

BEFORE THE ARBITRATOR

IRVING BROTSLOW

In the Matter of Interest Arbitration)	Case 44, No. 59148,
Between)	INT/ARB-9078
)	
Northern Educational Support Team)	Decision No. 30064-A
)	
And)	
)	
Hurley School District)	
(Teacher Aides))	

APPEARANCES

FOR THE SCHOOL DISTRICT

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FOR THE UNION

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1. BACKGROUND

The Hurley School District (hereinafter referred to as the "District"), and the Northern Educational Support Team (hereinafter referred to as the "Union") are parties to a 1998-2000 collective bargaining agreement covering teacher aides in the Hurley School District. There are currently ten (10) employees in the bargaining unit.

The parties met on August 17, 2000 to exchange their initial proposals for a successor collective bargaining agreement. Efforts to reach an agreement were unsuccessful. On August 22, 2000 the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate interest arbitration pursuant to Section 111.70(4)(cm)6, Wis Stats. Subsequently, an investigation was conducted by John Emery, a member of the WERC staff. On February 15, 2001, Mr. Emery concluded that the parties were at an impasse in their negotiations. Final offers were submitted by both parties by March, 2001.

The undersigned was notified of his selection as an Arbitrator in the instant case on March 21, 2001. A hearing on this matter was held on July 18, 2001 at the offices of the Hurley School District. Witnesses appeared, and were sworn. Both parties submitted a substantial number of exhibits in support of their respective positions, hereinafter referred to as Employer Exhibits ("ER Ex") or Union Exhibits ("UN Ex"). Post-hearing briefs were submitted to

and were exchanged by the Arbitrator, on or about August 21, 2001. Reference to the District's and the Union's post-hearing briefs are hereinafter referred to as "ER Br" and "UN Br," respectively. The record was closed with the submission of reply briefs to the Arbitrator, and their exchange to the parties, on September 21, 2001. Reference to the District's and the Union's reply briefs are hereinafter referred to "ER Reply Br" and "UN Reply Br," respectively.

II. ISSUES AND FINAL OFFERS

The Union's final offer is as follows:

1. All tentative agreements
2. Change all dates to reflect a new three-year agreement
3. All language in the previous collective bargaining agreement except as modified by this agreement.
4. Salary retroactive to July 1, 2000
5. Article 19 - Retirement
 - D. Upon early retirement, with the exception of discharge for just cause, the employee who has at least fifteen (15) consecutive years of service to the District shall be entitled to:
 - 1) Full family or single health insurance under the District's health insurance plan. The District's contribution shall be limited to three (3) years (36 months) and shall not exceed the monthly contribution for the appropriate coverage in effect at the time the employee's retirement is effective.

6. Appendix A.

Full Rates (per hour)
2000-01

LEVEL 1 \$9.37 (current rate is \$9.10)

July 1, 2001; increase all wage rates by 3%, except, if health insurance premiums increase 10% or more, the wage increase shall be 2.75% of the previous year's wage rate.

July 1, 2002, increase all wage rates by 3%, except, if health insurance premiums increase 10% or more, the wage increase shall be 2.5% of the previous year's wage rate.

The District's final offer is as follows:

1. All tentative agreements
2. Article 19 - Retirement, Section C (pg. 9, current agreement):

Change "ten dollars" (\$10.00) to "twenty-five dollars" (\$25.00) This refers to payout for each day of unused sick leave, upon retirement, at age 55 after 15 years of service.

3. Appendix A - wage levels

July 1, 2000	increase all wage rates 3%
January 1, 2000	increase all wage rates \$.25 per hour
July 1, 2001	increase all wage rates 3%
January 1, 2002	increase all wage rates \$.25 per hour
July 1, 2002	increase all wage rates 3%
January 1, 2003	increase all wage rates \$.25 per hour

III. STATUTORY CRITERIA

The parties have agreed to interest arbitration pursuant to Section 111.70(4)(cm), Wis Stats.to resolve the bargaining impasse described above. The criteria to be utilized by the Arbitrator in rendering an award are set forth in the Statute, as follows:

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 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 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. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall 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.
- 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. Stipulation 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 compensation presently received by 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.

IV. A REVIEW OF THE ISSUES IN DISPUTE

As noted in Section II above, the central issue in this dispute is the Union's proposal for three years of paid health insurance, at the 'exit rate,' for teacher aides who retire from the Hurley School District with 15 or more years of service. The percentage wage increases included in the Union's proposal are lower than those proposed by the District in its final offer, contingent upon an increase in health insurance premium costs, ostensibly as an offset against the cost of its post-retirement health care proposal.

The District offers slightly higher percentage increases in each year of the contract, plus three (3) \$.25/per hour wage increases, effective January 1, in each year of a three-year agreement. It also offers to increase the payout for unused sick leave at the time of retirement, after age 55 and 15 years of service, from \$10.00 to \$25.00 per day. No estimate of the cost of this benefit increase was provided by the District.

Based on the strong likelihood that health insurance premium costs will increase by at least 10% per year, the Union's wage proposal would increase the Level I wage rate by \$.77/per hour over the life of the agreement, from \$9.10/per hour, to \$9.87/per hour, or 8.46%. The District's wage proposal, including the three \$.25/per hour increases, would increase the Level I wage rate by \$1.62 an hour, or 17.8%.

Over the term of the three-year agreement, adopting the Union's wage proposal would "save" the District *approximately* \$33,915 ($\$0.85/\text{per hour} \times 1330 \text{ hours worked per year by Hurley Teacher Aides} \times 10 \text{ employees} \times 3 \text{ years}$). The elimination of the increased payout for unused days of sick leave at the time of retirement would produce additional cost savings, of an unspecified but probably insubstantial amount to the District.

As noted above, the most important issue in this dispute is the Union's proposal to include three years of paid health insurance benefits to employees who retire after 15 years of service. Also at issue is the matter of which counties comprise the appropriate comparables for the purpose of this interest arbitration.

The District proposes that they are the other schools in the Indianhead (athletic) conference, which includes Bayfield, Butternut, Drummond, Glidden, Mellen, Mercer, Solon Springs, South Shore and Washburn school districts, on the basis of such variables as cost per member, change in cost per member, aid per member, equalized value per member, change in equalized value per member, reported income tax returns, and unemployment rates. (ER Exs 10-16).

The Union argues that *internal comparables* (e.g., the other units of represented employees in the Hurley School District) constitute the proper basis for comparability, but that if external

comparables are to be included as a basis for the arbitrator's decision in this interest arbitration case, it does not accept the District's argument that the Indianhead Conference should be the basis for the external comparability grouping, since the District competes in several athletic conferences (UN Exs, Section 8). It also argues that Ashland County should be included in the group of external comparables, because it is adjacent to Iron County, in which the Hurley School District is located. (UN Br @2).

While the single most important issue, health insurance for retired teacher aides, is straightforward, it is far from uncomplicated, as demonstrated by the strong positions articulated by the parties in their testimony at the hearing, and by their exhibits, post-hearing and reply briefs. An analysis of their respective positions follows.

V. POSITION OF THE DISTRICT

The District argues that the Union's proposal regarding health insurance represents a major change to the status quo for which no support among the external comparables can be found and for which the Union offers no corresponding quid pro quo. (ER Br @3) On the issue of comparability, it cites a memorandum from Gene Degner, Executive Director of the Northern Tier Uniserv-Central, dated August 01, 2001, acknowledging that comparables were not established by arbitration. It also points out that numerous arbitrators have selected the Indianhead Conference as the appropriate comparable pool in other arbitrations involving Indianhead Conference School Districts (ER Br @3, and ER Ex 10), and that there is no justification, except geographical size, for including Ashland County in the Union's comparable pool. (ER Reply Br @2).

The District cites Arbitrator Sherwood Malamud's decision in D.C. Everest S.D., Dec. No. 24678-A, 2/88, in which he argued that the party proposing a major change in the status quo in interest arbitration must demonstrate (1) a need for the change, (2) whether the party proposing the change has provided a quid pro quo for the proposed change, and (3) that arbitrators require clear and convincing evidence that (1) and (2) have been met. (ER Br @10, emphasis in the original).

The District argues that the Union has failed to demonstrate a need for the change; that internal comparables are not necessarily the determining factor in interest arbitration cases, and that even a strong pattern among internal comparables cannot outweigh an overwhelming lack of support among external comparables. (ER Br @11). It emphasizes the differences between teachers and teacher aides, arguing that teachers are not comparable to teacher aides by virtue of training, responsibility, qualifications, etc. It also points out that encouraging early retirement among teachers can save the District money:

"The plans encourage the more experienced and highly-paid teachers to retire early, thereby allowing school districts to replace them with less experienced and lower-paid teachers.

There is a \$20,000 difference between starting and maximum salaries for teachers: The wage differential between a newly-hired teacher aide (90% of the maximum rate (\$9.10 in 1999-00) does not even begin to approach the cost savings that might be generated under the teachers' language, especially since teacher aides reach the maximum rate after just 3 years. Employees in the teacher aid classification are, quite simply, very different from teachers in this respect." (ER Br @12).

The District argues that internal consistency among disparate bargaining units is not necessary. It quotes Arbitrator Rose Marie Baron in several opinions, in which she articulated this position, e.g., in Boyceville S.D. (teacher aides), Dec. No. 27773-A, 2/94, in which she maintains that

"While internal consistency in fringe benefits is a worthwhile goal, the Arbitrator is without authority to go beyond the considerations set forth in the statutory guidelines - and equitable considerations are not available."

The District points out that its teacher aides work far fewer hours than do members of the AFSCME-represented units, e.g., 1330 versus 1910, which is 580 fewer hours per year, or 44% less. "This translates to tremendously higher benefit costs per hour for teacher aides than for the District's other support staff." (ER Br @15, ER Ex 32) It defends its decision to extend post-retirement health insurance benefits to support staff represented by AFSCME by pointing out that its membership is comprised entirely of 8/hour day 12 month employees, as compared with teacher aides, and that it first negotiated these benefits into the 1988-91 AFSCME contract when premium costs were far lower - "half of what they are now." (ER Exs 37, 38). It also refers to testimony by Ms. Geri Zaleski, the District's Business Manager, who was involved in negotiations that led to the introduction of retiree health insurance benefits into the 1988-91 AFSCME contract. She was a member of the AFSCME bargaining unit, and was present at bargaining sessions during which the retiree health insurance benefit was discussed, assisted in developing counter-proposals on behalf of the Union, and was privy to the Union's rationale and strategy as negotiations progressed.

"When the language implementing retiree insurance was ultimately agreed upon, the Union made an express concession in order to obtain the new benefit. It agreed to implement a sliding wage scale whereby new hires would start at 80% of the maximum rate and progress through a step wage schedule until they reached 100% of the maximum after a 2-year period." (ER Ex 38, pg. 3)

The District cites Arbitrator Edward Krinsky's decision in Salem Jt. S.D. No 7, Dec. No 27479-A, 5/93 regarding health insurance for retirees, in which he argues that "he is also reluctant to select a final offer which contains a new benefit, where there is no evidence that the moving party has made extensive efforts to secure the benefit voluntarily at the bargaining table." It argues that in Hurley, there is no evidence that the Union has made extensive efforts to obtain health insurance benefits in previous bargains or that the District 'stonewalled' on this issue. "Indeed, Union Representative Nelson acknowledged at the hearing that there wasn't much dialogue about the Union's retirement program during bargaining." (ER Br @19)

According to the District, a review of contract provisions among the external comparables reveals that only one of the other nine Indianhead Conference schools provides any type of early retirement benefit other than sick leave payout, (ER Br @19), and that its payout for unused sick leave is higher than that provided by the school districts in the Indianhead Conference which have such a benefit. It points out that its higher wage offer will result in higher Wisconsin Retirement System benefits, since they

are based on earnings during final years of employment. (ER Br @21)

A major part of the District's case is based on two related propositions: (1) that the *cost* of the Union's proposal is excessive, and (2) that "when the costs of the Union's retirement insurance proposal are measured against the 'savings' generated by its lower wage increase, it becomes apparent that the Union's alleged quid pro quo is woefully inadequate." (ER Br @23) It points to an employee referred to as "Peterson" (no first name given), who has the requisite 15 years of experience to qualify for the Union's post-retirement insurance benefit. According to The District, the cost of this employee's post-retirement benefit at current premium rates would be \$29,967 (\$9,989.04 per year x 3). (ER Br @23, ER Ex 33).

The District also complains that the Union's proposal does not include a reference to a specific age at which an employee could qualify for the retirement benefit, an important omission, and that because of the proposal's imprecision and ambiguities, it should be rejected by the Arbitrator on this basis alone. (ER Br @38-41)

The previous objection notwithstanding, the *major* argument raised by the District in opposition to the Union's proposal regarding post-retirement health insurance benefits for its teacher aides is that it would be extremely expensive:

"If the Union's offer is selected, the District has essentially just written out a check for at least \$300,000 (3 years of health insurance for 10 employees at \$30,000 each) because all employees will be entitled to the benefit provided they remain employed by the District until retirement. And this \$300,000 figure is significantly understated since it represents only current health insurance premium rates." (ER Br @24)

The District is not only concerned about its current health insurance costs, but also about the likelihood of double-digit increases in the future. It introduced into evidence several exhibits which demonstrate the impact of escalating health insurance premiums on employers in general (ER Exs 45-49); based on these trends and its own experience, it predicts that if employee Peterson does not retire until the end of the 2003-2004 school year,

"the Union's proposal would provide 3 years of health insurance at the 2003-2004 exit rate of \$14,384.22 per year for a total benefit of \$43,153. Thus, a two-year delay in the employee's retirement date will result in an increased cost to the District of over \$13,000 - for just one employee. Multiply these figures by the 10 employees currently in the unit and the District's potential liability becomes staggering." (ER Br @25)

As noted above, the District argues that teacher aides are part-time employees (e.g., 9 months per year), who work less than 8 hours per day. The AFSCME unit, on the other hand, is comprised almost entirely of full-time employees, which diminishes the applicability of the comparison:

"What the Union is really doing is demanding a costly new benefit for part-time employees, with nothing to support that demand except the fact that other full-time employees already receive that benefit. The question becomes: should the District be ordered, through arbitration, to adopt a costly new benefit for a unit of part-time employees, especially in light of the Union's inadequate quid pro quo. Arbitrators have responded with a resounding 'no.'" (ER Br @ 30; emphasis in the original).

The District argues that its final offer would contribute to a reduction in the wage disparity between its teacher aides and those paid to their counterparts in other school districts in the Indianhead Conference. (ER Ex 18) At present, Hurley is \$1.04 below the average; the Union's proposal would reduce the disparity by \$.01, to \$1.03, while the District's wage proposal would reduce the disparity to \$0.78/per hour. (ER Br @42) According to the District, it would add some much needed catch-up in addition to a reasonable percentage wage increase in each year of the contract, and would represent a more efficient use of dollars available for wages and/or benefits, as contrasted with the Union's proposal which includes a lower wage proposal, and a costly post-retirement health insurance benefit:

"It is obvious from its final offer that the Union would prefer to have this money funneled into insurance premiums for retirees rather than wage rates. As a taxpayer-supported entity, however, the District believes it makes economic and political sense to provide the available dollars to employees who are actively working rather than to individuals who leave the District's employ.

In the prevailing economic climate, the District simply cannot afford to provide a competitive wage and an early retirement benefit for teacher aide employees. The District's final offer provides the available dollars to current employees, not retirees. The District believes that its final offer on wages is, therefore, the more reasonable."
(ER Br @42-43)

In its brief, and in its reply brief, the District argues that the interest and welfare of the public support its final offer, and that the "greatest weight factor" in interest arbitration does not reduce arbitration cases down to a determination of whether or not the employer can afford to pay for whichever final offer costs more. (ER Reply Br @8) While it is not espousing an "inability-to-pay" argument, it does assert an *unwillingness* to fund future health insurance costs for retired employees who are no longer providing active service to the District. (ER Br @44)

The District challenges the Union's emphasis on the importance of internal consistency, particularly with respect to fringe benefits among separate bargaining units. In its reply brief, the District rebuts the applicability of arbitration decisions cited by the Union, which allegedly support its position that internal comparables are preferable to internal comparables with respect to fringe benefits. It points out that the decisions have little or no applicability to Hurley, since they deal with different issues, and do not necessarily support the conclusion claimed by the Union. (ER Reply Br @3-7).

In turn, the District quotes several arbitration decisions supporting their position, notably Rose Marie Baron in Boyceville S.D., cited above, who argued that there is a much higher standard of proof required when a party uses the arbitration process to obtain a brand new benefit:

"Equity is not one of the statutory criteria which arbitrators are required to apply in interest arbitration cases. As a result, the Union's desire for internal consistency with respect to post-retirement insurance simply is not sufficient grounds for imposition of its final offer through interest arbitration."
(ER Reply Br @7-8)

The District chides the Union for its failure to acknowledge the cost of its insurance proposal, pointing out that "neither the Union's exhibits nor its witnesses presented one iota of information as to current or historical health insurance premium rates." (ER Reply Br @9). It also challenges the Union's characterization of the Hurley teacher aides as "second class citizens," arguing that with respect to things such as health insurance coverage, retirement benefits, sick leave payout, etc., they are treated better than teacher aides in comparable districts. (ER Reply Br @10) It points out that Hurley School District employees, including teacher aides, unlike other public sector employees in the area, receive full payment of health insurance premiums during active employment:

"In all of the counties in which the comparable school districts are located (e.g., the Indianhead Conference), unionized employees are required to contribute toward the cost of family health insurance premiums during active employment. In all but one of these counties (Douglas), employees must also contribute toward the cost of single coverage. By contrast, Hurley teacher aides are not required to contribute toward either single or family health premiums as long as they are working at least 30 hours/week." (ER Br @44)

In summary, the District argues that, given the reasonable wage increases and generous set of benefits which bargaining unit members will continue to enjoy under its final offer, the "interest and welfare of the public" criterion stipulated in 111.70(4)(cm)(7) WI Stat. support the District's final offer (ER Br @47), and that a comparison of Consumer Price Index increases with the value of the wage and benefit package offered by the District also support its position:

"Over the course of the 3-year contract period, the District's offer will provide a minimum total package increase of more than 24% (emphasis provided). If health and dental insurance premiums increase in the 3rd year by 20% and 10% respectively, the District's offer will provide a 3-year total package of 28% (emphasis provided). Using the same 3-year calculations, the Union's final offer will provide a minimum total package increase of about 20% and an increase of 23.5% if health and dental increase by the higher numbers. The District's offer is reasonable when compared against the cost-of-living index." (ER Br @46)

For the reasons cited above, the District concludes that its final offer should be selected by the Arbitrator. (ER Reply Br @10)

VI. POSITION OF THE UNION

The principal argument raised by the Union is that this arbitration is about fair treatment, e.g., should the Hurley teacher aides be treated like all other employees in the Hurley School District, or should they remain as "second class citizens?" It points out that all other employees - teachers, cooks, secretaries and custodians - have post-retirement benefits of at least 60 months paid at the exit rate upon retirement.

"The Union recognizes the other two bargaining units representing cooks, secretaries and custodians have advanced to 60 months of insurance at the exit rate upon retirement and that teachers also enjoy 60 months of insurance at the exit rate upon retirement."
(UN Br @1)

The Union argues that comparability with respect to fringe benefits is an issue that lends itself to internal comparability over that of external comparability, and that when "it comes to singling out only one part of the support personnel and pitting those people against all other employees, arbitrators have generally ruled on the fairness side." (UN Reply Br @2) It disagrees that the Indianhead Conference should be the external comparability grouping. In defense of its argument, it points out (1) that the District competes in several conferences for various sports (Un Ex 8); (2) that none of the schools cited by the employer derive from other arbitrations (ER Ex 10); (3) that the employer failed to provide any data on the size of the school districts other than geographic size (ER Ex 11); (4) that the

Hurley School District is the size of Ashland and should also have Ashland considered as a comparable since it is adjacent; (5) that the Union recognizes that several of the athletic schools that the District is purporting to use as comparisons do not have post-retirement benefits, but this did not stop the District from granting these post-retirement benefits to cooks, custodians and secretaries.

"The other districts the employer is using as comparables do not provide these benefits to cooks, custodians and secretaries either. Therefore, the District is willing to deviate from the comparisons of the athletic conference for its cooks, custodians and secretaries but is not willing to deviate from the athletic conference comparisons for its aides. This is unjust." (UN Br @2)

A major part of the Union's post-hearing brief in support of its final offer is devoted to an examination of arbitration cases in which, according to the Union, arbitrators have ruled in favor of internal over external comparables "when it comes to issues such as fringe benefits." (UN Br @3-14). A reference to several of the cases cited by the Union are listed below, for purposes of illustrating that arbitrators, in the cases cited by the Union, have tended to support its argument regarding the preeminence of internal over external comparables.

In School District of Bloomer (Dec. No. 27407-A, 01-08-93), in a case involving educational support staff, in which the issue was the amount of the health insurance premium (for active employees) which would be paid by the school district, Arbitrator Morris

Slavney chose the teachers as the as the more comparable group when it came to the fringe benefits of health insurance:

"The distinctions in the makeup of the two bargaining units, and/or the fact that there is a much higher percentage of part-time support staff employees than part-timers among the teaching staff, and/or the fact that some of the support staff work compulsory overtime on regular basis, do not constitute a sufficient basis to reject the District's teacher unit as the more comparable group."
(UN Br @12)

In Kenosha Unified School District No. 1 (Dec No. 16851-A, 07/31/73), Arbitrator Frank Zeidler acknowledged that on the question of a fringe benefit (insurance) the most comparable group are the bargaining units for the same employer, "the argument that is case in point to the Union's argument in Hurley." (UN Br @14) According to Arbitrator Zeidler, the orders of comparability are (1) bargaining units within the Kenosha District; (2) The next most comparable group consists of comparable southeastern Wisconsin districts, including Racine; (3) A third group in rank consists of Kenosha area public employers:

"Weighting all of the above propositions, the arbitrator believes that the weightiest condition is the comparable pattern of full coverage in public employment in the area."
(UN Br @14)

In its reply brief, the Union challenges the District's contention that teacher aides are part-time employees; that it did not offer an adequate quid pro quo in return for post-retirement

health insurance for teacher aides; and that it was oblivious to the cost of these benefits.

Regarding the District's argument that the teacher aides are not full-time employees, NEST counters that their annual hours are not much different from those worked by cooks:

"By the Employer's own projection for the year 2002-03 with a post-retirement benefit worth \$11,986.85 times 5 would be \$59,934 for a food service worker divided by 1544 hours per week or a benefit equivalent to \$38.81 for each hour worked in a year. Applying this same benefit to a Hurley aide would be \$11,986.85 times 3 would be \$35,960 divided by 1323 hours or a benefit worth only \$27.81. Therefore, the Union in this case is proposing a benefit that is still not equivalent to the benefit the other support employees in the Hurley District enjoy." (UN Reply Br @2)

With respect to the District's claim that the Union did not offer a quid pro quo for its proposed benefit, it counters that, based on final wage comparisons, the Union is offering a quid pro quo of \$.85/per hour for the Hurley aides:

"That is a significant amount of money to pay for the benefit by the Hurley aides that others already enjoy. That generates \$1124.55 per year. Therefore, the Union has offered a very significant quid pro quo just to get a benefit that should be had by all employees working with the same employer." (UN Reply Br @3).

Without directly addressing the cost of the benefit which it is proposing, the Union argues that "rising health care costs did not deter the Employer from granting other AFSCME support personnel an additional 24 months of post retirement benefits as recent (sic) as only two years ago. Therefore, it cannot logically deter the

Employer from granting a minimum of 36 months of post-retirement benefits to its remaining class of employees, the aides, the same benefit." (UN Reply Br @3)

With regard to the statutory criteria, the Union argues that 7, "factor given greatest weight," is not applicable in this particular case, since "there are no standards or legislation disallowing or prohibiting the School District or any public employer from paying post-retirement benefits to employees." And with respect to 7g, "there is no evidence submitted by either parties (sic) that the cost of this benefit is prohibitive or that the District cannot afford it." (UN Br @15) With regard to 7r, "other factors considered," the Union argues that with regard to "the lawful authority of the municipal employer, there is no doubt that this employer has the lawful authority to accept the Union's offer; with regard to the 'stipulations of the parties,' there is nothing in the stipulations to suggest that the Union should not have post-retirement benefits by virtue of anything else that it gained in the bargain; and that with regard to 'the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement,'

"It is certainly within the financial means of the Hurley School District to meet this cost since this is not an immediate or all-at-once cost but spread rather it is spread (sic) out over 36 months and then, only at the time the employee has satisfied the years of (sic) and retires under the Wisconsin Retirement System." (UN Br @15)

The Union challenges the District's argument that its proposal is cost prohibitive and that the District is under revenue caps by pointing out that well after revenue limits and the QEO were enacted into law in 1993-94, it gave the Hurley custodians, secretaries and cooks an additional 24 months of post retirement insurance at the exit rate as shown in Employer Ex 42 and Union Ex 14:

"Therefore, while the District has been operating under revenue limits and the QEO, they found a sufficient amount of money to award employees in the other bargaining unit 24 months more of insurance bringing their total to 60 months the same as the professional employees." (UN Br @16)

In summary, the Union argues that is the internal comparables that should prevail in determining whether the Hurley teacher aides should enjoy the post-retirement benefit of 36 months of health insurance paid at the exit rate while all other employees in the Hurley School District are enjoying a post-retirement benefit of at least 60 months of health insurance at the exit rate. (UN Br @16). The Union recognizes that its wage offer is somewhat less than that of comparables the District chose to use. "Because they are seeking an improvement in a fringe benefit over a longer period of time, NEST chose to accept the wage offer given the other units." (UN Br @16-17)

Accordingly, "the Union hopes that the arbitrator will support its position and rectify this unjust treatment of the Hurley educational aides and select the Union's final offer for the new collective bargaining agreement." (UN Br @16-17)

VII. DISCUSSION

As noted previously, the only issue before the arbitrator is the matter of post-retirement health insurance benefits for teacher aides in the Hurley, Wisconsin School District - proposed by the Union, but strongly opposed by the District.

The Union bases its case on the matters of *fairness*, e.g., that all other (represented) employees in the Hurley School District, except its teacher aides, have the benefit, and that the District *increased* the benefit for AFSCME members from 36 to 60 months. According to the Union, they can't, nor should they claim "inability to pay." With respect to the matter of comparability, the Union maintains that *internal comparables* (e.g., Hurley School District employees represented by other unions) are preferable to *external comparables*, as the District argues. The Union claims that its position has been upheld by other interest arbitrators, *with regard to fringe benefits*, as in the instant case.

The Union challenges the District's contention that it has not offered a substantive *quid pro quo*, in the form of lower wage increases, in exchange for the post-retirement health insurance benefit included in its final proposal. The Union estimates that its (lower) wage proposal amounts to \$.85/per hour, or about \$11,330 per year, for a total saving of nearly \$34,000 over the life of the agreement. It also argues that the District has *overestimated* the cost of the benefit, since it will not be paid all at once, rather, over 3 years, and then not until employees

actually retire. In the opinion of the Union, the cost of the benefit is manageable, and within the District's "ability to pay."

Finally, the Union criticizes the District's characterization of its teacher aides as "part-timers," pointing out that they work about the same number of hours per year as cooks, and that they are no more "part-timers" than these members of the Hurley School District support staff.

By contrast, the District contends that external comparables are far preferable for purposes of comparison than internal comparables, and that the Indianhead (athletic) Conference represents the appropriate group of external comparables. It also argues that, contrary to the Union's assertion, there is no purpose to be served by including Ashland County in the group of external comparables, since the Union did not include any meaningful reason(s) for its inclusion.

The District argues that the *cost* of the Union's proposal is exorbitant, pointing out that at *current* premium rates, the cost of post-retirement health insurance for 3 years for 10 employees would be approximately \$300,000, and that if costs continue to increase as projected by many observers, total costs would be far greater, an issue which the Union has failed to address. According to exhibits offered into evidence by the District, the cost of health insurance benefits will shortly exceed total wages paid to teacher aides, (ER Ex 33) a situation which, from their perspective, would be totally unacceptable.

With respect to the Union's argument that not providing teacher aides with post-retirement benefits is "unfair," the District points out that "fairness" is not one of the statutory criteria which guide interest arbitrators, and that arbitrators have consistently said so. It points out that the list of cases cited by the Union in its brief are inappropriate, since none of them deals with the issues involved in the instant case.

The District argues that the Union is asking the arbitrator to award the Union a *new benefit*, which they were not able to obtain in negotiations. It points out that interest arbitrators are reluctant to upset the "status quo," e.g., with respect to awarding a new benefit, unless, the moving party demonstrates need, that an adequate quid pro quo has been offered, and that the two preceding conditions have been met. According to the District, none of these elements is present in the instant case.

With respect to other represented employees (secretaries, cooks, custodians, etc.) who already have post-retirement health insurance benefits, the District points out that they were obtained through *negotiations*, not through arbitration, when insurance premiums were much lower, and for which, in the case of AFSCME, a substantive quid pro quo was offered.

Observations Relating to the Positions of the Parties

The District's position regarding the external comparables, e.g., the Indianhead Conference, is supported by its careful analysis of key variables on which the issue of "comparability" is usually based, and by the District's citation of cases involving other school districts in which arbitrators have relied upon the Indianhead Conference as their preferred group of comparables. By contrast, the Union's attempt to include Ashland County in its group of external comparables is weakly supported, which is probably indicative of their strong reliance upon *internal comparables* as their preferred basis of comparison.

The Union questions the District's emphasis and reliance upon external comparables, citing the fact that it ignored external comparables when it granted, and later expanded post-retirement health insurance benefits to other employees in the Hurley School District. This question is fairly posed. However, the Union confuses *comparability* with *consistency*; a municipal employer and the Union(s) with which it negotiates are not bound to replicate the bargains struck in other jurisdictions. Simply stated, they are free to negotiate wage and fringe benefit provisions which are appropriate to their respective circumstances.

The arbitrator in the instant case cannot ignore the Union's argument about the alleged "unfairness" of not extending post-retirement health insurance coverage to teacher aides, when the

benefit is included in collective bargaining agreements covering other support personnel in the Hurley School District. Neither can he ignore other, salient aspects of the instant case, which include the circumstances relating to the granting of post-retirement health insurance benefits to other support personnel; the alleged imprecision of the Union's proposal regarding eligibility for post-retirement health insurance benefits; the relevancy of the District's contention that the teacher aides are "part-timers," resulting in a disproportionately high cents-per-hour cost of post-retirement insurance benefits; the total cost of the benefit by comparison with the quid pro quo offered by the Union; and finally, whether, as the District argues, the taxpaying public and its teacher aides are better served by the District's higher wage proposal, which provides immediate benefits to current employees, as opposed to the Union's proposal, which includes a benefit which is not payable until the employee retires. These aspects of the dispute are discussed below.

Post-retirement health insurance benefits among District personnel

As a major part of its case, the Union points to the fact that members of other bargaining units in the Hurley School District, comprising teachers, cooks, secretaries and custodians have post-retirement health insurance in their respective contracts, and that the duration of the benefits was extended from 36 to 60 months, well after revenue limits and the Qualified Economic Offer (QEO) were enacted into law. However, the Union fails to note that these

benefits were the result of collective bargaining, not arbitration awards, and were negotiated when health insurance costs were substantially lower. No evidence was introduced indicating that the Union and the District had bargained *seriously* over this issue, in this or in previous years. The length of time the teacher aides have been unionized is not indicated, but the Union's post-hearing brief includes the following statement:

"The Union certainly recognizes the aides were unorganized at the time the other employees in the District bargained and received that benefits." (sic) (UN Reply Br @3)

Based on the above statement, it would appear that the organization of teacher aides in the Hurley School District occurred fairly recently. The Union is correct when it argues that the District was willing to bear the cost of the post-retirement health insurance benefit when it bargained with its other support personnel. However, the Union's position would have been enhanced if it had demonstrated that it had been rebuffed in an effort to secure the benefit through negotiations.

Eligibility for post-retirement health insurance benefits

The District argues that the Union's proposal regarding post-retirement health insurance is badly flawed because it does not specify a minimum age for retirement, meaning that "the District would be on the hook for 3 years of post-retirement insurance payments, regardless of the age at which the employee retired." (ER Br @39). It also argues that other arbitrators have ruled that ambiguous proposals should not be placed into a contract through

arbitration.

The District's argument regarding the "imprecision" of the Union's proposal is correct with respect to its imposition by interest arbitrators, but is flawed by the fact that *nearly identical language* pertaining to post-retirement health insurance benefits is included in its contracts with its other support personnel. (UN Ex 2, ER Ex 41, UN Reply Br @3). At best, the Union is guilty of duplicating the language relating to post-retirement health insurance benefits included in contracts between the District and other unions, without specifying a minimum age of retirement.

The District's contention that teacher aides are "part-timers"

According to the District, its teacher aides are part-time employees, who work significantly fewer hours per year than their AFSCME counterparts, 1910 versus 1330, a difference of 44%. This, according to the District, translates into significantly higher fringe benefit costs for teacher aides than for AFSCME members, \$7.01/hour for a custodian to \$7.71/hour for a cook, versus \$8.56/hour for teacher aides, or 17% more. (ER Br @15) Furthermore, the cost disparity will be greatly exacerbated if health insurance premiums continue to increase as projected by most analysts.

The Union argues that teacher aides work about the same number of hours per year as cooks, 1323 hours per year for teacher aides versus 1544 hours per year for cooks, when the fact that cooks work eight hours a day with a paid lunch hour and teacher aides work

seven hours a day without a paid lunch hour is factored into the equation.

It is clear that Hurley teacher aides work fewer hours per year than other support personnel. Similarly, there is no reason for the arbitrator to question the accuracy of the District's calculation of the cost of the fringe benefits included in its respective contracts. However, the arbitrator is not convinced that the disparity with respect to hours worked and wage rates between teacher aides and other support personnel in the Hurley School District should, per se, disqualify them from eligibility for post-retirement health insurance benefits. If the same logic was applied across-the-board, it would render them ineligible for other fringe benefits, such as pre-retirement health insurance, life and dental insurance, paid sick leave, etc.

The cost of the benefit versus the quid pro quo

The District argues that the cost of extending post-retirement health insurance benefits to teacher aides is very costly, and, given the rate at which health insurance premiums are increasing, it will impose an unacceptably high financial burden upon the District. The annual premium costs it cites (currently \$8278.80/year for family coverage), are projected to increase to \$11,986.85/per year in the third year of the agreement, based on premium increases of 20%. (ER Ex 6) It also points out that the longer the employee delays retirement, the greater the projected cost to the District. With reference to employee "Peterson," whose

age and sex is not specified, the District estimates that the cost of the post-retirement health insurance for this employee for 3 years would be \$43,152.65, based on retirement at the end of the 2003-04 school year, and premium rate increases of 20% per year, compared with total wages in the amount of \$38,399.41 which will be paid to the employee hired to replace Peterson, based on wage increases included in the Union's final proposal. (ER Ex 33)

While the District's projections may appear to be pessimistic, they mirror those being made by a variety of commentators on the subject of escalating health care costs, as reported by the District (ER Exs 44-49), by the Milwaukee Journal on October 7, 2001, by the Milwaukee Teachers Education Association in a report to its members dated June 1, 2001, etc. Thus, the District is right to adopt a conservative approach with respect to rising health care costs, which the Union dismisses as a "cyclic factor." (UN Reply Br @3).

Projected premium increases aside, the District's cost estimates may be overstated. At present, only seven of the ten members of the teacher aide bargaining unit qualify for or opt to receive family coverage. (ER Ex 31) This fact and projected increases notwithstanding, the annual cost of health insurance premiums for the teacher aide bargaining unit is astounding - \$78,957 in year 2001-02. (ER Ex 6)

The Union correctly observes that "this is not an immediate or all-at-once cost but is spread over 36 months, and then only at the time the employee retires." (UN Br @15) The actual cost of funding

the benefit depends on the age and length of service of teacher aides in the Hurley School District (not provided, except in the case of "Peterson"), when they choose to retire, and whether each of the current employees will qualify for the benefit. For example, if the average age of the teacher aides is 38, and retirement occurs, on average, at age 55, the District would have 17 years to fund the benefit. Using the District's estimate of a total value of \$30,000 per employee, this would equal \$1,764 per year, or \$1.33 per hour, which is hardly inexpensive.

It is a widely accepted arbitral principle that the award of a new benefit, or the elimination of an existing benefit, must be conditioned upon an adequate quid pro quo by the party proposing the change, which in this case is the Union. As demonstrated above, the cost of the post-retirement health insurance benefit, which would be new to the Hurley teacher aides, is very expensive. The Union argues, contrary to the District's contention, that it has offered a significant quid pro quo, in the form of lower percentage wage increases, and a willingness to forego the three \$.25/hour "catch-up" increases included in the District's final offer. Taken together, this amounts to \$.85/hour, or about \$11,330 per year, or about \$34,000 over the life of the agreement. While the amount is not insubstantial, as the District maintains, it is substantially less than the cost of the Union's proposal to add 36 months of post-retirement health insurance, at the exit rate, to its existing collective bargaining agreement.

VIII. CONCLUSION

The Union's case is based on the issue of "fairness," e.g., that the internal comparables are most relevant, and strongly support its position, since all other support personnel in the Hurley School District already enjoy the benefit of post-retirement health insurance. *In all fairness*, the Union's argument regarding "fairness" cannot be summarily dismissed. As Arthur M. Ross, the noted labor economist observed many years ago, employees (and unions) judge the adequacy of their compensation on the basis of what he described as "orbits of coercive comparison." In other words, whether or not an employee's compensation is "fair" depends on how it compares to the wages and benefits paid to employees performing similar work, under similar circumstances, in a comparable labor market.

In rebuttal, the District correctly points out that "fairness" is not one of the statutory guidelines governing interest arbitration. In its reply brief, it again quotes Arbitrator Rose Marie Baron, who observed in Boyceville S.D. that "while internal consistency in fringe benefits is a worthwhile goal, the arbitrator is without authority to go beyond the considerations set forth in the statutory guidelines - and equitable considerations are not available." (ER Reply Br @7) This arbitrator cannot help but concur, since both the relevant arbitral precedents and applicable provisions of the statute preclude him from departing from the conclusion reached by Arbitrator Baron. The District also argues

that "there is a much stricter standard of proof required when a party uses the arbitration process to obtain a brand new benefit, and that the law compels the arbitrator to "consider and give greater weight" to economic conditions in the jurisdiction of the public employer (ER Reply Br@8), which in this case would mean the imposition of a costly new benefit upon the District.

A common observation is that interest arbitrators should attempt to replicate the results which would have occurred as the product of collective bargaining, in the absence of interest arbitration. Unfortunately, the Arbitrator in the instant case confronts a multiplicity of conflicting arguments cited by the Union and the District, most of which are seriously presented and meritorious, which makes the achievement of this outcome particularly difficult, if not impossible.

Accordingly, the question before the Arbitrator is whether the arguments raised by the Union regarding "fairness" and consistency among internal comparables trump the District's arguments with respect to the already high and rapidly escalating cost of health insurance and the unpredictability of future premium increases; the fact that teacher aides work less hours than other Hurley District support personnel; that the Union's proposal regarding eligibility is imprecise; and that available dollars could be spent more productively on wage catch-up for active employees.

The District's assertion that its teacher aides are part-time employees, and that the Union's proposal did not include a minimum

age at which they would become eligible for the post-retirement health insurance benefit has already been addressed. The District's reluctance to pay for benefits for employees who are no longer actively employed has little applicability to the instant case, since collective bargaining is a process by which the parties decide how to allocate available dollars to wages and non-wage monetary benefits. The Union's preference for post-retirement health insurance benefits may or may not be economically or politically "correct," from the District's perspective, but if it represents the Union's preference, it cannot be summarily rejected.

In the last analysis, it is incumbent upon the Union to demonstrate that it has offered a quid pro whose value is reasonably close to the cost of the new benefit it is seeking to obtain through interest arbitration. While its final offer with respect to wages is significantly lower than the one proposed by the District, it is not close to matching the cost of 36 months of post-retirement health insurance benefits for teacher aides in the Hurley School District, paid at the exit rate, using even the most conservative estimates of the extent to which health insurance premiums will increase in future years.

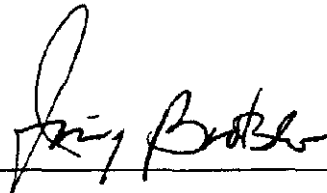
The District correctly argues that teacher aides in the Hurley School District are not "second class citizens," at least with respect to things such as District-paid health insurance, payout for unused sick leave, which will be increased under the District's final offer, etc. They are *behind* the external comparables with

respect to hourly wage rates, which the District's more generous proposal will help to ameliorate. The Hurley teacher aides do lack post-retirement health insurance benefits, which the other support personnel achieved *through collective bargaining*. This is an issue which can and should be seriously addressed in future negotiations between the Hurley School District and the Northern Educational Support Team.

IX. AWARD

On the basis of the preceding discussion, taking into consideration the testimony of the witnesses present at the hearing held in Hurley, Wisconsin on July 18, 2001, and all of the evidence submitted to me for my consideration, including exhibits, post-hearing and reply briefs, and applying the statutory criteria set forth at Wisconsin Statutes 111.70(4)(cm)(7) it is the decision of the Arbitrator that the final offer of the Hurley School District is the more reasonable of two final offers, and is hereby ordered to be implemented into the 2000-2003 collective bargaining agreement between the parties.

Dated: October 15, 2001

A handwritten signature in dark ink, appearing to read "Irving Brotslaw", is written over a horizontal line.

Irving Brotslaw, Arbitrator