BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

SCHOOL DISTRICT OF DRUMMOND
EMPLOYEES ASSOCIATION

Case 51 No. 59233
Int/Arb-9093
Dec. No. 30067-A

And

DRUMMOND AREA SCHOOL DISTRICT

INTEREST ARBITRATION AWARD

Appearances:

Mr. Barry Delaney, Executive Director, Northern Tier UniServ West on behalf of School District of Drummond Employees Association.

Ms. Kathryn Prenn, Weld, Riley, Prenn & Ricci, S.C., on behalf of the Drummond Area School District.

The above-captioned parties, hereinafter referred to as the District and the Association respectively, have been parties to a series of collective bargaining agreements throughout the years. The parties were able to resolve most issues for the 2001-2002 successor agreement except for the issues of wages and health and dental insurance. The Association filed a petition with the Wisconsin Employment Relations Commission wherein it alleged than an impasse existed between it and the District. The Association requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Drummond, Wisconsin on July 24, 2001. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on October 3, 2001. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

ISSUE AND FINAL OFFERS:

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement. Both parties had the following language in their respective final offers:

Except as set forth in this Final Offer, or in the Tentative Agreements reached between the parties, the terms and conditions of the 1998-2000 Agreement shall become the terms and conditions of the 2000-2002 Agreement.

ASSOCIATION'S FINAL OFFER

1. Increase all 1999-2000 wage rates by 3.0% for the 2000-2001 Wage Schedule.
2. Increase all 2000-2001 wage rates by 3.0% for the 2001-2002 Wage Schedule.

DISTRICT'S FINAL OFFER

1. ARTICLE X – INSURANCE AND RETIREMENT

Section B: Add a paragraph to read as follows:

For employees hired after July 1, 2000, and who work at least 600 hours per year but less than 1440 hours per year, the District shall pay 100% of the cost of premiums for the single plan health insurance coverage. The District's contribution toward the family plan health insurance coverage shall be prorated based on the employee's regularly scheduled hours per year compared to 1440 hours.

Section F:

a. Add the following sentence to the first paragraph:

The yearly benefit under the plan shall be increased to $2,000 per person as soon as allowed by the plan.

b. Add a paragraph to read as follows:

For employees hired after July 1, 2000, and who work at least 600 hours per year but less than 1440 hours per year, the District shall pay 100% of the cost of the premiums for the single plan dental insurance coverage. The District's contribution toward the family plan dental insurance coverage shall be prorated based on the employee's regularly scheduled hours per year compared to 1440 hours.

2. ARTICLE XVII - SALARY

Wage Rates - July 1, 2000 – Increase all wage rates 3.5%
July 1, 2001 – Increase all wage rates 3.5%

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., 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 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.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified under subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
g. The average consumer prices for goods and services, commonly known as the cost of living.
h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration.
j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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.

APPLICABLE CONTRACT LANGUAGE IN THE 1998-2000 AGREEMENT:

B. The District shall provide full family and full single health insurance for the 1998-99 and 1999-00 years. The provision just covers the employees who work 600 or more hours per year. Those employees in the bargaining unit not eligible for coverage under this provision shall receive an extra fifty (50) cents per hour in lieu of this provision. It is understood that the plan shall be the plan that was in effect during the 1983-84 year. The plan shall have a $2.00 prescription drug card benefit.

As soon as possible after the parties ratification of the agreement which covers the 1998-99/1999-00 contract years, the front end deductible shall be increased to a $100/$200 front end deductible, the drug card shall be increased to a $3 drug card, and the maximum aggregate per individual shall be increased to $1,000.00.

BACKGROUND:

For over a decade the Union has enjoyed the above contract language which gives part-time employees who work 600 or more hours per year full family or single health and dental insurance paid entirely by the District. The District proposes to modify this contractual provision by grand-fathering all current employees who work the 600 hours per year and continuing to pay for 100% of the single health and dental coverage for new employees, but not 100% of the family coverage. A new employee would be eligible to receive a pro-rated portion of the family coverage based upon a 1440-our work year. The Union wishes to retain the current language.

POSITION OF THE PARTIES:

DISTRICT

Initial Brief:

The District makes several arguments to support its offer. It maintains that it has met the required burden of proof for its proposal to prorate family health and dental insurance for newly hired part-time employees. Under the District's offer, the District will pay 100% for single health and dental coverage for all employees working at least 600 hours per year and no current employees will lose their present level of health and dental insurance because of the grand-fathering provision.

Applying a burden of proof whereby the party who is the proponent of the change must establish the need for the change by clear and convincing evidence and must demonstrate overwhelming comparable evidence supportive of the change to escape the

need to provide a *quid pro quo*, the District argues that it has met its burden of proof in proposing to change the *status quo* through arbitration.

It has demonstrated a need for its proposed change because the current insurance language limits the District's ability to hire additional staff. Although it has received requests to supplement the current staff in both the custodial and secretarial areas, the District simply does not have the funds to hire additional part-time staff and pay the requisite full health and dental insurance once an employee reaches the 600 hour per year standard. It notes that as things stand now, the District employs two part-time employees and strictly monitors their hours so as not to exceed the 600 hours threshold.

The District has been unable to achieve the change in bargaining on this issue for at least the past 10 years. Harkening back to the initial proposals for a 1990-92 collective bargaining agreement, the District proposed to increase the standard for full health and dental insurance from 600 to 800 hours per year and the Union has consistently refused to agree to that and any similar proposals over the year. While the initial proposals for the contract in dispute involved proposals to prorate both single and family health and dental insurance for newly hired employees based upon a pro-ration standard of 2080 hours per year, the certified offer requires pro-ration only for family health and dental insurance for newly hired employees and is based upon a pro-ration standard of 1440 hours per year. It cites arbitral precedent that the reasonableness of a proposal is enhanced where a party's proposal to change the status quo does not reflect a new or sudden change in position. Whereas past proposals would have affected all current bargaining unit members, that deficiency has been corrected by crafting its final offer such that no current bargaining unit members will be affected.

The continuing escalation of health insurance premiums underscores the reasonableness of the District's proposal. Health and dental insurance premium rates are skyrocketing. For the majority of the employees, these premiums will account from 21% to 37% of their total compensation. Total fringe benefit costs for the bargaining unit are on the rise. Increasing from $7.16 in 199-00 to $8.62 in 2001-02. There has been a 92% increase in family premiums in the last 10 years and they will become increasingly larger every year. In the last two years, premiums have increased over 29%, more than in the previous 7 years. Premium increases of this magnitude were unheard of when the benefit was originally negotiated for those employees who worked 600 hours per year. Given the phenomenal spiraling premium increases, the language originally negotiated no longer reflects the conditions of the labor market.

The actual cost figures applied to a "sample" custodial employee working 3.5 hours a day during the 2001-02 school year under the District's final offer is a prorated District contribution toward family health and dental insurance equal to 44.5%. Using 2001-02 premium rates, this equates to a District payment of $4,375.36 for health insurance and $367.75 for dental insurance. Under the Union's offer the employee receives 100% District contribution equating to $9,836.88 for health insurance and $826.80 for dental insurance, or $10,663.68 in insurance benefits for 641 hours worked

per year excluding wages and other benefits from the computation. Adding in other fringes such as WRS and FICA, the employee earns $33.15 per hour.

Insofar as comparison to external comparables is concerned, Drummond's plan is an exceptionally good one. It has a low employee deductible with only South Shore and Washburn having a lower one, no employee co-pays after the deductible has been met and a $3 employee co-pay for prescription drugs. No other school district provides full health insurance for employees who work as few as 600 hours per year, or 3.33 hours per day or 16.7 hours per week for the 9-month school year. Even those districts that offer employer-paid health insurance to employees working a minimum of 4 hours per day (or 20 hours per week), utilize a higher eligibility standard than Drummond under the current language. Seven of the nine Districts fall under the 4 hours per day, 20 hours per week category. Bayfield and Butternut pay only 50% of the premiums for these employees. Mellen and Mercer pay pro-rated premiums based upon 37.5 hours per week for employees working 4 hours, while Solon Springs pays only 50% of the premiums for employees working 4 hours a day or less. South Shore and Washburn (which pays only 50% of premiums for employees working 4 hours per day) also pay less. The remaining two districts have no minimum "floor" for employees to qualify for employer-paid health insurance. Glidden and Hurley require employees working less than fulltime to contribute on a pro-rata basis, toward their health insurance premiums for both single and family coverage. Glidden pays 100% for 12-month employees working at least 7 hours per day, 90% for school year employees working at least 7 hours per day and a prorated percentage based upon 2080 hours for employees working less than 7 hours per day. Hurley pays 100% for teacher aides working at least 30 hours per week, 100% for custodians, cooks and secretaries working at least 40 hours per week and a prorated percentage based on 30 hours and 2080 depending upon the classification in which the employees fall. Looking at the pro-ration proposal of the District where the standard for family insurance is 1440, the District will still match or exceed the pro-ration pattern among a majority of the comparable districts because it equals the work hours of a fulltime, school year employee rather than a year round employee. It will match the standards already followed by Butternut, Solon Springs and Washburn, all districts where the employees working 4 hours per day receive 50% of the premium as an employer contribution.

Pro-ration of health insurance for part-time employees is a pattern among the comparables. Six of the nine have some form of pro-ration for part-time workers. The remaining three districts provide full health insurance benefits to school year employees working a minimum of 20 hours per week or 720 hours per year. Only two districts, Glidden and Hurly, even permit employees with 600 hours to enroll in the group health insurance plans at all; and both require employee contribution on a prorated basis far less generous that that proposed by the District.

Dental insurance comparables yield similar results. With the exception of Glidden, all of the districts contribute the same amounts toward dental insurance as they contribute toward health insurance. Glidden is less generous in the dental insurance

benefit because it is prorated based upon 2080 hours. From this evidence the District argues that its proposal is supported by the prevailing practice of the comparables.

Looking at total compensation received among the comparable districts for the same new sample employee, not only is Drummond's wage rate higher than all but one other district, but its benefits costs far surpass every single other district in the comparables, even when calculated pursuant to the District's final offer, which would implement prorated health and dental insurance. In 6 of the 9 districts, a part-time employee working 3.5 hours per day would not even be eligible for health and dental insurance. Where eligible in the other 3 districts, the employee would receive significantly less than the District's final offer provides: (1) in Hurley, $3,075.95 for health insurance and $241.37 for dental insurance; (2) in Solon Springs, $4,229.58 for health insurance and $377.28 for dental insurance; and (3) in Glidden $2,998.94 for health insurance and $29.44 for dental insurance.

Assuming a 3% wage increase for those district's not settled for 2001-02, the average total compensation among the comparables for the part-time custodian is $15.19 per hour or $9,728.99 per year compared to $24.07 per hour or $15,419.05 per year under the District's offer and $33.15 per hour or $21,233.31 per year under the Union's final offer. Of the $33.15 hourly figure, only $13.92 is wages. Under the Union's offer, the District is required to fund benefit costs of nearly $20.00 for this single part-time employee working only 3.5 hours per day.

Noting that the Union seems to be arguing that the District's proposal is unreasonable because very little wages would be left over after a part-time employee pays for his/her prorated share of health and dental insurance premiums, the District stresses that a part-time employee selecting single health insurance would not be required to pay any portion of the premium. Only employees selecting family coverage will be required to contribute on a pro-rata basis. In 6 of the 9 districts, a similarly situated employee would not be eligible for group health and dental insurance, much less receiving an employer contribution for the premiums.

With the exception of the secretary classification, support staff wage rates in Drummond are significantly higher than the rates in comparable districts. Similarly situated employees have no insurance coverage and receive lower wage rates. Furthermore, the District provides a cash payout to employees who are not eligible for group health coverage as a $.50 add-on to the regular wage rate. No other district provides this type of cash payment in lieu of insurance. It is the Union's offer that is unreasonable because it requires higher health and dental insurance payments and better total compensation than any other district in the comparables. In fact, the District's offer still does this. There is no support among the comparables for the Union's proposal.

Arbitrators have accepted the notion that it is reasonable to tie the level of fringe benefits proportionately to the level of service provided by the employee. There is an inherent inequity in providing the same benefit level to full-time and part-time employees working only 600 hours per year. The skyrocketing of insurance premiums makes this

principle even more relevant. Part-time employees are not necessarily entitled to full-time benefits. The selection of the 1440 hours per year as a standard is reasonable because it reflects the hours required of a full-time school year employee. Arbitrators have in the past approved of this type of standard tied to full-time school year employee hours as reasonable.

The District has offered an adequate *quid pro quo* for its proposal. There are several quid pro quos for it proposal. The District's wage offer incorporates a *quid pro quo* because it is 3.5% each year as compared to the Union's offer of 3% for each year. The prevailing settlement pattern is 3%. The 1% additional lift at the end of the contract period is very clearly a *quid pro quo* and not an attempt to provide "catch-up" in wages. Drummond is already a wage leader among the comparables in almost every job classification. The District's offer on dental insurance is also a *quid pro quo*. It proposed to add language that will increase the maximum yearly dental insurance benefit to $2,000 per person over the current $1,000 per person. Third, the proposed language itself incorporates a *quid pro quo* in that it grand-fathers all current employees under the existing health and dental insurance language as long as they work the minimum 600 hours per year. Only prospective hires are affected and only those opting for family health and dental insurance coverage. The proposed dental benefit and 1% wage boost will benefit all current employees although none are affected by the proposed change. Arbitrators have found this pivotal in determining whether or not a moving party has offered an adequate *quid pro quo*.

Some arbitrators have gone so far as to say that where current employees will be unaffected by a party's proposed change, no *quid pro quo* is necessary to achieve the change through arbitration. Furthermore, when the proposed *status quo* chance involves the issue of health insurance, the need for a *quid pro quo* becomes less imperative. Since rising health insurance premiums in and of themselves alter the *status quo*. Furthermore, where the proposal to change the *status quo* is supported by the majority of the external comparables, the need for a *quid pro quo* is significantly lessened, if not altogether removed. Here, the District is certainly not proposing anything new among the comparables. To the contrary, its proposal is already prevalent among the majority of comparable districts. Where a party's proposal merely brings it into conformity with the comparables, no *quid pro quo* should be necessary. The District's wage rates at most benchmarks are equal to or better than those of comparable districts. In a case similar to the case here, the arbitrator found that the employer's proposal was based upon legitimate considerations and has be crafted in such a narrow manner to minimize the economic harm that might flow therefrom on current unit employees. The combination of a one percent wage lift over the comparable norm along with grand-fathering employees who currently receive the benefit supports the reasonableness of the employer's effort to control fringe benefits costs in this manner.

In response to Union arguments that the 1% is not a sufficient *quid pro quo* because it does not equal the wage increase offered to Mercer employees when they agreed to a first-time contribution toward health insurance premiums of 5%, the District distinguishes its situation from that of Mercer. It notes that the Mercer contribution

affected both current and future employee while the Drummond proposal only affects future employees and only those who choose family coverage. Mercer wages ranked at or near the bottom of the comparables at almost every benchmark while Drummond pay rates are at or near the top. The Union's argument that that a *quid pro quo* wage increase of 33% for employees already at or near the top of the comparables who will not personally be affected by the change proposed is absurd. Furthermore, the 5% contribution eroded the low wage rates even further in Mercer, which is not the case here. Here new employees working at least 1440 hours will not be required to contribute anything toward the premiums under the District's offer but will nevertheless receive the extra 1% boost to the already high wage rates. The District's proposal does not impose an undue hardship on the employees. The District's support staff has both high wages and top of the line insurance coverage.

The Union's contention that the District intends to subcontract away support staff positions is baseless. The only positions subcontracted are teacher aides, bus drivers and a volunteer coordinator. All but one of the positions subcontracted are tied to specific special education programs. Special needs can change from year to year based upon the specific needs and attendance of this part of the student population enrolled at any given time. Flexibility is needed for these positions to increase, decrease hours or to eliminate them altogether on fairly short notice. With respect to the subcontracting of bus drivers, the District notes that it is advertising for a new regular bus driver for the 2001-02 school year. While it could have subcontracted the vacancy, it chose to hire a new regular employee.

Extra-curricular hours driven by bus drivers along with their regular hours would be included in the calculation of hours worked for purposes of pro-rating premiums. The failure to specifically address the issue of extra-curricular hours in its proposal is not a flaw compelling rejection of the District's final offer. Its offer is no different than the existing insurance language. Referring to the one employee who does not have a regular work schedule at the present time, the District notes that the current contract does not specify that certain work hours would count toward the 600 hours standard while other work hours would not count. Any ambiguities under the current language have been worked out and there is nothing to suggest that they could not do the same under the District's proposal. Since no new ambiguity is introduced, there is no justification for rejection of the District's final offer on this basis.

The interest and welfare of the pubic supports the District's offer. Noting that total costs over the two years of the collective bargaining agreement are actually higher under the District's offer, the District is not making an inability to pay argument. It is, however, unwilling to be the sole financier of future health insurance costs for part-time employees. The unemployment rate in Bayfield Count is consistently higher than the state rate and has risen significantly higher than the average rate among the counties in which the comparable districts are located. It points out that the teachers have received total package increase of 3.8% in both 1999-00 and 2000-01, far less than the 5.16% (2000-01) and 6.68% (for 2001-02) total package increases offered by the District to the support staff. Other public sector employees do not receive fully paid health insurance

even when they are working full time. In all counties, but Douglas County, employees must also contribute toward the cost of single coverage. The District's offer provides a more generous increase than the Union's does because of the *quid pro quo* on wages. It will provide a total package increase of almost 12 % while the Union's offer will provide an increase of about 11%. The District's offer is more reasonable when measured against the cost of living index. Because of the future impact of the Union's offer in employees not hired, neither the cost of living nor the interest and welfare of the public favor the Union's offer.

Reply Brief:

In its reply brief, the District distinguishes various cases cited by the Union on the basis that in one instance no *quid pro quo* was offered and on the other the party sought to justify the elimination of a recently-negotiated policy or benefit, neither being the case before the arbitrator. In a case with very similar facts, the District insists that case can be distinguished because the instant proposal affects no current employees while, in the case cited by the Union, one employee who was already employed would be deprived of a significant economic benefit.

The District believes that the Union erroneously asserts that Drummond has the third highest Fund 10 balance. When a comparison of each district's fund balance as a percent of total expenses is drawn, Drummond is the fourth lowest among the comparables. It also disputes the Union's assertion that Drummond is one of the top districts having the greatest ability to pay. The data is insufficient to make that assertion especially where there is no information as to whether the comparable districts are using the full amount of money available to them under the statutory revenue caps. Drummond ranks rock bottom in terms of state aid received.

With respect to the Union's argument that there has been little, if any, change in the relationship between what full-time employees receive and what part-time employees receive in regard to district-paid health insurance, the District has three responses. First, the Union infers that comparable districts have rarely negotiated insurance benefit reductions and this does not comport with the facts. Bayfield reduced insurance benefit levels for part-time employees in the 1987-89 agreement, Glidden instituted a minimum work requirement of 7 hours per day for family health coverage in 1995-97, and Mercer agreed to institute prorated insurance benefits for part-time employees in 1989-91, to implement a 5% co-pay for all employees in the 1995-98 contract and to implement less generous pro-ration standards for part-time employees in the 1998-01 contract. Second, whether comparable districts have changed their insurance contributions for part-time employees is far less relevant than the level of insurance benefits that part-time employees actually receive among the comparable districts. No one else provides full family health and dental insurance for employees who work only 600 hours per year. Finally, despite the Union's claims that no "pattern of change" exists, it is clear that a pattern does exist with respect to the provision of different levels of insurance benefits for full-time versus part-time employees among the comparable districts. District's offer provides competitive benefits for both full-time and part-time employees. This is even

the case with respect to employees working less than half-time with the exception of Solon Springs.

The District reasserts the five reasons that it maintains have demonstrated the need for the change. It also disagrees with the Union's claim that its proposal is a major departure from the prior language. The Union's argument that the phrase "regularly scheduled" hours is ambiguous ignores the testimony of the District Administrator that the District would include the extra hours such as those worked by the bus drivers in calculating insurance pro-ration percentages. Furthermore many of the comparable districts have language similar to the phrase "regularly scheduled." Butternut, Glidden's retiree insurance language, Solon Springs, and Washburn have similar provisions and this language is common among the comparables.

Reference to the District's costing exhibit is misleading because the District utilizes the cast-forward methodology. It would include only those individuals who were actually employed in the 1999-00 base year. Since all four employees would be grand-fathered because they exceed the existing 600 hour standard, costing calculations do not include extra hours for bus drivers. The District disagrees with the Union's assertion that extra hours worked by cooks, janitors and other employees have been included in the calculations in the past alleging that the question of whether these extra hours are included or excluded has never before arisen. With respect to the eight positions that will be affected upon replacement with new employees, the District argues that these 8 positions would continue to have the major portion of their insurance premiums paid by the District, with the District contributing anywhere from 73% to 93% of the cost of the premium depending upon the number of hours worked during the school year.

In response to the Union's chart purporting to show what pay would be left after paying health and dental insurance premiums, the District claims that the chart is deceptive because it fails to consider the hours worked in the teacher aide and bus driver classifications. All teacher aides work 1464 hours and would receive full payment under the District's final offer. Similarly, the most any bus driver would pay for health and dental insurance is $3,258 per year or about $272 per month. However, current bus drivers are grand-fathered. In response to the Union's argument about talking benefits away from the "working poor," the District notes that no one can reasonably expect a job of 600 hours per year or anything less than 1440 hours per year for that matter to result in employment with full benefits and full support for a family. This expectation is unrealistic.

Because under the District's offer, it will provide new hires working 600 or more hours per year sing full health and dental under the single plan, the Union's statement that the District's offer would mean no health insurance for most, if not all, part-time employees is not only inaccurate, but a misrepresentation. It notes that similarly situated part-time employees have no access to insurance coverage and receive lower wages. While it may be true that many employees work for benefits rather than wages, to expect a full slate of insurance benefits valued at more than $10,000 for working only 3 hours per day, 180 days per year is beyond reason.

Several distinctions can be made with respect to the lead case cited by the Union wherein the arbitrator rejected the employer's proposal to reduce insurance benefits for future part-time employees. There the employer argued that its offer did not represent a change to the *status quo* because it did not affect any current employees. Here the District admits that it is changing the status quo. There the employer offered no *quid pro quo*. Here the District offers numerous quid pro quos, including a higher wage increase, expanded dental benefits and the grand-fathering of all current employees under existing insurance benefit levels. With respect to the other case cited, the District has made sacrifices in personnel because of the current language. Moreover, in that case 12 of the 14 employees would have suffered significant losses in total compensation as a result of the employer's pro-ration proposal. In Drummond, the District has attempted to soften the blow and provide a safety net.

The Union minimizes the value of the District's proffered dental insurance benefit. The value of the *quid pro quo* with respect to the increase in the dental insurance benefit is far greater than the increase in the dental premium rate. It provides an extra $1000 per year per person. This is also the case with respect to the extra 1% wage boost. With respect to the argument that a sufficient *quid pro quo* should go entirely to the new employees who will be affected by the prorated premiums, the Union cites little case law to support such a novel argument. The cases that it does cite address the adequacy or inadequacy of *quid pro quos* where the *status quo* changes would have impacted current employees. Here there are no current employees who will be affected by the change.

With respect to the settlement in Mercer cited by the Union, the District rejects one settlement as establishing the definitive *quid pro quo* standard for all other comparable school districts. That settlement was voluntary and Mercer's wage rates rank at the bottom of the comparables while Drummond's are among the highest. The District notes that many of the comparables have just such a two-tiered system as it is proposing. The District stresses that here the comparables have changed since the time the District initially bargained the existing language. According to the District, when the comparable districts did organize, they bargained less generous insurance benefits for part-time employees. The District has been attempting to negotiate a change ever since this occurred.

The Union cannot dismiss the external comparables as a deciding factor in this case. The comparable District language speaks for itself. With respect to the chart purporting to show that the District's eligibility standard is not reasonable when measured against the average of the comparable districts, the District points out that this chart proves just as convincingly that the *status quo* standard of 600 hours for full insurance coverage is not comparable. While it may be good public policy to encourage employers to offer group insurance coverage to their employees, this is not the same as requiring employers to foot the entire bill for family coverage. The provisions of the statute define eligibility for BadgerCare as not having access to employer-subsidized health care coverage where the employer pays at least 80% of the cost. The 80%

contribution on the employer's part is merely the eligibility benchmark for access to BadgerCare.

The District requests that the Arbitrator selected its offer.

UNION

Initial Brief:

The burden is placed upon the District to provide a clear case that its position is the more reasonable. The proponent of the change must demonstrate (1) the need for change; (2) the need for change must be addressed in a reasonable manner; (3) there should be a *quid pro quo* appropriate to the circumstances and (4) there should be support in the comparables. The normal responsibility of the proponent for a change is to make a very persuasive case that should include a demonstration that a legitimate problem exists which requires attention and that the disputed proposal reasonably addresses the problem. In general, a *quid pro quo* must be something of value, i.e., a "buy-out," in return for a reduction in benefits.

There is no need for the change proposed by the District. Drummond is in the middle of the comparable districts in regard to what it spends per child. It is not at the high end of spending within the comparable districts. Furthermore it has the second highest equalized property evaluation behind each student and the second lowest mill rate for property tax within the comparable districts. It also has the third highest Fund 10 balance within the comparable districts and is one of the top two districts in the conference having the greatest ability to pay for the health and dental insurance costs

There is nothing in the record relative to the state imposed revenue controls and Drummond's premium rates are similar to those of other districts. Comparisons are made between the first collective bargaining contracts and the most recent contracts with respect to all of the comparables. Within the comparable group there has been little, if any, change in the relationship between what full-time employees receive and what part-time employees receive when comparing each district's first agreement with their most recent agreement. Four and one half of the comparable districts have had no changes; two and one half have improved what part-time employees receive. Only two districts have decreased the premiums paid by the employer for part-time employees, when compared to full-time employees and both did so more than a decade ago. There is no established pattern set by the comparables of decreasing the amount the district pays toward health insurance premiums for part-time employees as compared to what it provides for full-time employees. Because Drummond is in far better financial position that most of the comparable districts and its rates are in the middle and there is no established pattern of the comparable districts reducing paid health insurance premiums for part-time employees, the District has not shown a need for the change in the status quo. It has agreed to the 600 hours per year for health and dental insurance without change for over twenty years and there have been no changes in circumstance that make such a change necessary.

The District's proposal to prorate part-time employees based upon the employee's "regularly scheduled" hours-per-year is a major departure from language in past agreements and from language found in the agreements of the comparable group. It notes that the current language simply states "The provision just covers the employees who work 600 or more hours per year." None of the comparable districts have only "regularly scheduled" work hours counted for receiving health and/or dental insurance benefits. Rather all work hours are counted. There is no justification for placing the term "regularly scheduled" in the District's offer. Only four bus drivers would qualify under the 1440-hour standard. With the use of the term "regularly scheduled" hours per year, and with the District not counting the bus driving hours for extra-curricular events for the costing of the final offers, the meaning of the term "regularly scheduled" is ambiguous and would need to be litigated should the District's offer be selected. Bus drivers are not the only unit employees affected by this language because janitors and cooks may also work extra hours for special events.

Insofar as the current employee complement in the bargaining unit is concerned, there are two positions where the work hours are below 600 per year, nine where the work hours exceed 1440, and eight where the employees work between 600 and 1440 hours. All new employees who fill the latter positions will be affected by the District's offer. All of the bargaining unit positions are filled by the working poor and there is no way that such workers can afford to pay their proportional share of the health and dental insurance premiums under the District's offer. If the district's offer is selected, it will mean no health insurance for most, if not all, part-time employees' families inasmuch as the new employees will opt not to participate. Therefore, the saving for the District will be greater than the District has indicated because it will not have to provide family health insurance for many of the new employees. Arbitrators have acknowledged that in low-paid employee units, many of the members work for the benefit almost as much as for the wages.

Although no current employee would be hurt by the change, it represents a real and significant future reduction in benefits within the bargaining unit and the introduction of a two-tiered benefit structure constitutes significant changes in the negotiated status quo ante. The impact of such a change should not be measured in terms of total package costing. The important questions are how is a change going to affect individuals and how is not making the change going to affect the operation of the District. Arbitral precedent suggests great caution and compelling circumstances in considering any proposal that would cut total compensation of the majority of employees by anywhere from 4% to 54%.

As part of the *quid pro quo* the District has offered to increase the yearly dental insurance benefit to $2000 per person at a cost of $14.40 per year for full family coverage. This is insignificant compared to the thousands of dollars part-time employees would have to contribute toward the health and dental insurance premiums with acceptance of the District's offer.

Acknowledging that the average comparable settlement pattern for 1999-00 was at or close to 3% and the same was true for the 2000-01 and 2001-02 settlements, a 1% greater wage rate over two years does not even come near what the part-time employees will have to pay for full family health and dental insurance if they can afford their share and it certainly decreases the total compensation for those employees who elect not to participate in the insurance plans because they have no financial means to pay their share of the premiums.

A 1% hike in wages for part-time employees amounts to only $60-$170 per year as compared to $1777-$6222 that new employees will have to contribute towards the health insurance. This is not a sufficient *quid pro quo*. It is not an equal exchange or substitution. The Union takes the position that a sufficient *quid pro quo* should have gone entirely to the new employees who will have to pay the prorated premiums and not to the employees who will not experience a benefit reduction. Pointing to a case where the arbitrator dealt with a similar issue, the arbitrator agreed that a half percent increase for those who did not benefit from the change would be a sufficient quid pro quo under the circumstances. In that case a 10.6% reduction of annual work hours in the health insurance eligibility formula was a trade-off of ½ % of a wage increase.

Applying that ratio to the instant case, the *quid pro quo* for increasing the yearly work hours needed for obtaining 100% paid full-family health and dental insurance from 600 hours to 1,440 hours (a 140% increase in hours needed to qualify for the benefits), would require a 6.6% increase in the wage rates above the normal settlement increase. The 1% wage increase the District is offering is simply out of touch with reality.

Within the comparable group one district voluntarily settled with a decrease from 100% payment to 95% payment by the District. All bargaining unit members in the Mercer unit were affected. In Mercer, however, in exchange for the 5% contribution, the District agreed to a 2.9% increase in wages over that of comparable settlements, or a .6% increase in wage rate for every 1% increase of the health insurance premium that the employee must pay. Applying such a quid pro quo in Drummond to the District proposal would result in a wage increase for every six tenths of a percent of premium for which the employee paid from 35 per cent to 10 per cent. Again this demonstrates how out of line the District offered 1% is as compared to what it will save.

Given the longstanding duration of the benefit, comparison with the other comparable districts should not dictate a change in the *status quo* when that change has such a large and dramatic economic impact on part-time employees. The Union argues that ongoing comparisons cannot alone provide a persuasive basis for change in the previously negotiated *status quo ante*; even if they had provided a basis for possible change, the reasonableness of this proposed two-tiered system remains in question and the District's failure to provide an appropriate *quid pro quo* in support of the proposed changes should still be determinative.

The Union is troubled with the use of comparables when considering benefits for part-time employees because there is nothing in the record that shows the districts

actually employ part-time employees and if they do, how many hours a day those employees work. This is important because parties tend to ignore issues in negotiations that do not apply to current employees. If there are no employees affected, the parties do not place a high priority on improving or decreasing the insurance benefits.

Forty-seven per cent of the positions in the current unit would be affected by the District's offer when new employees replace the current employees. Two work 992 hours, three work 1,288, and the remainder work 1,058, 1034 and 1,341. All of the above employees have a work year equal to the school year. When comparing the minimum hours a school term employee must work in order to receive the same family health and dental benefits as a full time employee the comparable districts average 990 hours, with some districts requiring 720 hours per year and others requiring 1,260 hours per year. All of the affected Drummond employees exceed the comparable average of 990 hours. The Union's offer provides these eight positions the same premium contributions as compared to full-time employees as would be provided using the comparable group average. No other district has as high as standard as the District is proposing to qualify for full family health and dental insurance as the 1440. The Union's offer is closer to the comparable group average of 990 than is the District's.

With respect to the statutory criteria, the "greatest weight" factor is not applicable. No meaningful evidence was introduced on this point. With respect to the "factor given greater weight," the District is in very good financial shape. Furthermore, the District's offer costs more than the Union's offer. The lawful authority of the municipal employer factor does not apply, nor do the stipulations of the parties. The Union's offer is in the interest and welfare of the public to a greater extent than that of the District because the unaffordable full family premiums will leave new employees' families without health insurance, resulting in reliance upon public support. Even under the state-sponsored program to provide health insurance to low income workers, the standard is for the state to pay 80% of the cost of health care family coverage. When viewing internal comparables, i.e., the teacher unit, no information is provided for 2001-02 with regard to what, if any, contributions are made by part-time teachers towards their health and dental insurance premiums. This factor is not applicable because there is insufficient information to make a comparison nor has information been provided about the condition of other municipal or private sector employees. Both parties' offers exceed the CPI. Since the District's offer exceed the CPI to a greater degree, the Union's offer is more reasonable under this factor. There have been no changes during the pendency of the arbitration proceedings.

Reply Brief:

The Union insists that the District has not shown need for its proposed change. According to the Union, the comparables and the necessity for the change are two separate burdens that must be fulfilled by the party proposing the change.

With respect to the District's contention that it has established need for the change, the Union argues that the District has not done so. In addressing the argument

that the current insurance language limits the District's ability to hire additional part-time staff, the Union insists that actually the opposite is the case because the current language helps the District hire part-time staff to a greater extent than does the District's proposal. It note that part-time employees who work four to eight hours will cost less than those who work a mere three and one half hours per day. Increasing an employee's work hours decreases the fringe benefits costs on an hourly basis. Furthermore, the District can limit its financial liability by substantially reducing or eliminating the part-time employment opportunities that current exist.

Pointing to the bus driver notice of vacancy, the Union notes that the District is free to post the position as that of bus driver/custodian and not simply bus driver. There is no reason why a bus driver cannot do custodial duties prior to his/her morning route or after the afternoon route. Such a decision would reduce the hourly costs that the District claims are so high. This can also be the case with combining both the dishwasher and secretarial positions if there is a need for more secretarial help. According to the Union, most, if not all, of the ten current part-time employees would accept more hours, even if such hours were for a position in a different category than the one in which they are currently employed.

The Union notes that of the 35 support staff positions, the District subcontracts 46% of these positions. If the District feels that it must create new part-time position, it can hire employees through subcontracting as it has done in the past and in the present. It is not hamstrung in hiring through subcontracting for a vacant or newly created part-time position. The District can also hire an employee for less than 600 hours so that it does not have to contribute anything towards health and dental insurance premiums. One part-time bus driver can take the morning run while another takes the afternoon run. Another option is for the District to propose a different, less costly, health plan for employees working less than a certain number of hours. Such a plan, with a smaller cost for the premium, could have a higher deductible, co-pay provisions and other lesser benefits. Under the District's offer, part-time employees will not be able to participate in having insurance for their families. With a modified health and/or dental insurance plan offered to these part-time employees and with the District still providing 100% of the premiums for such a plan for employees working less than a specified number of hours, the cost for the employees would go down and these part-time employees would still be able to receive at least a limited amount of health care protection for their families.

The District argument that it has attempted to negotiate a change in part-time insurance coverage for at least the past ten years during almost every round of bargaining dating back to 1990 is misleading. During the 1990-92 bargaining, the District proposed a common dollar amount for both health and dental insurance, no increase in the second year, and with employees working less than 800 hours having not access to any insurance. For the 1992-94 contract, the District proposed to require all employees to pick up any premium increase greater than 3% the first year and 2.8% the second year. It did not differentiate between full-time and part-time employees. The District's proposal for 1996-98 was no access to health insurance for all employee working 1,040 or less. In 1998-00, the District proposed fully paid health and dental insurance for those employees

working six or more hours per day and to contribute 50% of the premium for those working for to six hours per day. Employees working 600 to 720 hours per year would not have access to health insurance. The District also proposed to increase the front-end deductible and the drug card deductible.

The District admits that each of these proposals would have affected all bargaining unit members. The Union during the ten-year period did agree to an increase in the front-end deductible and the prescription drug deductible for the purpose of reducing the premiums. Now the District proposes language producing drastic changes on a take-it or leave-it basis. It is the District that is unwilling to compromise yet it argues that the Union would not accept the District's offer.

The Union also quarrels with the increase in the eligibility standard from 600 to 1440 hours, a 240% increase. This is too dramatic an increase given that the 600-threshold has been in place for 22 years for health insurance and 16 for dental. While acknowledging the soaring increase in family health insurance cost, the Union claims that the District's proposal puts the increase and more on the backs of employees who do not earn enough to pay such a high percentage of the premiums. The 92% increase in health insurance premiums over the last decade is more moderate than what occurred in the 1980's. There was a 437% increase from 1981-82 to 1991-92. The District's proposal will not reduce costs as much as it argues because insurance rates are based upon insuring large numbers of employees. Part-time employees will of necessity look long and hard when deciding whether to opt for family insurance coverage and only those with family members in poor health will opt to be covered. This system will drive up the cost of the premiums for everyone.

Reducing the family health and dental benefits for part-time employees such as the bus-driver is not going to attract the same high level of applicants as apply under the current benefit structure. In the Union's view, the District has shown "wants" not "needs" with respect to its proposal.

The Drummond health insurance plan is not as exceptional as the District claims. There is no evidence of any other comparable district cutting back on the health insurance benefits that it offers to its employees. The District does not explain how its offer affects employees working more than half time during the school year, i.e., those working 4-8 hours per day. All of the eight affected positions average between 5.5 to 7.4 hours per day. The Union's offer at 3.33 hours per day is closer to the average of the comparables of 5.5 hours per day or 990 hours per 180 day school year than the District' proposed 8 hours per day, i.e., 1440 hours per 180 day school year. All nine districts provide employees who work seven hours per day with the same full family coverage as those who work eight hours per day. Only Drummond would be the exception under the District's proposal. Five of the nine comparables provide employees who work six hours per day during the school year with the same premium contributions for full family health insurance coverage as they provide to their employees who work eight hours per day. All five of these districts would surpass Drummond if the District's offer were accepted. None of the districts pro-rates insurance based upon 1440 hours as the District claims

because it is not used in any of the districts for school year employees working 7 hours per day.

The Union cites Solon Springs as an example of providing employees in the eight affected positions with fully paid family health and dental coverage. The Union contends that it would accept the Solon Springs contribution system over the present Drummond system in a minute.

The real wage rates earned by Drummond bargaining unit members are not as dramatic as the union claims. It points to certain positions among the comparables which are paid higher than Drummond provides. Looking at the total wages and health and dental benefits for a custodian working 4.1 hours per day for the school year, the Union's *status quo* offer is not out of line. It would maintain the District's ranking of second, while the District's offer would change the District's ranking from second to fifth. This would result from a single agreement change. Applying the same methodology for a teacher aide working 6 hours per day during the school year, the Union's offer retains the ranking of second while the District's offer drops Drummond to seventh. The impact for part-time employees working 4 to 7 hours per day is simply outrageous. No Union would agree to such a decrease in rank with respect to total compensation where there is no demonstration of financial instability on the District's part. Because eight of the nine comparables do not have a different percentage payment for single versus family coverage for part-time employees, the comparables also weigh in on the Union's side with respect to this aspect of the District's proposal.

In response to the District's assertion that the phrase "regularly scheduled" should not count against its offer, the Union points out that parties do not include phrases in offers that do not have any meaning and that this phrase is a change from the current language and from the *status quo*. Because the District employs one individual whose hours vary from day to day, that employee does not have "regular scheduled" work hours and under the District's offer, he will not be eligible for any health and dental benefits if he does work over 600 hours in future years. The Union submits that it has not worked out any ambiguities with the District because there have not been any ambiguities. The Union also questions the meaning of the term "regularly scheduled" work hours. In its view there are no exceptional circumstances that exist which are necessary to overcome the strong principle of allowing the parties to voluntarily negotiate such a substantial change as the District's offer represents.

How the District can consider maintaining the status quo for current employees to be a *quid pro quo* is beyond normal reasoning. The comparables do not support the District's change in health and dental insurance language for new part-time employees working between four and eight hours per day nor do they fully support new part-time employees who work between 1 and four hours per day. Because they do not fully support the District's offer, the price of the quid pro quo is much higher than what the District has offered. The Union points out that with the 2.9% extra wage increase and the new 5% insurance contribution, full-time Mercer employees who work the year round had an effective reduction in their hourly wage rate of $.25 per hour, while school year

full-time employees experienced a reduction of $.36 per hour. In Mercer, the 2.9% wage increase did not make up for the loss in the health insurance premium contributions. Certainly the one per cent offered by the District is insufficient. The proposed *quid pro quo* for the 2001-02 year costs the District $4,128 (the difference in cost between the Union's and District's offers). This amount does not even cover the cost of what one new employee, who works 720 hours per year, will have to pay as their share of the health and dental insurance.

With respect to unemployment rates, Bayfield County, where the District is located, ranks third lowest out of the four counties in which comparable districts are located. Only one district is located in a county with a lower unemployment rate. Insofar as subcontracting is concerned, no evidence was presented at the hearing to substantiate contention that subcontracting saves money for the District other than the testimony of Board President Crandall that it probably costs more to hire bus drivers directly.

The Union requests the arbitrator to select its offer as the most reasonable.

DISCUSSION AND OPINION:

Any evaluation of the offers submitted by the parties must begin within the statutory framework set forth above. Section 111.70(4)(cm) 7. is inapplicable because no state law or directive exists which places limitations on expenditures made by a municipal employer with respect to this bargaining unit. Because the District is under no such statutory limitation, this factor does not clearly favor one party over another and the case will be determined by evaluation of the lesser factors.

Likewise, Section 111.70(4)(cm)7g. is not determinative. The District makes no argument that it is unable to pay. Its offer costs more than that of the Union.

The 'other factors considered' in Section 111.70(4)(cm) 7r. determine the outcome of the instant dispute. In particular, these factors, especially c., d., g, h. and j., are considered in ascertaining whether or not the District has satisfied is burden of proof to justify the change in the *status quo.* The District has made a cogent case for its need to make a change in the health insurance for part-time employees pursuant to criteria "c". The continuing accelerating costs of the health insurance premiums along with the impact that such costs have on the total compensation package for part-time employees demonstrates the need for the change from District payment for the entire premium. As other arbitrators have observed, there is also substantial intrinsic appeal to the idea that employees—given the extremely high and accelerating cost of the health and dental insurance—should, to some degree, share in the cost.[1] There is also no question in the mind of the undersigned that employees in this bargaining unit enjoy comparatively high wages and no arguments have been made that the unit has sacrificed wages or other valuable fringe benefits to maintain this extremely valuable benefit.

[1] Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (Vernon, 1990) at p. 15.

Review of the comparable districts supports the conclusion that no other district in the conference enjoys such a low eligibility standard of hours worked for part-time employees to gain fully paid family and dental insurance. In fact, as the District correctly observes, many similarly situated employees employed in comparable districts who work hours equivalent to that required for eligibility in the District's plan, i.e., just 600 hours, may not even qualify to participate in those districts' group insurance plans, let alone receive full benefits under either the single or family premium. The current language gives the bargaining unit an outstanding benefit that far surpasses the health and dental insurance benefits offered to comparable part-time employees in comparable districts. That being said, the undersigned views this case as turning upon the other two elements necessary to support the proposed change: (1) whether the party proposing the change had addressed the need in a reasonable manner; and (2) whether a *quid pro quo* is needed and if one is needed, the sufficiency of the *quid pro quo* offered. This involves criteria "d" and "j".

To some degree the question of whether the proposed change reasonably addresses the expressed need is concerned with whether or not the party proposing the change has adequately "cushioned the blow." The District's offer, correctly seeking to minimize the affect on current employees and being mindful that arbitrators have routinely rejected changes where employees are substantially impacted, contains a grand-father clause for all current employees who now work 600 hours. It makes its offer prospective only. Other provisions of the District's offer are more troublesome as the Union has pointed out, especially the 1440 work hour eligibility threshold and the inclusion of the phrase "regularly scheduled work hours." The District has advanced no good reason for its departure from the current language with respect to the inclusion of the latter. With respect to the former, the Union makes a strong case that the 1440 hour eligibility standard with pro-rationing will ask for greater contribution from part-time employees working more than half-time during the school year than do the comparables. Differentiating between family and single coverage for part-time employees when the other eight comparables do not do so is also somewhat problematic. Thus, although the undersigned accepts the need for change, the manner in which the District is proposing to address the change varies from the arrangements agreed to in comparable districts. While these aspects of the District's offer do not disqualify it from selection, they do suggest that the District must provide a greater *quid pro quo* in exchange for them than would be required with some more modest proposal or in their absence.

The undersigned is cognizant that some arbitrators have required little or no *quid pro quo* where health and dental insurance benefits are concerned.[2] These particular benefits, as applied to the District's part-time employees, are, however, extremely generous and extremely valuable and are recognized as such by both of the parties. It is evident that party who currently enjoys this benefit would not voluntarily agree at the bargaining table to such radical changes without a substantial, significant *quid pro quo*. Contrary to the assertions of the District, it has offered only two improvements as the *quid pro quo* for its proposal. Offering to permit current employees who already enjoy a

[2]Maple Dale-Indian Hill School Districts, Dec. No. 27400-A (Stern, 1993) p.7. See also School District of Rhinelander, Dec. No. 27136-A (Vernon, 1992) p. 9.

benefit to keep it is not a *quid pro quo*. The improvement in the dental plan and the ½ % each year in wages in excess of the wage pattern for the comparables are improvements which the employees currently do not enjoy. These two items in combination are not, however, equal in value to the benefit the District would be gaining with the selection of its language.

It is recognized that the District would be hard-pressed to offer any tangible economic benefit or benefits as trade-offs during any one bargain which come near to the value of the current language for part-time employees. It would simply be too costly. Nevertheless, given the imbalance in the economic value of the *quid pro quo* offered and the specific language proposed by the District, it cannot be concluded that the District has provided a sufficient *quid pro quo* for this particular proposal at this time under the statutory criteria. Had the District offered a more modest proposal which more closely approximates the benefits provided to part-time employees by the comparables (such as providing full family benefits to new part-time employees who work in excess of 6 hours per day during the school year or basing the eligibility standard on working 1200 hours per year), or a more substantive economic *quid pro quo* for the language it has proposed, the result would have been different.

The Union's wage proposal falls within the wage pattern of the comparables and, although not determinative, is reasonable. The Union's offer is preferred over the District's final offer based primarily upon the parties' insurance proposals. The Union's offer is selected.

AWARD

That the Union's final offer is adopted as the award in this proceeding and incorporated into the parties' 2000-2002 collective bargaining agreement.

Dated this 19th day of October, 2001, in Madison, Wisconsin.

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Mary Jo Schiavoni, Arbitrator