BEFORE THE ARBITRATOR

In the Matter of the Petition of

RIO EDUCATIONAL SUPPORT TEAM

To Initiate Arbitration Between
Said Petitioner and

RIO COMMUNITY SCHOOL DISTRICT

Case 15
No. 59086 INT/ARB-9063
Decision No. 30092-A

Appearances:

Mr. John D. Horn, UniServ Director, Three Rivers United Educators, 104 West Cook Street, Suite 103, P.O. Box 79, Portage, Wisconsin 53901-0079, on behalf of the Association.

Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, 122 West Washington Avenue, Room 500, Madison, Wisconsin 53703, on behalf of the Employer.

ARBITRATION AWARD

Rio Educational Support Team, hereinafter referred to as the Association, and Rio Community School District, hereinafter referred to as the District, Board or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on June 30, 2000. Said agreement covered all regular full-time and part-time non-instructional employees employed by the District, excluding all temporary, casual, confidential, supervisory, managerial and professional employees. Failing to reach such an accord, the Association and Employer, on July 31, 2000, filed a stipulation with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an

investigation conducted in the matter, the WERC, after receiving the final offers from the parties on February 28, 2001, issued an Order wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on March 15, 2001, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on June 25, 2001, at Rio, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by August 25, 2001. The record was closed as of the latter date.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The Association and District final offers and Tentative Agreements are attached and identified as attachment "A," "B," and "C," respectively.

BACKGROUND:

At the hearing in the instant case, both parties presented numerous exhibits in support of their positions. Representatives for each side presented, reviewed and explained their exhibits to the Arbitrator.

In addition to the support staff unit involved in this case, there is one other unit of represented employees in the District, the teachers. The teachers and District are under contract for a term July 1, 2001 to June 30, 2003. The contract includes a 4.2% total cost increase in the first year and 3.8% total cost increase in the second year, as calculated by the Association. The District calculated the teacher cost increase, using the cost forward costing basis, as 3.8% in each year.

POSITIONS OF THE PARTIES:

Each party filed an exhaustive and well-reasoned brief and reply brief. What follows is an overview of the parties' main arguments in support of their final offers and not intended to be an in-depth presentation of the briefs. The parties should be assured, however, that the Arbitrator has read, and re-read, their briefs in their entirety in reaching his decision.

Association's Position

Comparability Group

It is the position of the Association that the labor market, not the Athletic Conference, is the more appropriate comparable group. Thus, it is argued, the most appropriate group is the unionized school district support staff within a reasonable distance of Rio and within the same labor market. They are: Columbus, DeForest, Lodi, Portage, Poynette and Sun Prairie. The Association argues that the District's proposed Dual County Conference District should not be accepted because it includes non-unionized districts and that those Dual County Conference Districts that fall outside Columbia County are not part of the same labor market as Rio. The Association cites several prior arbitration awards in support of both propositions.

Language Issues

Notice of Date of Layoff and Seniority for Reduction in Hours

The Union contends that one of the most important reasons for employees to unionize is for job security. Here, there is no seniority protection for employees who are reduced in hours. It is argued that there is a need for a change in the contract to provide such protection because the District has reduced the hours of employees and when it did so recently, it was not done by seniority. Further, it is claimed, said layoff proposal is supported by the comparables. Internally, in the only other bargaining unit, the teachers, layoffs and reduction in hours are by seniority within a department which compares with the Association's proposal herein of seniority by job category. External comparables, it is argued, strongly support the Association's position both on notice of layoff and the application of seniority. Thus, it is argued, the District's position that does not address seniority or even provide notice of layoff must be rejected as unreasonable when compared to the Association's final offer.

Economic Issues

Tax Shelter Annuity (TSA) in Lieu of Health Insurance,
Dental Insurance and Wages

The Association notes that of the benefit issues, the TSA in lieu of health insurance is clearly the most significant. However, it contends that although the dental insurance issue is not of primary importance in this case, the exhibits provided by the Association clearly show the parties understood the dental side letter to be a part of the continuing status quo. The Association argues that the Board's September memo (Association Exhibit 54) was an attempt by the Board to create bargaining history. It is claimed that the letter written in response to the

memo, along with the Association'' bargaining notes (Association Exhibits 53A and 53B) reflect the accurate understanding of the parties. The Association contends that in the clarification at the bargaining table on June 27, 2000, the Board stated they agreed to no deletion of the dental insurance and that employees would get their step on the schedule (Association Exhibit 53B).

The Association argues that although the District payment of health insurance seems to indicate that a support staff employee who does not work in the summer is a "part-time" employee, it has been recognized in school support bargaining and interest arbitrations that school year support staff employees are full-time employees. (Lake Geneva Joint School District No. 1, Dec. No. 26826-A, 2/5/92, Vernon).

The Association contends that the dental insurance premium payment, as well as the TSA in lieu of health insurance, is strongly supported by the internal comparables. Citing prior arbitration awards, the Association argues that it is well established that internal comparables are primarily relied upon regarding any benefit issue. It is argued that internal comparables are the critical consideration in benefit questions because both unions and employers generally recognize the value of administrative convenience of standardized benefit language. Additionally, internal consistency minimizes potential employee dissatisfaction.

The teacher unit has the TSA benefit as do calendar year employees in this unit, and thus school year employees in this unit who work side by side are treated differently. This, it is argued, is an inequity that should not be allowed to continue.

The internal comparables, it is argued, strongly support REST in both its dental and TSA in lieu of health insurance proposals and, therefore, should be deemed more reasonable than the District's proposal in this area.

Total Compensation Supported by the External Comparables

The Association acknowledges that there are no comparable districts that have cash or a TSA in lieu of health insurance. It argues, however, that the external comparables do support a higher percentage premium payment of health insurance for school year employees and in general show a consistent internal pattern (Association Exhibit 39) on health insurance between the teacher units and school and calendar year support staff.

When compared to the comparables, the Association claims that not only are benefits for school year employees behind, but Rio school year support staff wages also need improvement in relation to any comparability group used (Board Exhibits 62 to 64 and Association Exhibits 72 to 78). The wage comparables, it is argued, reinforce the fact that on total compensation Rio trails other school year support staff and needs improvement in both areas. The Association argues that the addition of TSA will move the total compensation towards the external comparables.

Association Priorities Must be Considered in Interest Arbitration

The Association contends that the interest arbitration process attempts to initiate the process of voluntary settlement. The TSA benefit, in this bargain, is a higher priority of the REST membership than is increased premium payment.

The Association notes that the Board is more interested in a wage increase than benefit equity. According to the Association, the quid pro quo of a lower wage offer that the Association final offer includes is not done because REST believes wages are yet where they need to be relative to the comparables, but offered to emulate the give and take of bargaining and

to partially resolve the benefit equity issue in this bargain. The Association argues that it is difficult to deal with more than one economic change in the interest arbitration process. It feels the clear inequity of this unit not having a TSA in lieu of health insurance must be dealt with now.

Response to Board's Arguments:

A. Ability to Pay in the Context of the Revenue Controls

Association's Response

Support Staff Wages and Benefits are a Very Small Percentage of the Total Budget

The Board relies on the foundation of the "greatest weight" factor in the context of the legislatively imposed revenue limits. However, the Association contends, the REST offer will not put them in a position of being unable to meet their other obligations without violating the revenue limit.

Here, it is argued, the support staff wages and benefits were only 8% of the total 2000-2001 budget. The Association, citing, the Wausaukee School District case, [1] argues that where the amount at issue is a small percentage of the overall budget, the "greatest weight" factor does not significantly come into play. It is noted that the non-represented employees are 9.5% of the budget and the four administrative staff make up over 6% of the total budget.

[1] Decision No. 29976-A, Honeyman.

The Association contends that here the lowest wage earners, without equitable benefits, are taking the biggest hit in the budget reductions. Over the last two years the support staff has been reduced 3.2 full-time equivalencies and the teacher bargaining unit has been reduced one full-time equivalency and the administration and other non-represented employees have taken no position cuts at all.

The Board has Voluntarily Settled with the Teacher's Union

The Association claims that the Board settled with the teachers on a total package of 4.2% the first year and 3.8% the second year. The Association asks why the Board did not argue the "greatest weight" factor with the teachers when the size and overall compensation of the REA bargaining unit creates a much more significant impact on the budget than the REST bargaining unit.

The Total Package Cost is Not Out of Line

The Board claims that REST's offer represents a 13.24% total package increase. The Association, to the contrary, claims it is much lower. The Association argues that the Board's costing includes those that have left the District and will not be replaced, does not include the reduction of time that will be in place in the 2000-2001 school year and that the Board picks an unrealistic date for the implementation of the TSA, but one that inflates the cost of the REST package. In addition, the Board does not include the late health insurance enrollees in the costing of their package.

Board Total Package is in Fact Higher Than Rest in Year 2

The Association using the "cast forward costing" with the inclusion of the late health insurance enrollees' costs to Board's proposal is 16.2% and the Association's proposal (with a September 2001 effective date for the TSA benefit) at about 10%.

However, the Association argues that the cast forward method of costing is not appropriate because it does not take into account the elimination of two full-time positions effective for the 2000-2001 school year and an additional 10% in two other positions. Taking same into consideration, the Board's proposal is over a 9% increase and the Association's proposal is a 3.5% increase. Additionally, under this analysis if the "base year" (1999-2000) is used, the Association payment increases the cost to the District over the two years of the agreement only 2.6%.

Step Increases are not a New Cost

It is the Association's position that it is generally recognized that step increases are not included as a part of the current costing for support staff as they were added in previous negotiations. The Association argues that because of the structure of the wage grid in the instant matter and the struggle to gain it in the first bargain, it seems even more important not to cost the step increase.

B. REST is Moving Away from the Status Quo in Arbitration

Association's Response

No Bona Fide Status Quo Established

The Association notes that the parties only had two previous agreements. It argues that in both negotiations and agreements it moved slowly, not attempting to go "too far, too fast." It argues that when parties are engaged in the development of a collective bargaining agreement in its initial stages it is inappropriate to hold the early agreements up as some type of rigid "status quo." Otherwise, it is argued, unions will be forced to insist upon "everything" in the first agreement.

Quid Pro Quo of a Lower Wage Proposal

The Association argues that even if it can be established that some parts of a bona fide status quo have been established, REST offers a quid pro quo for a wage proposal that is 10¢ less on each wage rate than the District's. This, it is argued, is a significant quid pro quo in light of internal comparables that alone establish a need for a change in seniority based on reduction in hours and benefits.

Based on the above, the Association urges the Arbitrator to select its final offer as the most reasonable.

Board's Position:

Factors Given the Greatest Weight: Revenue Limits

The Legislature has directed arbitrators to give the greatest weight to revenue limits. The Board states that simply under the revenue caps a district may raise a certain amount of money per student. Thus, the amount of revenue limit rises and falls depending on the size of enrollment.

The Board contends that Rio Community School District is experiencing declining enrollments. According to the Board, Rio will lose 67 more pupils over the next 4 years – that is over 12% of the District's current pupil count of 528.

It is argued that these declining pupil counts are already causing Rio financial problems. The District started the year (2000-01) with a balanced budget. It assumed 545 pupils being enrolled, but only 528 pupils enrolled. This caused a deficit of $47,156.

The District claims the financial problems of Rio, as testified to by Superintendent Ronda Ewald, are projected to increase in the future. The District's revenues increased by 4.3% in 1998-99, 3.6% in 1999-00, 3.12% in 2000-01 and are projected to increase 2.7% in 2001-02. Eighty-five percent of the school District expenses are employee salaries and fringe benefits. It is argued that wages and fringes in the future will undoubtedly increase by 3.8% at least. The District notes that both final offers in the first year equal 6.25% but that the Board's offer the second year is 5.24% compared to 13.24% of REST. It is argued that it is difficult to balance the budget when wage and fringe benefits are increasing faster than the District's revenues.

The District cites various arbitrators who have identified the standards that a school board must meet to convince them that "the factors given greatest weight" justifies the selection of the Employer's offer. The District points out that Arbitrator Vernon says that the Board must

show that the Association's final offer will force the District to either exceed the revenue limit now or cut student services, activities or programs now. Arbitrator Bilder requires the Board to show that it has current financial problems, is taxing at the maximum rate allowed by law and will have to cut programs to fund the Union's final offer. Arbitrator Levine wants to see the concrete steps that the Board will have to take if the Union's final offer is selected. Arbitrator Petrie looks for a significant economic difference between the parties' offers.

The District argues that notwithstanding the District's maximum taxation effort, expenses exceed revenues in 2000-01. Further, but for the Board's budget cuts, expenses would have exceeded revenues amount in 2001-02. 2000-01 budget shortfall was $47,156. The Board, it is argued, lacks concrete steps to deal with same, including the elimination of a half-time custodian and half-time library aide position after the employees in those positions resigned. The remainder of the 2000-01 deficit was covered by the District's fund balance.

The District notes that the Rio School Board debated reductions at almost every meeting they had during the 2000-01 school year. The Board asked for recommendations and residents were surveyed on expenditure reductions. The Board took the following action:

- Two educational assistants resigned who will not be replaced.
- One educational assistant was reduced in hours from 7 to 14 hours per day.
- Two educational assistants working in the Title I program are reduced in hours by 2.5 hours per week each.
- The assistant bookkeeper is no longer employed during the summer months.
- The number of guidance counselors has been reduced from 1.8 FTE to 0.8 FTE.
- The Title I teacher's (Tammy Black) contract was reduced by 10%.
- One special education teacher was resigned and will not be replaced.

Cost saving measures were not limited to teachers and REST members (see the 5th and 6th pages of Board Exhibit 42):

- None of the 4 administrators in the district (Ewald, Shippert, Voight, Adams) received a salary increased in 2001-02.
- The curriculum director (Adams) no longer receives health or dental insurance (see also the first page of Board Exhibit 43).
- Bill Kubehl's hours were reduced from 25 hours per week to 8 hours per week.

These cost saving measures reduced the cost of non-union personnel from $491,901.41 in the 2000-01 school year to $464,150.73 in 2001-02, a savings of $27,750.68 or 5.64%.

The District argues that despite maximum taxation and the above cuts, the Association's final offer would require $32,250 in additional cuts from the 2001-02 budget. However, it is argued, the difficulties do not end there because the biggest cost increase is the TSA (an increase of $37,768) which, based on past history, [2] will increase 11.83% a year. Thus, in 10 years the TSA contribution will be $110,194.

It is the Board's position that given the above, Section 111.70(4)(cm) 7 mandates the selection of the Board's final offer.

II. Factors Given the Greater Weight: Local Economic Conditions

This factor, it is argued, directs arbitrators to look at the economic conditions of the people paying the property taxes in the jurisdiction of the Municipal Employer. It is argued that the best indication of same is their annual increase. In this regard, the District claims that in every year dating back to 1995, the taxpayers of Rio School District earn substantially less than

[2] The TSA contribution is equal to the single health insurance premium which over the past 20 years has increased an average of 11.83%.

their counterparts in comparable school districts. Other indications show that the population of the District did not grow as fast as other areas of the County; Columbia County personal increase per capita logged behind Wisconsin and the United States in every year from 1993 through 1998; and the average annual wage earned in Columbia County is only 78.7% of the average in the South Central Conference Development Area. Further, unemployment rates regularly exceed unemployment rates in Dane County and the State of Wisconsin as a whole.

The District argues that most indicators of the economic well being of the taxpayers of Rio School District indicate they are not as well off as the taxpayers of surrounding school districts. Personal increase date specific to each school district shows that Rio taxpayers earn substantially less on average than their counterparts in comparable school districts. The District argues that in this arbitration, the giving of "greater weight to economic conditions in the jurisdiction of the municipal employer" requires the conclusion that Rio taxpayers do not enjoy the same level of prosperity as other area school districts. Given same, the District argues that the taxpayers are less able to support the higher taxes that would result from any referendum to exceed the revenue limits.

III. Factors Given Weight: Intra-Industry Comparisons

The District argues that its set of comparables is more appropriate than the Association's. It is claimed that arbitrators tend to look at size, geographic proximity and local economic conditions when selecting comparables. The District proposes the other eight Dual Conference schools, i.e., Cambria-Friesland, Fall River, Green Lake, Montello, Pardeeville area, Princeton, Randolph and Westfield plus Portage, Poynette, Lodi, DeForest and Columbus. The Board, relying on various of its exhibits, believes that its proposed comparison group is preferable to the

Association's proposed group; it is more geographically proximate to the Rio Community School District than is the Association's comparison group; includes all contiguous districts and does not have a bias toward school districts that are closer to Madison rather than further away; is clearly closer in the average number of pupils to the Rio Community School District than is the Association's comparison group; and the average increase earned per tax return by taxpayers in districts in the Board's comparison group is much closer to the average increase in the Rio Community School District than is the Association's comparison group.

With respect to the Association's contention that non-Union schools should not be considered, the District argues that in this case they must because there is no way to put together a comparison group with at least some schools that are similar to Rio in both size and local economic conditions that are also geographically proximate without considering non-Union schools. Citing several arbitration decisions, the District argues that arbitral authority supports its position. Arbitrators have held that there is no legal basis under Sec. 111.70(4)(cm)7.d., Wis. Stats., to exclude non-Union employers from a comparison group salary because of non-Union status. Further, it is argued, contiguous non-Union districts are part of the labor market for Rio and cannot be excluded.

Based on the above, the District believes its set of comparables should be adopted.

A. TSA Contributions for School Year Employees Choosing not to take Health Insurance

This, it is argued, is the biggest issue because the Association proposes that the Board increase spending toward these TSA's by $36,768.

According to the District, comparable school districts do not offer tax sheltered annuity benefits for employees who do not take health insurance. Board Exhibit 67 shows that only 2

schools out of 13 in the Board's comparison group offer any benefit for employees not taking health insurance: one offers employees $100 per year (Cambria-Friesland) and another $1,000 per year (Fall River). Board Exhibit 67 includes all the schools in the Association's comparison group except Sun Prairie, and Sun Prairie offers no benefit at all for such employees.

Therefore, it is argued, comparison of wages, hours and conditions of employment with similar employees in neighboring school districts clearly supports the Board on the TSA issue.

B. Dental Insurance Premium Payments for School Year Employees

The Employer makes two comparisons here: one with comparable districts that make some contributions and one that includes districts that make no contributions.

The Employer contends that if we exclude the 0% contributions from the averages, the REST offer is closer to the average on the single premiums, but not the family premiums. If we include the 0% contributions in the averages, the evidence solidly supports the Board's offer for both single and family premium contributions for both 30-hour and 20-hour per week employees.

The evidence, according to the District, shows that all schools are requiring some level of contribution (or are denying coverage altogether) for school year employees working less than full time. The Association's final offer substantially increases the Employer contribution toward dental insurance for school year employees. It is impossible, the District argues, to justify that change in benefits with this comparison data. The Board concludes that intra-industry comparisons of dental insurance contributions supports selection of the Board's final offer.

C. Wages

Both parties propose a 40¢ per hour wage increase effective July 1, 2000. The Board proposes another 30¢ per hour increase effective July 1, 2001, while the Association proposes a 20¢ increase. The 10¢ per hour difference is the Association's claimed quid pro quo for its changes in status quo.

The District analyzes the wage offers by looking at comparisons of wage increases and looking at comparisons of wage rates. When comparing wage increases for 2001-02 the District contends its offer is higher than the comparison group average while the Association's is closer to the average.

When comparing wage rates, the District contends that notwithstanding the 40¢ per hour wage increase in 2000 01 in each final offer, Rio loses ground on starting wage rates, but improves somewhat on maximum wage rates. Under the second year proposals of the parties, the District claims Rio's wage rankings drop a little further behind on base wage rates and drops a bit closer to the average under the Association's final offer.

The Employer argues that it wants a strong wage schedule, particularly at base salaries. The Rio District is small and many part-time positions are offered. Competitive wage rates, it is argued, are vital to the Board's ability to fill those positions with qualified employees. The District argues that the Association's final offer shifts money away from the wage schedule and toward employee benefits. The data, according to the District, shows that Rio's wage rates are at best average. The comparison data shows that the 10¢ difference between the parties' final offer would improve Rio in wage rate rankings if the Board's final offer were selected. The Board concludes that evidence of wage rates paid to employees performing similar services in comparable school districts supports selection of the Board's final offer.

D. Layoff Language

The Board believes this to be the least important issue.

The District asserts that the comparison data of Union and non-Union schools is split. The Association has support for its notice requirement proposal, the Board has support for giving no seniority list and the contracts are split on the application of the layoff clause to reduction in hours. The District contends that the evidence of layoff provisions in comparable school districts does not indicate that either offer is preferable to the other.

IV. Factors Given Weight – Other Factors

The District argues that the issues to be considered under this criteria are the Association's three proposals to change the status quo of wages, hours and working conditions. It is argued that to do so the Association must justify the proposed changes by showing a need for the change through proof of hardship or widespread support for the change in comparable employers, a showing that the change in status quo alleviates the hardship and by offering a significant quid pro quo.

A. The Tax Sheltered Annuity Change

The District asserts that the Association's case rests solely on its argument that since the teachers and year-round support staff employees receive the benefit, the school year employees

should receive the benefit, too. However, it is argued, the Association has failed to justify its proposal because it has not offered any evidence of a hardship or need for the change. In fact, it is argued, its offer would create a hardship on the Board.

Further, the Association has not offered an adequate quid pro quo. Its 10¢ per hour quid pro pro is worth $3,018 because, the District argues, its offer increases the tax sheltered annuity cost by a difference of $36,292. Further, it is claimed, that said cost will increase by 11.83% per year thereby raising the cost of the TSA to $99,274 by the year 2010-2011. Clearly, it is argued, the quid pro quo is inadequate. The fact that other employees, internally, receive the benefit is not enough.

B. The Dental Insurance Contribution During June, July and August for School Year Employees

In analyzing the issue, the District concludes that the Association has failed to meet its burden to justify this change in the status quo. The District argues that had the parties intended to make this benefit permanent they would have included it in the contract, but they did not. Further, it is argued, the Association has not proven a hardship or dramatic support from the practices in comparable school districts. The Association proposal will not alleviate the problem during the 2000-02 contract term in this case since it could not take affect until after the summers of 2000 and 2001. The District avers that the Association has not offered a sufficient quid pro quo to justify both the TSA and dental insurance proposals. The Board concludes that the Association has failed to justify its dental insurance proposal.

C. The Three Layoff Proposals

It is the position of the District that the Association has not shown that the District has not given 14 days' notice of layoffs in the past; that it has not shown any evidence of a problem in reduction of hours in the past, and that no evidence was offered indicating that there is any confusion about the seniority of members of this bargaining unit.

With respect to the comparables, the District claims the comparisons are mixed and provide equal support for each final offer.

Finally, the District argues that the Association's offer does not alleviate any hardship and no adequate quid pro quo has been offered.

D. Does the Board have Any Status Quo Issues

The District proposes to delete Appendix B (dental insurance for summer months for school year employees) as did the Association. The District argues that this was a temporary agreement and therefore the change in status quo is by the Association and not the District.

E. Conclusions

It is the District's position that the Association has not justified its changes in status quo by clear and convincing evidence and, therefore, the District's offer is more reasonable.

V. Factors Given Weight – Internal Comparisons

The Association relies on internal comparisons with respect to TSA and dental insurance. The District argues that these benefits were given to teachers and year round staff many years

ago when the benefit was cheaper. Now, it is argued, the cost of health insurance is rising too fast for the School District to expand this benefit. Further, it is argued, most schools provide differing levels of dental insurance for their year round and school year employees.

The Board concludes that evidence of fringe benefits paid to members of the Rio Education Association do not provide significant support for the Association's final offer and should be ignored.

VI. Factors Given Weight: The CPI

The Board asserts that the cast forward total package cost increase of both final offers is 6.25% for 2000-01. In 2001-02 the Board's offer is 5.42% and the Association's is 13.24%. The current rate of inflation according to the District is 3.44% and has been 2.4%, on the average, over the last five years. Clearly, it is argued, the CPI favors the District's offer.

VII. Conclusion

Based on all of the above, the District argues that its offer should be selected as the most reasonable of the two.

Association's Reply Brief

The Association reiterates its position that internal comparables deserve primary consideration, especially when the issues involve benefit and language changes. Here, it is argued, the TSA, dental insurance and layoff language are all benefits and language enjoyed by the teacher unit and in some cases by calendar employees within the REST unit. Because of the inequity among employees of the same employer, it is the Association's position that internal comparables are far more important than external comparables.

With respect to external comparables, the Association takes issue with the District's position in regard thereto and restates its position that only unionized units should be considered. Further, the Association claims that Westfield School District employees are not unionized as claimed by the District in its initial brief.

The Association again argues that its quid pro quo is more than adequate. It cites the fact that the TSA figured used by the District as definitive is really not and that the Association's reduces the difference because of its delayed implementation.

As initially argued, the "greatest weight" and "greater weight" factors do not apply. Further, it is argued there has been a change of circumstances during the pendency of the arbitration proceedings which has changed the District's financial situation. First, the Wisconsin Supreme Court ruled Act 11 (relating to amendments to the Wisconsin Retirement System) to be constitutional in its entirety. This law creates a credit for school districts. The Rio School District's credit is $51,873.77. Secondly, the District now has a vacancy in one of its four administrative positions which it may very well not fill. The savings is $44,563.73.

Lastly, the Association again argues that the dental insurance status quo for school year employees is 100% District payment, including June, July and August. The Association argues that the District is seeking a change for which it has offered no justification. It is argued that since the Association is not seeking to change the status quo, the dental benefit represents no new cost.

For the foregoing reasons, the Association again requests that the Arbitrator select its final offer as the most reasonable of the two.

The District's Reply Brief

The District takes issue with the Association's external comparables and its arguments in regard thereto. It argues that Marquette County is as much in Rio's labor market as Dane County and for said reason the school districts within should be included in the appropriate comparables. Further, the District again argues that non-unionized employers should be included, and not excluded as argued by the Association, because they are as much in the same labor market as unionized employers. Rio, the District points out, competes with non-unionized as well as unionized employers for employees. Therefore, they should be included.

The District further argued that the Association has failed to show a need for its layoff proposal because there is no evidence that the Board has not or will not reduce hours by seniority or provide appropriate notice of same.

With respect to dental insurance, the District argues that the Association is confusing the status quo of changing a term of the contract with dynamic status quo of not changing a mandatory subject of bargaining. Here the Board was maintaining the dynamic status quo which does not change the fact that the Appendix B side letter expired by its own terms. Therefore, it is the Association that is proposing to change the status quo.

The District disputes the Association's arguments regarding the District's costing of its package. It again explains its costing method and how it arrived at the 13.24% cost figure. The Board concedes that its actual costs will not increase by 13.24% in 2001-02 over 2000-01 if the Association's final offer is selected because the Board is laying off employees. But employees returning to work will receive a 13.24% total compensation increase in 2001-02 if the Association's final offer is selected.

The District in response to the Association's claim that nine employees will be taking health insurance on January 1, 2002, is purely speculative and unlikely. The District argues that said employees probably signed up for insurance to influence bargaining between the Board and the Association and that most will not take health insurance because of the high premium contribution.

Also, with respect to costing, the District takes issue with the Association's position that step increases should not be costed. While the Board agrees that step costs are not new costs, they are nevertheless costs that the Board must pay for and therefore they must be costed into the package.

Finally, the District takes issue with the Association's view that no status quo has really been established in this bargaining relationship. This seems to be based on the fact that the relationship just recently was established with the 1997-99 agreement and that there were many goals to achieve and that the parties would slowly make progress in achieving those goals. The District argues that the Association's reasoning is faulty and that there was no understanding that, in essence, Union goals would be achieved. The District agrees that the concept of status quo applies to new bargaining relationships as well as old relationships.

Based on the above, the District again urges the Arbitrator to select its final offer.

DISCUSSION:

Section 111.70(4)(cm)7 of the Wisconsin Statutes, directs the Arbitrator to give weight to the following arbitral criteria:

> 7. "Factors given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive

lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

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

e. Comparison of 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 comparable communities.

f. 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 in private employment in the same community and 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 proceeding.

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 public service or in private employment.

The Association in support of its position relies primarily on criterion addressing internal and external comparables and total compensation. The Employer, on the other hand, relies primarily on the "greatest weight" and "greater weight" criteria and also on external comparables, factor j as it relates to the Association changing the status quo, and the CPI. The criteria not addressed by the parties is determined, as apparently the parties did, to be non-determinative.

"Greatest Weight" and "Greater Weight" Factors

The Employer, in essence, argues that the impact of revenue limitations on the District and the economic condition in the Rio Community School District so favors the District that its offer must be selected as the most reasonable of the two offers.

There is no question the statutory revenue caps have impacted the District's ability to generate revenue to meet its needs. The District is at its maximum taxing limit and is experiencing a decline in student enrollment which is a determining factor in the amount of revenue received by the District from the State. The Board has laid off employees and cut programs.

On the other hand, the difference in this case, even accepting the Board's figures, is $32,250 which is a small percentage of the overall budget of $4,275,586. More importantly, however, the $32,250 figure is not a hard figure and the difference may be substantially less if nine employees who have signed up to take insurance coverage decide to actually do so at the beginning of year 2002. While it might be unlikely all will take the insurance, some might. Further, the Board used a September 1, 2001, implementation date for the TSA benefit, which obviously will not be the case. This also reduces the actual dollar difference between the two offers. Also, there may be other areas in the budget where the District has flexibility. For instance, since the hearing in the instant matter in June, an administrative position has become vacant, which may or may not be filled. If not filled, the savings from said position, alone, is $42,563.

For the above reasons, the Arbitrator is not convinced that the revenue limitations placed upon the District is such that it cannot meet the Association's offer. As such, other factors must be relied upon to determine the reasonableness of the two offers.

With respect to the District's reliance on the "greater weight" factor, the Arbitrator reaches the same conclusion. While the economic condition of the people paying property taxes in the District's jurisdiction is not as strong as its comparables (regardless of which set of comparables is adopted), it is hard to conclude that the taxpayers could not meet the Association's offer given the difference in the two offers as discussed above. Further, only 29% of the District's revenue comes from local taxpayers, the rest is from State sources.

Appropriate Comparables

The Association contends that the appropriate comparables are dictated by the labor market and not the athletic conference. Thus, it proposes, as appropriate, school districts of Columbus, DeForest, Lodi, Portage, Poynette and Sun Prairie. The District proposes the same, except for Sun Prairie, and would add the following eight school districts from the Dual Counties Athletic Conference: Cambria-Friesland, Columbus, DeForest, Fall River, Green Lake, Lodi, Montello, Pardeeville, Portage, Poynette, Princeton, Randolph and Westfield.

Arbitrators have long used various indices to determine the appropriateness of comparables such as school districts which are in the same geographic area and districts similar in size, staff, and equalized value. But, typically, the principle factors considered are school districts of geographic proximity and size. Here, the Association relies primarily on geographic proximity of unionized districts, and the District on size as well as geographic proximity [3] of all units. Proximity reflects the labor market and size reflects the Employer's relative ability to compete. The Arbitrator is of the opinion that both factors are important and, in this case, a blend of the two should determine the appropriate comparables.

[3] The District also compares the average income per tax return of taxpayers in Rio with that of comparables and cost per pupil. The taxpayer comparison shows that Rio taxpayers are below the average, regardless of what set of comparables are used, but it also shows that the Rio taxpayer income, between 1995-1999, is rising faster than the comparables, thereby reducing the difference. The cost per pupil comparison places Rio - 226 among the District's proposed comparables and - 139 using the Association's comparables. The Arbitrator does not find this factor significant enough to alter the set of comparables desired by using geographic proximity and size.

Further, the Arbitrator is not convinced that as a matter of rule that the appropriate comparables should be limited to unionized districts or that all conference districts must be included. For units such as this, geographic proximity and size should be the primary considerations. The District agrees with all of the Association's proposed set of comparables, except for Sun Prairie. I agree with the deletion of Sun Prairie. It is neither contiguous to Rio or anywhere near its size. Sun Prairie, when comparing student enrollment, is about eight times larger than Rio. Further, while Sun Prairie may draw Columbia County residents for work, the Arbitrator notes much of the growth of Columbia County and the increase of Columbia County residents working in Dane County may be due to Dane County people moving to Columbia County while maintaining employment in Dane County. [4] In any event, given the size disparity between Sun Prairie and Rio and the geographic proximity of the two, the Arbitrator does not find Sun Prairie to be a comparable school district.

With respect to the District's proposed set of comparables, the Arbitrator finds them to be comparable when size is considered, but not all are geographic proximate. Arbitrators have held that using the athletic conference as the appropriate comparables is not as important with support staff as it is with teacher units. Here, the Arbitrator finds that the northern tier of districts, Westfield, Princeton, Green Lake and Montello may be too distant given the jobs of this unit to be a meaningful comparable.

Thus, the Arbitrator finds the appropriate comparables to be the agreed-upon comparables of Columbus, DeForest, Lodi, Portage and Poynette, as well as Cambria-Friesland, Fall River, and Pardeeville which are contiguous to Rio School District.

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[4] See Association Exhibit No. 9, Board Exhibit 47.

In arriving at said set of comparables, the Arbitrator was not influenced by the organizational status of the employees of the District's proposal. The Arbitrator recognizes, as argued by the Association, that from a bargaining relationship standpoint, organizational status of unit employees makes a difference. Employers of organized employees are duty bound to the give and take of good faith collective bargaining and, if impasse is reached, the statutory criteria applied by arbitrators in determining the outcome. In contrast, in non-unionized relationships, employers, in the extreme, may unilaterally establish wage rates and increases and conditions of employment with no input from employees.

However, from a labor market viewpoint, non-union comparisons are as relevant as unionized, because regardless of organizational status, employers are competing for the same employees. The market place is the market place, regardless of how determined. Thus, the Arbitrator in determining the appropriate comparables did not automatically disregard non-unionized employers if otherwise comparable. The weight given to said groups, however, may vary depending on the issue.

THE ISSUES:

There is no difference in the parties' first year, 2000-2001, offers. Both offers are exactly the same and represent a wage increase of 40¢ per hour. In the second year the parties are apart on the hourly wage rate increase, benefits, language and total package increase.

In the second year, the Association proposes an increase of 20¢ per hour plus a new benefit to employees entitling them to choose to forego health insurance and have the Employer pay an amount equivalent to the single premium for health insurance to a TSA. Also proposed is the extension of exiting seniority language, applicable to layoffs, to reduction in hours, a 14-day

notice thereof, and the right to a seniority list upon request. Lastly, the Association proposes to continue the expiring contract's side letter providing employer payment of health insurance premiums for school year employees during the summer months.

The Employer proposes a 30¢ per hour increase the second year and deletion of side letter relating to dental contributions for school year employees during the summer months.

The Association views the TSA and layoff/seniority issues as the two most important. The District views the TSA, by far, as the most important issue because of its cost impact.

Tax Sheltered Annuity Issue

Both parties rely on comparables in support of their position: the Association on internal and the District on external comparables.

With respect to external comparables, the record evidence clearly establishes that none of the comparables offer tax sheltered annuity benefits for employees who do not take health insurance. Two offer cash in lieu of health insurance.[5] Cambria-Friesland School District offers employees $100 per year and Fall River School District offers employees $1,000 per year.

On the other hand, the internal comparables clearly supports the Association's position. In this regard, the only other employees of the District who are unionized are the teachers. The teacher agreement provides a TSA for bargaining unit employees who do not take health insurance. Further, calendar year support staff within the instant bargaining unit have the option of a TSA.

[5] This is true with the Association's proposed set of comparables as well. The Association concedes that there are no comparable districts that offer cash or a TSA in lieu of health insurance.

Arbitrators have almost uniformly recognized the importance of internal comparability, especially when it comes to benefits such as health insurance, holidays, vacations, longevity pay, etc. [6] At the core of the issue is the concern of fairness and the impact on the morale of

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[6] Other arbitrators have stated the same but differently. Arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91), stated:

> . . . Internal comparables historically in municipal units have been given great weight when it comes to basic fringe benefits. There is great uniformity in contribution levels and in the specific benefits, particularly in health insurance. Significant equity considerations arise when one unit seeks to be treated more favorably than others.

Arbitrator Malamud in Greendale School District, Dec. No. 25499-A (1/89), stated:

> Consistency in the level of benefits among employee groups is a widely accepted tenet in labor relations.
>
> . . .
>
> The Employer demand for consistency in benefits as expressed through its final offer is accorded great weight by this Arbitrator.

Arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B, (2/89), stated:

> In the area of insurance benefits, a uniform internal pattern is particularly persuasive. . . . Unless the benefit is demonstrably substandard, and not made up for in some other component of the compensation package, external comparables will not generally have great weight in disputes over the features of an insurance plan.

Arbitrator Kessler stated in Columbia County (Health Care), Dec. No. 28960-A (8/97):

> Particularly in the administration of health insurance benefits, a government should be treating all of its employees the same.

employees who work for the same employer but not treated the same. [7] Thus, unless there is good reason to deviate, the uniformity of benefits among employees of the same employer, internal comparables, clearly outweighs external comparables. This is true regardless of which party, the Union or Employer, is relying on internal comparability in support of its position. [8] Many times it is the Employer who argues against a new benefit when there is a pattern already set in settlements covering the benefit.

Thus, in this case, the Arbitrator finds that the fact that teachers are offered a TSA, as well as calendar employees within the unit herein, to be more persuasive than the fact that external comparables do not offer such a benefit. [9]

Having concluded same, the critical issue becomes whether the Association's offer, although favorable on its merits, is reasonable in terms of cost. In other words, this unit of employees is not automatically entitled to receive the TSA benefit merely on equity. Presumably, the teacher unit did not get the TSA benefit for nothing. It was negotiated. The same is true here. The TSA benefit, while reasonable on the basis of uniformity of benefits, still must be attained as part of a package that is more reasonable than the District's.

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[7] City of Wausau (Support/Technical, Decision No. 29533-A, p. 29, Torosian (11/99)

[8] For instance, if the Association was trying to get a new benefit not enjoyed by other employees when the pattern has already been set internally, it would have a hard time getting same in arbitration.

[9] While this is a change in status quo, the Arbitrator finds that the fact that all other employees except the school year employees get the benefit, and its impact on employee morale, to justify the need for its demand.

All important in this regard is the total second year package increase of the parties' final offers. Using the traditional cast forward method, the District's offer totals a 5.42% increase. The District claims the Association's offer constitutes a 13.24% increase. The Association argues that the 13.24% figure is not an accurate figure. The Arbitrator agrees that the 13.24% figure is not a hard number in that 1) no one knows how many of the nine employees costed into that figure will participate in the TSA, and 2) the Employer, in costing the Association's offer, used a September 1, 2001, implementation date for the TSA benefit.

The unpredictability of what the nine employees will do, makes it difficult to calculate the true cost of the Association's offer. The nine employees have not taken health insurance coverage in the past, but they signed up and may in the future. It is unlikely that all will take the insurance, but a few may. Even if we assume only four or five will opt for the TSA, and an implementation date of December 1, 2001, the Association'' offer would be in excess of 7%. More likely, more than that will take advantage of the TSA which would raise the Association's offer closer to the 13.24% figure.

However, the Association argues that the District has not costed the nine employees who signed up for health insurance coverage effective December 1, 2001, in their package, and if it did its package would be 16.28% and exceed that of the Association's. I would agree with the Association if the District could now take credit for such cost and properly include it in the costing of the support staff package increase. But it cannot. The reason is that it is not a new benefit. Health insurance pick-up per the contract is an existing benefit negotiated in a previous contract and is available to the nine employees whenever they want. It cannot legitimately be costed against the support staff package in this contract. The employees have already been

charged for that benefit in a previous contract. Thus, whether the nine employees take the health insurance coverage or not, the value of District's package to the support staff in this contract is the same.

This is not to say that the cost to the District will not substantially increase if the nine employees in fact take health insurance coverage. It will. But, in the opinion of the Arbitrator, the cost figure is only important to the extent that it shows that the District has the ability to meet the Association's offer, and cannot, as discussed above, be considered in determining the value of the package offered to the employees.

In determining the reasonableness of the two offers, the Arbitrator notes, although the parties are not in dispute, that their first year offers provide for a total package increase of 6.25%. Undoubtedly, there is good reason for the 6.25% increase, but the fact remains that it is higher than the average settlements throughout the State for 2000-2001. When combined with the second year offers by the parties, the Arbitrator finds the Board's two year offer totaling 11.4% to be more reasonable than the Association's two year offer of 13.26%-20.09%.[10] Both offers exceed the average settlements and the CPI. Also, importantly, the Association's quid pro quo of 10 cents per hour is incorporated in its offer of 13.26%-20.09% and, as such, is insufficient.

Lastly, the District is not without its financial problems. The District is faced with declining student enrollment and revenues. The District has attempted to reduce its expenditures to meet its needs. Moreover, this is not a case where the Employer is trying to meet its

[10] The 13.56% is based on 4-5 employees taking advantage of the TSA and the 20.09% on all nine opting for the TSA.

budgetary problems only through its negotiations with this unit[11] and/or cuts within the unit. For instance, in the teachers unit one guidance counselor position was eliminated, a Title I teacher's contract was reduced by 10%, and one special education teacher who resigned will not be replaced. Further, none of the administrators received a salary increase in 2001-2002, the curriculum director no longer receives health or dental insurance (the position has since become vacant and not filled), and another's hours were reduced from 25 hours per week to eight hours per week.

Layoff and Seniority Proposals

The parties' present contractual language provides that full layoffs will be by seniority within job categories. The Association's proposal extends the same seniority rights to employees in the event of reduction in hours, a 14-day notice of same, and the Association's right to a seniority list upon request. The District proposes to keep the language as is.

The Arbitrator notes that the Association's proposal is mainstream and typical in bargaining units of this type. Internally, the teachers have a seniority based layoff provision, including reduction in hours, by department. The instant proposal by the Association requires reduction of hours by seniority within a job category. If anything, in the opinion of the Arbitrator, reduction of hours by seniority in the teacher unit would be more problematic for the District than the instant support staff unit. Furthermore, the Arbitrator finds nothing onerous

[11] The Board settled a two-year contract with the teachers for 4.2% and 3.8%. Here, using the same costing method, the Board's offer is 6.25% the first year and 5.24% the second year.

about the Association's proposal for the Employer. There has been and it appears from the record, and admittedly by the Employer, that further reduction of hours is a distinct possibility in the future. Employees' concerns over this possibility is certainly understandable and speaks to the need for such a proposal. Under the circumstances, a proposal to protect employees in such situations is reasonable regardless of how layoffs and reductions in hours has been handled in the past. The Association's proposal meets the need.

Also, a 14-day notice requirement is reasonable as is providing the Association with a seniority list. The Arbitrator notes that there is no limit on the number of seniority list requests that can be made, but the test of "reasonableness" can be applied.

With respect to external comparables, there is support for the positions of both parties. However, as discussed earlier with respect to the TSA issue and for the same reasons, the Arbitrator finds internal comparability more persuasive. As discussed earlier, the Association's internal comparable is the teacher unit and the Association's proposal is consistent with the teacher contract provision.

All in all, the Arbitrator finds the Association's proposal the more reasonable of the two.

Dental Insurance Proposal

The Association and the District both rate this issue as least significant and not one that will determine the case. I agree. Nevertheless, it bears discussion.

The dental insurance issue, to some degree, comes down to a status quo issue.

Both parties propose to delete the side letter, Appendix B, that requires the Board to pay dental insurance premiums for school year employees during the summer months. However, the Association also proposes to delete contract language, Article XX, B., 2 which in part states that

school year employees ". . . will be responsible for the value of 100% of the premium for the months of June, July and August." In effect, the Association's proposal continues the side letter requirement that the Board pay school year employees dental insurance during the summer months. It is noted that if indeed the side letter was intended to continue, as argued by the Association, then it should continue into the next contract and not be costed against the package. Conversely, if the side letter was intended to be just that, as argued by the District, with a termination date concurrent with the contract, then to continue such benefit would constitute a change in the status quo requiring a sufficient quid pro quo.

At the outset the Arbitrator notes that the side letter by its own terms was to expire June 30, 2000. In pertinent part it reads as follows:

> Notwithstanding, Article XX, Section B, Paragraph 2, and Article XXV, the Board agrees to pay the full (proration to be based on Article XX, Section B, paragraph 1, b.) dental insurance premium for all employees who were enrolled in the District's dental insurance program on September 1, 1999. Such payment shall be retroactive to July 1, 1999 and be paid until June 30, 2000.

The side letter language is clear and unambiguous and can only be read to terminate on June 30, 2000. The fact that the Board continued summer payments in 2000 and 2001 is not significant in that it felt it was maintaining the dynamic status quo during negotiations for a successor agreement. Because the side letter is so clear and unequivocal, any claimed understanding contrary to the language or amendment to the language, must be established by a showing of proof that both parties unequivocally intended the language, despite its expiration date, to continue. There is no evidence to establish such an understanding. The Association contends that the benefit was put in a side letter instead of changing the Insurance Benefits article of the contract which provided otherwise, because it allowed for more flexibility in future

bargains. There is, however, no evidence whatsoever that this was a mutual understanding.

As noted earlier, the fact that the Board continued payments beyond June 30, 2000, is not evidence that the Board intended the side letter to continue as part of the successor agreement. Clearly, the Board made payments in the summers of 2000 and 2001 to maintain the dynamic status quo, and not as a matter of contract. They were maintaining the status quo at the time of expiration. Thus, the proposed deletion of the side letter by the District is not a change in the status quo. However, the Association's deletion of Article XX, B, 2.a., of the contract and, in essence, continuing the side letter is a change in the status quo. Thus, it is the Association that bears the burden of establishing the need for changing the status quo and a quid pro quo.

In analyzing this issue with internal and external comparables, the evidence, with respect to external comparables, establishes that districts vary greatly on this issue. As such, comparisons are very difficult to make. In the final analysis support, in various ways, can be found for both parties. For instance, while some districts pay in the summer months, they on an annual basis, pay less of the premiums than the Rio District.

With respect to internal comparables, they favor the Association. Notwithstanding same, the Board argues that the Association has not shown a need for the change and it therefore must be denied. The Arbitrator notes, however, that the Board itself recognized the need for summer months payment, as evidenced by the side letter, albeit for a specific term.

However, it still remains that the Association is seeking to change the status quo and must cost the benefit in its package. This is to because the Board, in agreeing to the side letter providing for a benefit with a specific end date, did not anticipate an on-going cost. The Association's proposal to delete current contract language and incorporate the payment of dental insurance during the summer months, does just that and constitutes a new benefit. As such it

must be costed against its package. Whether it is viewed as a change in the status quo or otherwise, in the end it must be costed and be considered in determining the reasonableness of the Association's total offer.

All in all, this issue is pretty much a toss up because while there may be a need for extending this benefit, it has not been accounted for in the Association's total package.

Summary and Conclusion

There is no question that of the issues in dispute, the TSA issue is the most important. The Arbitrator is convinced that had the parties been able to resolve the TSA issue, they would have, voluntarily, reached agreement on a successor agreement on all items, including the other issues in dispute in this proceeding. Thus, the Arbitrator finds that while the other two items in issue are not unimportant, the financial impact of the TSA issue is such that it, alone, is determinative in this case. Thus, while the Arbitrator has found the Association's proposal on reduction in hours, notice of same, and the right to a seniority list to be more reasonable and its dental insurance proposal equally reasonable to that of the Board's, the Board's final offer is selected on the basis of its position on the TSA issue.

As discussed above, this is not to say the Association's offer is not otherwise warranted, but the increase proposed by the Association with an insufficient quid pro quo is simply not as reasonable as that proposed by the Board, especially given the revenue limitations faced by the District and their good faith attempts to meet the budget requiring layoffs and program cuts.

Having considered the statutory criteria, the evidence and arguments presented by the parties, the Arbitrator, based on the above and foregoing, concludes that the offer of the Employer should be favored over the offer of the Association, and in that regard the Arbitrator makes and issues the following

AWARD

The Employer's offer is to be incorporated in the 2000-2001 – 2001-2002 two year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 30th day of October, 2001.

Herman Torosian, Arbitrator