

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In The Matter Of The Petition Of

**DISTRICT COUNCIL 48, AFSCME,
AFL-CIO LOCAL 2 (CUSTODIAL UNIT)**

To Initiate Interest Arbitration
Between Said Petitioner and

FRANKLIN SCHOOL DISTRICT

Case 70, No. 59227
INT/ARB-9091
Decision No. 30128-A

APPEARANCES:

Attorney Donna L. Billman, at hearing and on post-hearing briefs, and Attorney Kenneth J. Murray at hearing, Podell, Ugent & Haney, S.C. 611 North Broadway, Suite 200, Milwaukee, Wisconsin 53202-5004, on behalf of District Council 48, AFSCME, AFL-CIO Local 2 (Custodial Unit).

Attorney Mark Olson, Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, on behalf of Franklin School District.

District Council 48, AFSCME, AFL-CIO Local 2 (Custodial Unit), hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate interest arbitration pursuant to Section 111.70(4)(cm) of the Municipal Employment Relations Act with respect to an impasse between it and the Franklin School District, hereinafter referred to as the District. The undersigned was appointed as arbitrator to hear and decide the dispute, as specified by order of the Wisconsin Employment Relations Commission, dated June 11, 2001. Hearing was held on November 30, 2001 at which time the parties advised that they had resolved certain issues and that the remaining unsettled issue would be deferred until a later date. The parties requested that the undersigned issue a Consent Award, which Award was issued on December 3, 2001. The remaining issue was heard on September 26, 2002, where the parties were afforded full opportunity to present testimony, evidence and argument. Post-

hearing initial and reply briefs were exchanged by March 1, 2003, marking the close of the record.

PARTIES' FINAL OFFERS

A. FINAL OFFER OF THE UNION

ARTICLE 16 – HEALTH AND DENTAL INSURANCE

The board shall provide two (2) additional years of Retiree Health Insurance:

- a) The employee, upon retirement, shall pay two percent (2%) of the cost of the premium.
- b) The premium cost for employees shall be frozen at the end of the third year at the ninety-eight percent (98%) level.
- c) The eligibility shall be that for each additional year of Board-paid insurance, the employee must work an additional five (5) years beyond twenty (20) years.
- d) The Union proposed that this item from Board Policy 4172, which affects the Custodial Unit, be incorporated into the contract.

Sick leave shall be granted at the rate of one (1) day per month with full pay. A day shall be considered as equal to the number of hours per day that an employee is normally scheduled. Sick leave shall be cumulative to one hundred twenty (120) days with severance pay granted for all unused days in excess of fifty (50) days at seventy-five percent (75%) of the employee's daily rate in effect at the time of retirement.

- e) At the employee's option the employee may cash out their sick leave, up to one hundred twenty (120) days, as provided above, or they may use the amount of days in their account to pay for the employee's premium share of health insurance after retirement.

The Union agrees to all previously agreed to Tentative Agreements.

B. FINAL OFFER OF THE DISTRICT

The District does not propose any changes to the Retiree Health Insurance Provision of Article 16 or Sick Leave pay out. The current language of Article 16 states in pertinent part:

If an employee retires from employment with the District prior to age 65 and before such employee qualifies for Medicare, the District shall allow the retiree to remain in the group plan for health insurance coverage as provided for regular employees. The District shall pay the full premium for employees between the ages of 57 through 64 for a maximum period of three (3) years. If an employee retires at age 65 or older, the District shall pay the employee's share of Medicare Extended 365 day coverage for a maximum of three (3) years. To be eligible for this benefit, an employee must have twenty (20) years of active service to the District.

The District pays 98% and the employees pay 2% of the health insurance premium.

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), 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 performing similar services.
- e. Comparison of the wages, hours and conditions of employment 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 other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken 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.

POSITION OF THE UNION

A. INITIAL BRIEF

The Union first notes that the “Greatest Weight” factor under the statute does not enter into the analysis. The “Greater Weight” factor can also be disposed of since the economic conditions in the Franklin School District are better than in many other communities. The remaining statutory factors are therefore controlling.

The Union asserts that its proposal is not a fundamental benefit change; rather, it is only a modification to an existing benefit. There is no reason to provide a quid pro quo, since the Retiree Health benefit already exists and is a long standing, established previously bargained for benefit. The proposal simply replicates the District’s provisions for the Teachers and Administrators. If a quid pro quo is required, the Union submits that one is included because it freezes costs at the end of the third year and requires additional years of service to be entitled to the benefit.

The parties have not entered into interest arbitration before, and, therefore, no established set of comparables exists. The parties agree to the “Most Comparable” group and the “Regionally Comparable” group of comparable districts. The only difference is in the grouping the Union titles “Generally Comparable” and the District titles “Extended Comparables.” The District includes Germantown in this group, while the Union includes Whitefish Bay.

The Union argues that its proposal is supported by the need of retirees to have additional coverage, especially if the retirement at 57 option is to have meaning. The affected employee’s pension plan allows for retirement at 55 with 30 years of service is

rendered useless without the ability to have Health Insurance coverage on a reasonable and affordable basis.

The District also receives the benefit of having well trained and experienced employees motivated to stay with the District. Moreover, when an employee retires, the replacement employee will be hired at a lower wage rate.

The District also needs to recognize elitist and artificial values being placed on one group of employees over another group. In suburban communities, the employment of people of color is often greater among the support personnel, and a two-tiered value system has been created. The District has a duty to strive for more equality and consistency.

The Union contends that comparable public employee contracts all provide for Retiree Health Insurance, though not identical. The internal comparables are identical, and there is a clear pattern between the Teaching staff and the Support and Maintenance personnel. The private sector is not an appropriate comparison.

The Union asserts that it cannot be assumed that an employee would retire at the earliest possible age. Costing cannot be exact because it is not known when the benefit would start and end, who would leave before the benefit would start, the value of the benefit, and the interest rate. It is impossible to accurately forecast its cost. However, that the District provides it for its Teachers and Administrators at a greater level than what is proposed here ameliorates the cost argument.

The Union's proposal is not out of sync with the benefits the District provides to others. When total compensation is considered, the District is not the lowest or the highest of the comparables.

Staff Representative Jim Burnham testified that once the Shevey grievance arbitration award was made in the Union's favor regarding vacation time pay out, the District had a problem with this proposal, when they had previously been willing to negotiate. The District insisted that the Union modify the wording in the contract to negate the award. When the Union refused, the District then was unwilling to negotiate this proposal.

The Union argues that the District's objection is not over this proposal, but rather because it lost the grievance arbitration award. The District is relitigating that dispute to attempt to "even the score." The District could have sought recourse in a different forum if it felt that arbitrator exceeded her authority.

B. REPLY BRIEF

As the District points out, approximately 25% of the comparable pool do pay more on coverage for Retirees' Health Insurance.

The Union maintains its proposal is only a modification to an existing benefit, so no quid pro quo is required. However, the Union has provided a quid pro quo with this proposal by requiring an additional five years of service for eligibility.

The Union's proposal is in line with other districts by requiring retirement at the minimum age of 57. For inexplicable reasons, the District points to St. Francis to compare and calculate the Health Insurance premiums for retirees with a hypothetical premium amount for 15 years of service. However, this is not an applicable comparable when talking about the retirement age of 57, which the Union agrees is the appropriate retirement age.

While the District correctly notes that the Union has offered to cap the contribution for premiums at 98%, it incorrectly asserts there is no other quid pro quo. The District ignores the additional five years of service each employee would have to provide to be eligible for the extended retiree health benefits. The value of an additional five years of service provided by experienced employees is the quid pro quo.

The only way a retiree can claim the additional Health Insurance coverage would be by working an additional five years. The District, however, assesses no value for an already experienced worker providing five additional years of service.

Though the District asserts the Union has not demonstrated a need, the Union showed there was a need because employees contemplating retirement must have affordable and reasonably contained health care costs.

The Union is simply trying to extend the already existing health coverage in exchange for the requirement of additional years of service.

Although the District argues it is not retrying the Shevey grievance, the District is attempting to cloud the issue when it asserts the Shevey award added a “far- reaching unanticipated financial burden.” To claim that the Shevey award resulted in another non-negotiated financial benefit denies that the existing contract was violated, when it was simply being enforced. The award was premised upon already negotiated contract language. Further, to argue that the current three years of Retiree Health coverage is generous belies the District’s admission that 75% of its comparables already receive that benefit.

The Shevey award should be considered as separate from this interest arbitration proceeding. The Shevey award is a current financial cost; however, the Union is

proposing a cost which will not be borne by the District for at least seven years. That should be a significant consideration by the arbitrator.

Though the District argues it cannot be required to commit to a long-term expense which cannot be precisely quantified, the District is already doing so with its Teachers and Administrators. The District must commit to many long-term expenses. It belies any semblance of reason to claim this proposal is fiscally irresponsible, as the District contends. Failure to plan would be irresponsible; however, to merely extend an existing benefit with capped limits or costs would appear to be the fiscally responsible thing to do.

In summary, the Union submits it is not trying to modify the Sick Leave provision in place, but rather to codify the Board policy into the bargaining agreement. The Custodial Retiree Health Insurance offer is inconsistent with that of the Teachers and Administrators. The District ignores the internal comparable pattern. The District also does not offer any historical context. The District attempts to curtail the coverage of Retiree Health Insurance for the Custodial unit. The Union therefore asks that its proposal be adopted into the contract.

POSITION OF THE DISTRICT

A. INITIAL BRIEF

The District first addresses the appropriate comparable groups. The District notes that the only differences are with respect to proposed groups of generally comparable or extended comparable groups. However, the District recommends that including such additional comparables for this analysis would be too broad and unwieldy for meaningful comparison. Therefore, the District requests that the most comparable and regionally

comparable districts only be used: Greendale, Greenfield, Whitnall, Cudahy, South Milwaukee, Oak-Creek Franklin, and St. Francis.

Turning to external comparable Retiree Health Insurance, the District notes that only Greenfield provides more than three years of Retiree Health Insurance with 95% of the premium paid by the district. South Milwaukee may provide more than three years, depending upon the age at retirement. The remaining external comparables provide a range of coverage equal to or less than the District's Retiree coverage.

The District asserts that the Union has offered no evidence that supports or justifies its position. Nor did it provide evidence of any quid pro quo for the Retiree Health Insurance proposal.

There has been no demonstration, the District maintains, for the status quo to be altered. Though the Union may want the additional benefit, the current language is consistent with the majority of the area comparables.

Eligibility for retirement and Retiree Health Insurance varies among the external comparables. Only St. Francis permits retirement before age 57; however, it only contributes a certain amount of the retiree's unused Sick Leave, depending upon the years of service. The Franklin School District provides for 100% District paid premium along with a conversion of Sick Leave pay out. The District pays up to 70 days of Sick Leave conversion at 75%. The District submits that this provision extends "free" Retiree Health Insurance well beyond three years. There is no comparable support for the Union's proposal to extend the insurance benefits for two additional years.

The District asserts that when arbitrators consider a change in the status quo, they consider whether the party has demonstrated a need for the change, has provided a quid

pro quo, and has met the criteria by clear and convincing evidence. Here, the Union has not demonstrated a need for the change or a quid pro quo. The Union may argue that there is a quid pro quo with the 98% cap. However, the District responds that the status quo is at 0% for the two additional proposed years of coverage, so the 98% cap cannot be construed as a quid pro quo.

Although the proposal also increases the years of service requirement to an additional five years for each additional year of proposed Retiree Health Insurance, the District does not believe this is a trade off either. The District notes that requiring additional years of service to earn a new benefit does not have any cost containment value. The test for a quid pro quo, the District submits, is whether there is an exchange of a similar or dissimilar benefit of the same or greater value. The District maintains that the Union did not offer anything in exchange for the proposed new benefit.

Accordingly, the District submits that without a demonstrated need for the change or a quid pro quo, the Union has not met the clear and convincing burden that is required with such a proposal. The District argues that these standards applied by arbitrators when considering a proposed new benefit have been well established. Because the Union has failed to meet the required tests, its proposal should be rejected.

The Shevey grievance arbitration award ruled that ten years of past District practice of paying a terminating employee vacation based upon vacation earned during a fiscal year was to be set aside. The award requires that the District must pay a full year's vacation to a terminating employee regardless of whether the vacation had been earned. That created an unprecedented and expensive new benefit for retiring employees which

has never been negotiated. The District asserts that Dr. Marie Glasgow's testimony demonstrates that it created costly and long-term effects on the District.

The District argues that the cost of the Shevey award must be considered when assessing the parties' final offers. To ignore the substantial new cost would be tantamount to ignoring the statutory criteria. That award has a negative effect on the financial condition of the District. The District's final offer is based upon and impacted by the Shevey award. The District contends that the new post-retirement benefit which resulted from that decision makes it impossible to impose even more post-retirement costs as the Union proposes.

District Exhibit 19, as corrected, delineates the extensive cost to the District of the current post-retirement benefits. It also calculates future retiree costs under the Union's proposal. The District contends that, with an assumed and understated 8% premium increase, the costs will increase by \$2,000,000 for the additional two years of coverage. The District maintains the Union's proposal would add another retirement benefit above that required by the Shevey award without a quid pro quo. The District believes that the arbitrator must consider all costs faced by the District.

While the District assumed an 8% Health Insurance premium increase, the District argues that is modest, based upon past experience here and around the country. The total cost to the Shevey award is a valid concern, the District argues. The Union's proposal reveals that the Union apparently has no interest in reducing the already escalating Health Insurance costs. The Union's proposal under any theory is arbitrarily unacceptable.

Because of the 1993 State-mandated revenue caps, school districts are under financial constraints; moreover, citizens around the State have suffered because of the economic slowdown. Many taxpayers do not enjoy Retiree Health Insurance. District Exhibit 17 demonstrates how Milwaukee-area job losses and plant/business closings are under economic distress, highlighting the irresponsibility of the Union's offer.

An improvement of Retiree Health Insurance is not acceptable at this time. Benefit costs must be pared down, not increased. Such an expensive proposal is indefensible and should not be imposed.

The Union is attempting to minimize the cost impact of its offer by claiming that, because it will not occur for years, the District can prepare for it. Such a long-term expense would have a greater impact and be fiscally irresponsible. The District responds that it would be more reasonable for the District to seek sharing of the insurance costs by employees, given the spiraling insurance costs. Arbitrators believe that employees now must share in the costs. The District believes that it is significant that it is not seeking that employees begin sharing the premium costs.

The District suggests that the Union's exhibits on assumed projected costs are misleading, for they do not include all of the pertinent information. The Union is attempting to downplay the real cost increases.

When the cost of living criteria is considered, the District's exhibits demonstrate that the agreed-to wage increases favor its final offer. With total package costs, the increases are far above the cost of living, the District maintains.

The District asserts that internally, Food Service employees do not have any Retiree Health Insurance and the Secretary/Clerk/Educational Assistants have three years

of post-retirement Health Insurance. However, the Teachers should not be considered as an internal comparable. Teachers are required to have a Bachelor's degree and a State Teacher certification. That is not true of Custodians. Teachers often take work home at night. Teachers must maintain their certification and a current license. Custodians are not required to take responsibility for a student's education as Teachers are.

While the District contends it does not undervalue Custodians, nonetheless, Teachers are professionals. Moreover, Custodians are not subject to the QEO law, like Teachers. There are virtually no pertinent similarities between Teachers and Custodians.

As Union Exhibit 14 shows, there is a substantial salary difference between a beginning Teacher and a long-term Teacher with a Master's degree and 45 credits. There is a substantial saving with replacing a retiring Teacher with a new hire. However, there is only a difference of \$2.85/hour between starting and a top-paid Custodian. The District realizes virtually no financial saving when a Custodian retires and is replaced with a new hire.

Though the Union claims its offer should prevail because of fairness and equity, that is not one of the statutory criteria. The District believes that the Union is relying on claimed fairness and equity arguments because it does not have any other grounds. The District responds that the Custodians are already being treated fairly and equitably. The Custodians' benefits are already equal to or superior to all suburban Milwaukee area school districts. Each bargaining unit is distinct and each has distinct costs and benefits.

While the Union argues that there are already quid pro quos, the District replies, as previously noted, that there are no such quid pro quos. Moreover, the Union contends

its offer is a “win-win” proposal; however, the District submits there is no basis for the claim.

The District further contends that its exhibits show the Custodians are near the top in wages and the percent wage increases are also above average. The evidence demonstrates that they do not lag behind. Arbitrators generally consider overall wages and benefits. While this case does not revolve around wages, overall compensation and benefits should be considered. The Custodians’ wages and benefits package are more generous than the comparables.

B. REPLY BRIEF

In its response to the Union’s arguments, the District first contends that the Union has improperly characterized Franklin as an upper middle class community, without any supporting evidence. The District believes such an assertion is purely self-serving. Rather, the District responds that District Exhibit 14 demonstrates that the District’s projected increases through 2006-2007 will exceed the State’s current revenue cap with a projected shortfall of \$2,894,027 by that school year. The District further argues that the greatest weight and greater weight factors require the arbitrator to consider the projected shortfall.

While the Union asserts that no quid pro quo is needed because there is already a retirement benefit in the contract, this proposed retirement benefit is not in existence. Any such change requires a quid pro quo. The Union’s claimed quid pro quo of allowing the District to freeze its cost at the end of the third year and requiring employees to have additional years of service to allow for the new benefit is without merit, for there is an

increase in the Retiree Health Insurance benefit. Nothing is being offered by the Union as a quid pro quo, and the status quo must remain in effect.

The District further responds that the cost of the proposal is prohibitive and unknown. Though the Union claims notwithstanding, retirement costs will increase significantly in the long run. Two additional years of coverage equals two years of additional costs to the District.

While the Union argues no set of comparables exist, the District's proposed pool of suburban south shore school districts has been used by arbitrators for over twenty years. That group of comparables fully supports the District's position.

The Union asserts that retirees need the additional health coverage; however, the District asks why that need would cease at age 61, assuming a Custodian retires at age 57 with five years of Health Insurance coverage? Currently, Custodians receive three years of coverage, which is superior to most comparables.

The Union claims that when there is a new hire after a retirement, the lower wage rate results in a savings to the District. The District responds that after the first year, the wage differential diminishes, with no savings resulting after four years. That wage savings is more than offset, the District argues, by the extended post-retirement Health Insurance cost. This Union argument is even more hollow, the District maintains, when the increased cost from the Shevey award is considered.

The Union also alleges the District has set up a two-tiered value system, implying that race is a factor. However, the Union has not answered any of the appropriate questions in order to make such an allegation.

Contrary to the Union's assertion, the internal comparable units are the Secretary/Clerk/Educational Assistant and the Food Service units. Teachers are not an appropriate comparable, as other arbitrators have noted.

Though the Union notes that the greatest bulk in the cost under its proposal will not occur for several years, that factor supports the District's position. It is not responsible to agree to an unknown escalating cost. District Exhibit 19 underestimates the projected cost at over \$2,000,000. It is more likely to far exceed that projection, the District argues.

The District disagrees that it is simply trying to have another "kick at the cat" with respect to the Shevey case. The District had never agreed to that increased cost and those additional costs must be considered. The Shevey award during the pending mediation proceeding falls within the meaning of changes during the pendency of the proceedings, as required under Section 111.70(4)(cm)7r(i), Stats. The Union would simply have the District ignore cost consequences. The Union's proposal would burden the District with costs on top of those imposed by the Shevey award.

The District asserts there is no comparable support, demonstrated need, nor statutory justification for the Union's proposal. The District therefore concludes that it believes its offer is more reasonable and should be adopted by the Arbitrator. The District cites arbitral authority in support of its position.

DISCUSSION

APPROPRIATE EXTERNAL COMPARABLES

This is the parties' first interest arbitration. Consequently, the group of external comparables has not previously been established. Both parties propose identical "Most

Comparable” districts (Franklin, Greendale, Greenfield, and Whitnall) and “Regional Comparable” districts (Cudahy, Oak Creek-Franklin, South Milwaukee, and St. Francis). Both parties also propose a generally identical list of “Generally Comparable” (the Union’s term) or “Extended Comparables” (the District’s term) of: Brown Deer, Elm Brook, Menomonee Falls, Muskego, New Berlin, Nicolet, Shorewood, Wauwatosa, and West Allis. However, the Union would also include Whitefish Bay, while the District would instead add Germantown.

Given the nature of the dispute, it is unnecessary to consider or determine the General, or Extended, group of comparables. Accordingly, as the parties have agreed, the Most Comparable districts include: Franklin, Greendale, Greenfield, and Whitnall, while the Regional Comparable districts include: Cudahy, Oak Creek-Franklin, South Milwaukee, and St. Francis.

ANALYSIS

A. Section 111.70(4)(cm)7 “Factor given greatest weight,” and Section 111.70(4)(cm)7g. “Factor given greater weight,”

Section 111.70(4)(cm)7 “Factor given greatest weight,” requires the arbitrator to give greatest weight in the decision-making process to imposed revenue and expenditure limits, while Section 111.70(4)(cm)7g. “Factor given greater weight,” requires the arbitrator to give greater weight to the economic conditions of the municipality than to those listed under subdivision 7r. The District contends these factors apply because of a projected budgetary shortfall. Absent more specific, concrete evidence that such a projected budgetary shortfall will transpire, the undersigned does not find that possibility

alone to control the result in this matter. The remaining statutory criteria must therefore be considered.

B. RETIREE HEALTH INSURANCE

The Union proposes to have retirees' Health Insurance premiums paid at 98% by the District for an additional two years beyond the current three years of coverage, if the employee works an additional five years beyond twenty. When arbitrators are presented with proposed changes from the status quo, they generally consider the following criteria:

1. Has the party proposing the change demonstrated a need for the change?
2. If there is a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change?
3. Has the party demonstrated such criteria by clear and convincing evidence?

To change the status quo, the arbitrator must be convinced of the need for the change. As the statutory framework reflects, stability, or the status quo, in the bargaining relationship has some high priority.

Much of the dispute focuses on whether there has been a quid pro quo for the Union's proposal. The Union argues in part that, because there already is a Retiree Health Insurance provision, there is no change from the status quo and therefore there may not be a need for a quid pro quo. However, the Union's proposed improvement in Retiree Health Insurance coverage is an additional, new Retiree benefit, and thus would change the status quo. Accordingly, the above-cited analysis applies.

The Union further contends that a need for the change has been demonstrated because employees who are about to retire face large health care costs and thus Health Insurance is essential. While no one can argue that Retirees will likely face increased health care costs, that is the case for all Retirees. The best measure for how like-situated Retirees are protected from health care costs is to apply a comparability analysis, i.e., whether external and internal comparables have a similar benefit.

The following table, summarized from the parties' exhibits, is helpful in reviewing external comparables' Retiree Health Insurance coverage.

<u>RETIREE HEALTH INSURANCE</u>	
<u>EXTERNAL COMPARABLE</u>	<u>YEARS OF COVERAGE OF DISTRICT PROVIDED HEALTH INSURANCE</u>
Cudahy	3 years of coverage until age 65.
Greendale	Up to 3 years of coverage.
Greenfield	Various – including 4 years of coverage plus up to 2 years of additional time based upon unused Sick Leave.
Oak Creek-Franklin	3 years of coverage.
South Milwaukee	Same coverage as active employees up to age 64.
St. Francis	Retirees must pay own premium.
Whitnall	3 years of coverage (or a Sick Leave conversion plan).

This summary reveals that most of those districts provide three-year employer-paid Health Insurance for retirees. The external comparables thus strongly support the status quo.

Turning to the internal comparables, the Union points to the Administrators and Teachers who have Retiree Health Insurance coverage. However, Administrators are not covered by a collective bargaining agreement. The prevalent view among arbitrators is that only unionized groups of employees should be considered as appropriate comparables, because the non-unionized employees do not have the right to negotiate their wages, hours, and working conditions. The Administrative employee group is therefore not considered as an internal comparable.

With respect to the Teachers, they are under a somewhat different statutory framework that has its own set of requirements. There are, therefore, some limitations in comparing the Teachers to the Custodians.

The Food Service unit does not have a provision for Retiree Health Insurance coverage. With the Secretarial/Clerk/Educational Assistant unit, there are three years of Health Insurance coverage with twenty years of service and retirement at 55 or later.

The internal comparables therefore favor the District's position of the status quo for Retiree Health Insurance.

The Union further asserts that a quid pro quo is provided because employees must have an additional five years of service for the new coverage to be triggered. Generally, a quid pro quo requires the proposing party to give up something of essentially like value from the status quo in return for the proposed new provision. The five-year requirement the Union refers to is a provision in its proposed, new benefit. While the requirement

may make it more difficult for an employee to trigger the new benefit and thus less costly to the District, that provision is not a “give back” from the status quo.

Because the external and internal comparables favor the District on the Union’s Retiree Health Insurance proposal, the District’s proposal of retaining the status quo is found more reasonable.

C. SICK LEAVE PAY OUT

The status quo under the Custodians’ contract does not provide for Retiree Sick Leave pay out. The Union is proposing the incorporation of Board Policy No. 4172 into the contract. That policy provides for the pay out of all unused sick days in excess of 50 at 75% of the employee’s daily rate in effect at the time of the retirement. The pay out may be applied toward Health Insurance premiums. Because the contract does not currently include such a provision, a similar analysis applies with this proposed change from the status quo.

The following table, summarized from District Exhibit 1, Tab 8d, is helpful in reviewing external comparable Sick Leave pay out when an employee retires:

<u>SICK LEAVE</u>	
<u>EXTERNAL COMPARABLE</u>	<u>SICK LEAVE PAY OUT</u>
Cudahy	50 % paid out with 15 years of service; 75% paid out with 20 years of service – both payable upon retirement or resignation.
Greendale	No provision.
Greenfield	After 90 day maximum reached, employees may accrue 10 additional Sick Leave days to be placed in escrow account earned at 50% rate. May only be used in employee’s last year prior

	to retirement and cannot be used to purchase Health Insurance.
Oak Creek-Franklin	Days in excess of 60 days will be paid out at satisfactory termination of employment or retirement. Days in excess of 90 are credited to employee for severance pay purposes to maximum of 30 days.
St. Francis	50% paid out at retirement (minimum age 55) with 10 years' service; 100% paid out at retirement at age 55 with 15 years of service.
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South Milwaukee	Paid upon retirement to maximum of 50 days.
Whitnall	Upon retirement, may be converted to pay for health or dental insurance premiums.

All of those districts, but for one, have some form of Sick Leave pay out provision upon retirement. The external comparables support the Union's proposal on Retiree Sick Leave.

The Food Service unit and the Secretary/Clerk/Educational Assistant unit both have a 75% Sick Leave pay out upon retirement for days in excess of 50, capped at 70 days. The internal comparables thus also support the Union's Sick Leave pay out proposal. In addition, the Union's proposal would incorporate an existing Board policy.

Because both the external and internal comparables favor the Union's Sick Leave pay out proposal and the proposal incorporates an existing Board policy, that proposal is found more reasonable.

CONCLUSION

Because the Retiree Health Insurance proposal is the issue that has the greatest economic impact and was the central focus of the parties, that proposal drives the result.

While the Union's Sick Leave proposal is found more reasonable, the District's position to continue with the status quo on Retiree Health Insurance is favored. Consequently, the District's Final Offer shall be adopted here.¹

Having considered the statutory criteria, the evidence and arguments of the parties, the undersigned, based on the above and foregoing, concludes that the final offer of the District is more reasonable and therefore should be favored over the offer of the Union. In that regard the undersigned makes and issues the following:

AWARD

The District's final offer shall be incorporated into the July 1, 2000 – June 30, 2001 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 in Madison, Wisconsin, on April 14, 2003, by

Andrew M. Roberts, Arbitrator

¹ During the mediation process, the parties received the Shevey arbitration award, which ruled in favor of the Union. The District contends the award allowed for vacation pay out when an employee retired that was contrary to the parties' practice and it had an unexpected economic impact that must be considered in this proceeding. The Union responds that the grievance arbitrator was simply upholding the terms of the contract and it should not be considered further. While the Union is correct that the District is bound by the award, the District also may consider its financial impact. However, neither of the parties' assertions was determinative here.