union 3% Board .14%

These comparisons favor the Union offer because the Tomahawk Board is proposing a probable 1.80% increase when other districts have ranged anywhere from 3%-7.72% on the rates for 2000-01. The second year the Tomahawk Board is proposing a .14% increase when the other districts range well into 3% for 2001-02. They also take the position that the feeder schools of the Lakeland Union High School District also support this particular rate increase as do the contiguous school districts to Tomahawk (Antigo, Merrill, Rhinelander).

Factor 7R.e is phrased as comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hour and conditions of employment of other employees generally in public employment in the same community and in comparable communities. The Union notes that neither party has offered any specific evidence with regards to either total package cost or wage rate increase of particular public employees within the Tomahawk community. The same is true for Factor 7R.f. (Private Employment). Factor 7R.8. is also inapplicable.

Concerning the 'Cost of Living' factor, the Union directs attention to data which shows that the CPI-U for all urban consumers for the year 2000 average 3.3%. For all urban wage earners and clerical workers the average is 3.4% for 2000. If we look at the non-metropolitan urban areas in the North Central states, the average is 3.7% for 2000. Therefore, the Union's offer of 3% per cell for the 2000-01 and 2001-02 school years is much closer to that average and is slightly less than the CPI-U average.

Factor 7R.h. is the 'Overall Compensation Factor'. The Union believes evidence was not presented in any form that goes to the significance of the parties offers with regards to this factor. The significance is that almost all of the Lumberjack Athletic conference schools have close to the same benefit packages and the only discernable differences are in their wage rates.

The Union addresses the retroactive pay increase for the Fiscal Assistant under Factor R.j. The District requires an Associate Degree for this position in contrast to all the schools in the Lumberjack Conference who do not. The Associate Degree requirement was reinforced in a grievance arbitration. The only comparable position in the bargaining unit requiring a post high school degree is a

position at Level VIII. Thus, they believe that's where this position should be slotted.

V. OPINION AND DISCUSSION

To get straight to the point, in the Arbitrator's opinion, the final offers squarely put in play the meaning and application of the "Greatest Weight Factor" of the applicable interest arbitration statute (Wis. Stats. 111.70 (4)(CM) 7 states:

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."

It is observed that this criteria, while historically accounted for by arbitrators, hasn't often been deemed controlling even though it is to be given the "Greatest Weight". This is so because the evidence is often non-existent or negligible that revenue limitations have had, in a particular case, any meaningful impact on an employer's operation and/or the salary requests of its employees. See Black River Falls School District, Decision No. 29002-A, Vernon, 11/9/97, Oregon School District (Educational Assistants), Decision No. 28724-A, Levine, 3/10/97 and Waupaca County (Highway Unit), Decision No. 28850-A, Petrie, 7/24/97.

In this case the Union brushes aside the impact of revenue caps 'The Greatest Weight Factor' on the basis of two arguments. First, they contend the District can "afford" the Union's final offer. Second, they argue that the total package approach of the District is really meant for teachers and applicable only to teacher collective bargaining under the QEO (Qualified Economic Offer) provisions of relevant statutes. .

The Arbitrator will comment on these arguments in order. The "Greatest Weight Factor" is not simply an ordinary ability-to-pay consideration by some other name. The 'ability to pay' has been one of the criteria under Wis. Stats. 111.70 long before the "Great Weight Factor" was added to the list of factors arbitrators are to consider. Ability to pay arguments under the prior incarnations of Wis. Stats. 111.70 never held much weight with arbitrators because a

municipality always had the ability to pay a salary demand because they always had the right to raise revenues through taxation. This, of course, with respect to school districts has changed. Districts have state-imposed revenue limitations, save approval by local referendums. With revenue caps came the “Greatest Weight” factor.

Clearly, the legislature had something more in mind when this factor was written into the statute than the garden variety ‘ability to pay’ arguments particularly since ‘ability to pay’ was retained as one of the “Other Factors”. In this regard the Union’s attempt to stiff-arm the “Greatest Weight” factor because the District can “afford” to pay the salary demand of the Union, leaves the Arbitrator’s analytical crew a bit empty. Of course, the District can always make other financial choices freeing up money for employees. Theoretically, the District could have one employee, a combination Administrator/Teacher/Custodian/Cook/Bus Driver who teaches and feeds all the District’s students from the center of one large room and then cleans that room after taking everybody home on the bus.

Certainly a District in this strict sense can almost always “afford” a raise for its employees. However, it seems more reasonable that the relevant question under the “Greatest Weight” factor seems to be “If the District can afford a salary increase, at what cost to the educational mission will this increase come?” This Arbitrator believes that the “Greatest Weight” factor as related to revenue limitations was meant to have arbitrators, in individual cases and in appropriate circumstances, take into account the financial and budgetary influence, impact and pressures that come to bear under legislative revenue limitations (wise or as unwise as they be).

The other reason that the Union argued that the ‘Greatest Weight Factor’ should not be given as much weight as the combination of the ‘R’ factors is that such a total package approach is better applied to teachers. This may be true and this may be a relevant labor relations consideration under one or more of the ‘R’ factors, but the form of a proposal doesn’t mean that the substantive financial impact of revenue caps should not be considered by an arbitrator under Factor 7. If the legislature wanted to exempt non-teaching employees of school districts from the application of Factor 7, they could have simply said so. Factor 7 makes no distinction as to who it applies to and imposes no restrictions as to the form of a final offer.

In this case the Arbitrator believes Factor 7 is relevant because the District has provided convincing evidence that revenue limitations in combination with the cost of the Union's salary request will have a substantial and palpable adverse effect on the operations of the District, particularly in 2001-02. I don't think the ship is sinking but it is hard to say that it isn't taking on some water to an extent sufficient to put Factor 7 into play. For example, the District has been taxing at the maximum allowable rate for several years and has been experiencing declining enrollments for several years. As a result, the amount of revenue the District will be allowed to raise has declined in 1999-00 and 2000-01. In 2001-02 the District, based on a continued trend of declining enrollment, anticipates receiving only 1 to 1 1/2% of new dollars. The revenue cap is expected to increase only \$250,000. To avoid arbitration with its teachers, the District will have to commit \$35,000 more than this increase in revenues. The District is faced with depleting its fund balance and making budget cuts. Indeed, the evidence shows that the Board in February and March approved approximately \$325,000 in budget cuts including the total elimination of one of the jobs in the bargaining unit (the aforementioned Fiscal Assistant) and the reduction in hours of a number of other positions. It is noteworthy that instructional and athletic budgets were frozen, user fees were established and/or increased among a list of many other budget adjustments.

In the face of this evidence, it is impossible to say that revenue limitations haven't affected the District. Indeed, the budgetary constraints have resulted in a layoff directly affecting the security of this very bargaining unit. Significantly, the District's budget is based on its final offer and not the Association's final offer. It would take an additional \$21,706 to fund the Association's offer for 2000-01 and \$68,446 in 2001-02. It is the cost of the second year under the Association's final offer that is of the greatest concern to the Arbitrator. Even allowing for some variance from this figure based on a different costing approach, the extra money to fund the Association's final offer will have a demonstrable effect on the District's budget in 2001-02.

The Union did present evidence from the former district administrator, now a consultant who analyzed the District's financial data for fiscal years 1997 through 2000. In a nutshell, it was his opinion that the District could afford to pay for the Union's final offer and that the District was relatively healthy. He identified one source of funds not affected by revenue caps, the so-called 'PILT' payments (payment in lieu of taxes) made by township governments in 2001. The payments total \$150,000. Only half of it is allocated in the budget.

While the expert testimony of the Union witness was far more instructive than the Baird Model, the import of his testimony was diminished by the fact he had not reviewed a budget or other important financial data for 2000-01 or 2001-02. This is significant particularly with respect to 2001-02 because over 75% of the impact of the Union's final offer would be felt in the second year of the contract. It is for this year that the District had implemented over \$325,000 worth of budget cuts due to a cost/revenue imbalance. It can hardly be denied that meeting the Union's demand will cause more cuts at the school.

The Arbitrator also notes that this is not a case where Factor 7 is the only factor that favors the employer. One of the factors normally taken into consideration in these matters (under Factor 7R.j.) is the so-called "internal comparables". In this regard the total package percentage increase offered to the bargaining unit exceeds that provided to the teachers and administrators. This favors the Employer on equitable grounds. The cost of living factor also favors the Employer as the cost of living is more consistent with the Employer's total package offer which is the appropriate comparative measure rather than the wages-only increase because as does the CPI, the total package reflects the value of the increase in the Employer's contribution to the invaluable health insurance benefits. Indeed, the Employer's total package offer exceeds the CPI for 2000-01.

Regarding Factor 7R.d. There is no dispute that on a wage-only percentage increase basis, this factor favors the Union. However, the fact there will be some comparative erosion in the relative wage rates is mitigated by the fact that in several classifications Tomahawk still maintains its ranking and in some cases its leadership position. In five out of seven categories, wage rates will still exceed the average of the comparables for 2000-01. The lack of settlement data for 2001-02 makes any precise wage level comparisons difficult.

The Arbitrator agrees with the Union to an extent that the form of the Employer's offer is troublesome because implementation requires some technical costing assumptions that may be disputed between the parties. Under the catch-all factor 7R.j., it is a negative when a final offer may be less than clear and as a result have a potential for further disputes. Indeed, the Employer's offer carries this stigma. However, the Arbitrator does not agree with the Union that this negative is a fatal flaw. The form of the District's offer is troublesome but the Arbitrator is bound by law to consider the substance of the Employer's offer since it has made a prima facie case that state revenue limitations in combination with the salary

demands of the Union will have a significant measurable impact on the school district.

In comparison to the Board's offer, the Union's offer does nothing to address the impact of revenue limitations. Instead, it is a lockstep offer based on bargaining as usual. This is a deficiency in the Union's offer and it is an extremely important one under the hierarchy of the criteria to be applied by arbitrators under the statute. However, it is not a certainty there will be a dispute or if one developed, that this dispute couldn't be resolved under the contract. The parties' representatives are seasoned veterans well familiar with industry standards, custom and practice as it relates to total package costing and wage distribution thereunder.

The Arbitrator must make a choice between two less than perfect offers. In this case, under these facts, the influence of revenue limits and the greater impact of the Union's offer along with the fact the District's offer is favored on other statutory criteria, must be given controlling weight.

AWARD

The final offer of the Employer is selected.

Gil Vernon, Arbitrator

Dated this 28th day of September, 2001.