

BEFORE THE ARBITRATOR

In the Matter of the Petition of

OCONTO UNIFIED SCHOOL DISTRICT

To Initiate Arbitration Between Said  
Petitioner and

OSSA/BOOKKEEPERS, PARAPROFESSIONALS  
AND SECRETARIES

Case 31

No. 60380 INT/ARB-9393

Decision No. 30295-A

Appearances:

Godfrey & Kahn, Attorneys at Law, by Mr. John A. Haase, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, on behalf of the Employer.

Mr. Thomas G. Fineran, Organizer/Consultant, Collective Bargaining Advocacy & Affiliate Relations, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, on behalf of the Association.

ARBITRATION AWARD

Oconto Unified School District, hereinafter referred to as the District or Employer, and OSSA/Bookkeepers, Paraprofessionals and Secretaries, hereinafter referred to as the Union, met on several occasions in collective bargaining in an effort to reach an accord on the terms of an initial collective bargaining agreement. Said agreement covers all regular full-time and regular bookkeeper(s), part-time administrative assistants and paraprofessional employees, but excluding all supervisors, professional employees, managers, confidential employees, casual employees, and all other employees whose job description does not fall under the above-named categories. Failing to reach such an accord, a petition was filed on September 20, 2001, 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 25, 2002, 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 April 11, 2002, 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 May 24, 2002, at Oconto, 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 July 28, 2002. The record was closed as of the latter date.

#### THE FINAL OFFERS:

The Association and District final offers are attached and identified as attachment "A" and "B," 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, the District presented one witness, District Administrator Dr. Sara Croney, who testified with regard to the District's budget and financial condition.

Oconto School District, with a student population of approximately 1,325, is a member of the Packerland Athletic Conference. The other schools (and population) in the Conference are the following: Algoma (706), Denmark (1,680), Gibraltar (693), Kewaunee (1,154), Luxemburg-Casco (1,853), Sevastopol (669), Southern Door (1,327) and Sturgeon Bay (1,440). Oconto School District is in the eastern-most sector of Oconto County and not contiguous to any of the other Packerland Conference schools. It is contiguous to the Oconto Falls (1,992), Lena (471), Coleman (779) and Peshtigo School Districts (1,100).

There are two other bargaining units in Oconto School District: teachers (114 employees) and custodial/food service (24 employees). There were 20 employees in the instant bargaining unit of bookkeepers, secretaries/paraprofessionals, during the term of this contract. While the teacher unit is an established unit, this is the initial contract for the Bookkeepers, Administrative Assistants/paraprofessionals and the Custodial/Food Service first contract was for the term 1999-2001.

Of the 20 employees in this unit, 8 (7 Secretarial and 1 Accounts/Payable Clerk) work 2,096 annual hours and 12 (Paraprofessionals) work between 480 and 1,380 annual hours.

#### THE FINAL OFFERS:

The collective bargaining agreement in issue represents the parties' initial contract. Numerous negotiation meetings were held during which time the parties resolved a substantial number of issues. The parties submitted final offers on the following remaining issues. (They are accurately summarized by the District in its brief, as follows):

SUMMARY OF FINAL OFFERS		
CONTRACT PROVISION	BOARD'S FINAL OFFER	UNION'S FINAL OFFER
SECTION 5.02 – DEFINITION OF EMPLOYEES AND EMPLOYMENT STATUS	Definition for full-time parapros is a threshold of <b>2000</b> or more calendar hours.  Definition for part-time parapros is a threshold of less than 2000 calendar hours.	Definition of full-time parapros is a threshold of <b>1000</b> or more calendar hours  Definition for part-time parapros is a threshold of less than <b>1000</b> calendar hours.
SECTION 5.05 – CASUAL EMPLOYEES DEFINITION	Should a position exceed <b>120</b> work days, the position will automatically become a regular bargaining unit position subject to the job posting requirements of this Agreement.	Should a position exceed <b>60</b> work days, the position will automatically become a regular bargaining unit position subject to the job posting requirements of this Agreement
SECTION 7.01 – SENIORITY DEFINITION	Requires that seniority will be <b>reestablished if movement occurs between classifications</b> (i.e., bookkeepers, administrative assistants and paraprofessionals	No restrictions. <b>Seniority is continuous and uninterrupted.</b>
SECTION 7.02 – LOSS OF SENIORITY	Inclusion of <b>being absent from work for 3 consecutive days with-out prior approval.</b>	No language.
SECTION 7.02 – LOSS OF SENIORITY	No language.	Requires the Board to <b>notify after layoff by registered mail, return receipt requested.</b>
SECTION 9.02 – PAY POLICY	Employees shall be paid <b>according to District policy.</b>	Employees shall be paid <b>every two weeks.</b>
SECTION 12.01 – HEALTH INSURANCE	The District shall pay 90% of the premium <b>for regular full-time employees.</b>	The District shall pay 90% of the premium for <b>regular full-time employees and for regular part-time employees (pro-rated based upon hours worked).</b>
SECTION 12.01 – HEALTH INSURANCE (PAY)	No language.	<b>Every September, parapros shall have the opportunity to accept or reject health and dental insurance. If the employee rejects the insurance, the monies that have been budgeted for said insurance shall be put into a fund to be used for salary increases due to employees from this union.</b>
SECTION 12.02 – DENTAL INSURANCE	The District shall pay 90% of the premium for <b>regular full-time employees.</b>	The District shall pay 90% of the premium for <b>regular full-time employees and for regular part-time employees (pro-rated based upon hours worked).</b>
SECTION 16.04 – SICK LEAVE PAYOUT	<b>The employee will be paid within 30 calendar days of his/her last day of work. If termination is for unlawful or immoral reasons, this payment is null and void.</b>	<b>Retirement payment will be made at retirement or during the first month of the next tax year at the option of the employee.</b>
SECTION 19.02 – PERSONAL LEAVE DAY	<b>Unused personal days do not accrue from one year to the next.</b>	No language.
SALARY SCHEDULES	<b>For differences between the two final offers see Appendix A and B.</b>	
SALARY SCHEDULES – LONGEVITY PAY	None.	Language providing for hourly longevity pay <b>beginning with the 2001-02 school year.</b>

## POSITIONS OF THE PARTIES:

The parties filed comprehensive, well-reasoned initial and reply briefs in support of their positions and arbitration cases in support thereof. The following is not intended to be a detailed review of the parties' arguments, but, rather, a brief general overview of their main arguments. The parties, however, should be assured that the Arbitrator has reviewed their briefs, and cases cited therein, in detail.

### Union's Position

At the outset, the Union argues that the economic conditions of the District clearly establishes that it is in excellent financial condition and has the ability to meet the costs of the Union's proposed settlement.

The Union contends that while statutory caps have negatively impacted all school districts in the state, the economic situation in Oconto is stable and the District's financial condition is good. The Union relies on the District's enrollment experience and cuts already made to support its position. Further, it argues, that with a bargaining unit of only 20 employees (during the term of the contract) their wages and benefits only account for about 2.4% of the total 2000-2001 District budget. Thus, the District is not constrained by the "greatest weight" factor in meeting the Association's offer.

### Appropriate Comparables

The Union proposes that the eight other Packerland Athletic Conference support staff units comprise the primary external comparables and that similar units in the Bay Athletic Conference comprise a set of secondary external comparables.

The Union objects to the District's comparables that add the four contiguous Districts of Coleman, Lena, Oconto Falls and Peshtigo to the primary set of comparables. Unlike the other Packerland School Districts, these districts are not similar in size, budget, enrollment and staff and, according to the Union, should be rejected. More appropriate as secondary comparables is the Bay Conference which are geographically proximate to Oconto and, while larger in size than the Packerland Conference schools, reflect the labor market travel patterns to Oconto County.

#### Internal and External Comparables

With respect to internal comparables, it is the Union's position that the District voluntarily agreed to pay 90% of the health and dental premiums for other support staff for years 1998-1999, 1999-2000 and 2000-2001. The custodians, non-represented support staff, teachers and administrators all receive same. This, it is argued, supports the Union's position. Internal consistency, it is argued, of frozen benefits not only promotes a healthy environment, but it is also a reasonable expectation. The Union contends that in other cases arbitrators so held. Internal comparables clearly outweigh external comparables.

Also, it is argued, that the health and dental insurance premium increases during and prior to the term of the contract does not justify the District's proposal. The Union recognizes the rising cost of insurance, but that the amount involved for this unit is a tiny percentage of the total budget and therefore not a sufficient reason for the Employer's definition over the Union's.

Further, the Union argues that the District has not shown a need for a change from the parties' history of providing 90% premium payment for full-time employees as defined by the Union, and pro-rated payment for part-time employees.

The District has already agreed to provide insurance benefits to kitchen staff who work 1,000 hours per year and pro-rated benefits for those working less than 1,000 hours.

The Union argues that the District's proposal to change from a 1,000 hour full-time definition for 9-month employees to a 2,000 hour full-time definition is not warranted or reasonable. The Union argues that the 1,000 hour definition is already in place with other District support personnel, i.e. custodians and food service employees, and establishes that full-time equals 2,000 hours per year for calendar year employees and 1,000 hours for school year employees.

External comparables, according to the Union, also support the Union's position. The Union analyzes each district in the conference and the secondary comparables submitted by the district and argues that some pay 100% of the premium and many pay more than 90%. Additionally, the Union's threshold hours defining full time compares well with the comparables.

External comparables, it is argued, also defines school year employees as being full time when they work 1,000 or about 1,000 hours.

Clearly, it is argued, the external comparables support the Union's offer.

### Wages

The Union acknowledges that the Union-proposed percentage increases are higher than given in other districts, but argues that there are three good reasons for same: 1) this is an initial contract and up until now the District unilaterally established wage rates; 2) a considerable amount of "catching up" is due, and 3) the District froze the wages of these employees during the last four years of negotiations.

The Union compares the parties' offers to the minimum-maximum ranges of paraprofessionals and secretaries in the Packerland Conference. The averages as compared to the District and Union offers are as follows:

### Paraprofessionals

	1997-98	1998-99	1999-00	2000-01
Average	8.24 - 11.30			
Oconto	5.50 – 10.71			
Average		8.40 – 11.26	9.09 – 11.60	9.21 – 12.10
District Offer		6.40 – 7.42	7.55 – 8.75	8.85 – 10.26
Union Offer		6.91 – 9.17	7.41 – 9.67	7.91 – 10.17

### Secretaries

Average	9.05 – 11.45			
Oconto	6.17 – 10.11			
Average		9.50 – 11.59	9.85 – 12.01	10.54 – 12.26
District Offer		9.00 – 10.43	9.70 – 11.24	10.45 – 12.11
Union Offer		9.53 – 12.19	10.03 – 12.69	10.53 – 13.19

With respect to the bookkeeper position represented by the Union, the Union contends that the District is treating the position as a clerical position. The Union argues that the evidence of past employment contracts with employees performing this work all refer to the position as Bookkeeper, Grants/Accounts Payable.

The Bookkeeper comparables in the Conference are as follows:

	1997-98	1998-99	1999-00	2000-01
Average	10.569 – 12.43			
Oconto	10.11			
Average		11.09 – 12.86	12.11 – 14.01	12.48 – 14.45
District Offer		9.00 – 10.43	9.70 – 11.24	10.45 – 12.11
Union Offer		12.51 – 14.30	13.01 – 14.80	13.51 – 15.50

It is the Union's position that when the above is taken as a whole, the Union's offer is much closer over the three-year period to area comparables for all of the job classifications.



### Longevity

It is the Union's position that based on the external comparables of Southern Door, Sturgeon Bay, Coleman, Oconto Falls and Peshtigo, all of which have longevity benefits, the Union's proposal in this regard is preferable.

### Eligibility Language for Health and Dental Insurance

The Union argues that it has shown in its arguments that based upon internal and external comparables the Union's contract language is preferred to the District's.

Based on all of the above, the Union submits that its proposal is the most reasonable and, therefore, should be adopted.

### District's Position:

The District notes that of the total number of issues only five are critical and determinative of this dispute. They are: definition of full-time employee, health insurance, dental insurance, salary schedule and longevity pay.

### Greatest Weight Factor

The District argues that this statutory factor requires that the Arbitrator consider the budgetary impact of the two final offers. The District reasons that with revenue controls, decreasing state aids and attendant budget cuts, public sector employees, including the District, can no longer pay any salary demand, no matter how reasonable, without recognizing its impact on the local budget.

Here, the District asserts, it is very likely the District will exceed the revenue cap. To address the problem the administrative team has been instructed to reduce their 2002-2003 budgets by 10%. Additional cuts were made in school supplies and equipment. Further, it is claimed, ten District positions will face layoff or reductions in the 2002-2003 school year as well.

The District argues that if the Union's health insurance, dental insurance and salary schedule structures are implemented, the District will have no choice but to make additional cuts. Selection of the Union's final offer would, according to the District, cause irreparable harm on the District's 2002-2003 budget.

#### Full-Time and Part-Time Employee Definitions and Health and Dental Insurance Benefits

The District argues that the Union by proposing to define full time as 1,000 hours, it is changing the status quo. By so doing, the District claims 83% of the unit will shift from part-time to full-time status and thus be eligible for health and dental insurance. The cost would be \$130,000 for health insurance and \$9,812 for dental insurance.

The District contends that since the Union is seeking to change the status quo it must first establish a need for the change and then provide a quid pro quo to the District in exchange for the change in status quo.

With respect to the merits of the Union's offer, the District notes that the cost of its health and dental proposal is \$140,000 in 2002-2003. This, it is argued, is at a time when the cost of insurance is rising dramatically. From 1997-1998 and including 2002-2003 estimates, the District's family health insurance premiums have increased 116.87% and dental insurance 38.54%. The District projects that increases of 25% will continue for years.

The District submits that the Union's costly offer is inappropriate given the current situation. This is no time the District contends, to create new benefits and change the parties' past practice and economic relationship.

Also, part of the Union's offer is language that provides that if a paraprofessional declines coverage he/she will receive the same amount in salary increases. The District argues that there is no support in internal or external comparables to support this offer.

None of the above, it is argued, is accompanied with a quid pro quo. Instead, the District claims, the Union offer contains a salary increase of more than 30% the first year, plus increased wages for those who decline health insurance, plus longevity pay. The cost impact is enormous. The Union, the District argues, has given up nothing or given the District anything in return for its health and dental proposals. The District's offer on the other hand preserves the economic relationship between the parties and preserves the right of the parties to address this issue in the future while at the same time providing substantial salary increases to bargaining unit members.

#### Appropriate Comparables

The District proposes a two-tier framework. The first tier includes all of the schools within the Packerland Conference. Because Oconto is geographically separated from all of the other Conference schools, the District proposes to include more localized school districts within comparable pool which it claims would take in account the same labor market. It proposes the contiguous districts of Coleman, Lena, Oconto Falls and Peshtigo. The District believes these can be justified on the basis of certain socio-economic characteristics, including size, tax base, community of interest and local labor market.

In the District's view, the comparables presented by the Union are haphazard. They presented the Packerland Conference and, additionally, Ashwaubenon, DePere,

Howard-Suamico, Marinette, New London, Pulaski, Seymour, Shawano-Gresham and West DePere. The District argues that it is not fair to compare Oconto with these schools because Shawano-Gresham and New London are miles away and the remaining are substantially larger districts and fall within the influence of the Green Bay labor market.

Furthermore, the District contends that the Union presented no testimony or supporting documentation in order to justify the comparables proposed. According to the District, socio-economic statistics are necessary to justify a particular comparable. There has to be a rationale for connecting the school districts with a common bond.

The District argues that it has justified its set of comparables and the Arbitrator should adopt same.

### Wages

The District acknowledges that there is a need to improve this bargaining unit's wage rates, but claims that this comes with a serious price tag. The District argues that its final offer presents, on average, initial placement increase of 13.39%; that the secretarial wage ranges will increase 7.78% and 7.33% in 1999-2000 and 2000-2001, respectively; and that during the same period of time, the paraprofessionals' wage rates will increase 17.97% and 17.22%. The District claims the Union's first-year offer is over 30% and provides a salary adjustment of 50¢ per hour for the 1999-2000 and 2000-2001 school years. The difference between the two offers in backpay is \$87,000.

The District argues that when a rank analysis is made with the primary comparables (Packerland Conference), the District's offer is validated. Both the secretaries and paraprofessionals begin dead last (9/9) at the maximum wage rate level. At the end of the

contract, secretaries under the District's offer are 5/9 and under the Union's 2/9. The District argues that its offer is more reasonable because it makes steady progress while the Union's jumps the secretaries ranking the first year from last to second.

The District argues the same could be said of paraprofessionals. Their wage rates were last and very low. Both offers raises their ranking one notch to eight. But, the District argues, that its maximum of \$10.26 is higher than the Union's \$10.17.

The District makes the same rank analysis using the four contiguous school districts. The secretaries go from last to first under both offers and the paraprofessionals go from last to second under both offers.

Also, comparison is made to the average hourly rate of the primary comparables. Under the District's comparisons, the secretaries' maximum hourly rate begins at \$1.05 and the paraprofessionals at \$3.10 below the comparables. The secretaries' rate improves to -4¢ under the District's offer and +\$1.04 under the Union's. The paraprofessionals improve to -73¢ and -82¢ under the District and Union offers, respectively.

The District argues that its offer is the more reasonable of the two. The Union's offer improves secretaries 100% in the first year. With respect to the paraprofessionals, the District points out that its offer reduces the difference more than the Union's.

The District argues that with respect to the local market (the four contiguous districts), both the secretaries and paraprofessionals begin closer to the average and under both offers end up considerably more than the average.

#### Longevity

The Union's longevity proposal does not go into effect until 2001-2002, and the end of the contract. While there is no immediate cost impact, the District notes that 35% of the unit will

immediately be eligible to receive it. The District acknowledges the cost is not great, \$2,556.00, but argues that if granted the District will not have gathered a quid pro quo for the new benefit.

Further, the District argues that the most reasonable internal comparable, the custodial and food service employees, do not have the benefit and only two of the primary external comparables have a longevity benefit. Thus, it is argued, there is no support for such a new benefit.

### Conclusion

The District argues that the Union is simply attempting to gain too much in an initial contract. The wage increase will cut into the core of the District's budget; the health insurance eligibility calls for a change in the status quo without a quid pro quo and results in a very costly item; and the longevity benefit is a new benefit without comparable support.

Based on the above, the District claims its offer is the most reasonable of the two.

### Union's Reply

It is the position of the Union that the District's comparables of the four contiguous school districts does not meet the comparable size criteria established by past arbitration decisions and should be rejected.

The Union argues that if geographic proximity is the only criteria to be used in making the labor market argument, then the Bay Athletic Conference school should be included as well. If any geographic proximity and comparable size criteria were used without regard to Athletic Conference affiliates, then the comparables would be (using a 400 student margin on each side) Denmark, Kewaunee, Southern Door and Sturgeon Bay from the Packerland Conference and Peshtigo.

The Union makes a thorough comparison with the Peshtigo contract and argues that it clearly favors the Union's offer because the threshold hours for yearly employees are 1,260 hours for school year employees, its payment of premium is better, and it has a longevity benefit. When longevity is factored in, the Union contends that its offer becomes even more reasonable than the District's.

With respect to the District's status quo argument concerning the definition of full-time employees, the Union takes the position that the status quo in this regard was established when the District voluntarily entered into a collective bargaining agreement with the custodial and food service employees in which 2,000 hours for yearly employees and 1,000 hours for school year employees were defined as the threshold hours for the purpose of full-time status. Thus, it is the District attempting to change the status quo.

Further, it is argued that when it comes to benefits, internal comparables are most convincing and that arbitrators place great importance on uniformity of benefits.

With respect to the wages, the Union takes issue with comparisons to contiguous school districts, except possibly for Peshtigo and claims that there are flaws and inaccuracies in the District's analysis.

The Union argues that the District did not treat the accounts payable position at Oconto School District as such and makes the appropriate comparisons.

The Union also claims the averages claimed by the District are distorted because it did not take into consideration the difference in school size and that its conclusion that its averages are higher than the contiguous districts is false and misleading.

The Union also takes issue with the District that cost implications are more important than internal and external comparables when it comes to the insurance issue. This, according to arbitral authority, is to the contrary.

Lastly, the Union argues that just because employees have not left their jobs does not mean there is no need for health insurance improvements with respect to eligibility, as claimed by the District. The employees are loyal and committed employees. This does not mean they are not entitled to a better benefit.

For the reasons stated above, the Union urges the Arbitrator to select the Union's final offer as the most reasonable.

#### District's Reply

The District takes issue with the Union's claim of "bargaining history" and status quo as it relates to the insurance issue. The District is proposing to continue the same insurance premium contribution and definition of full-time employee as before the contract. It is not trying to change a thing. Therefore, it is not changing status quo. The District contends that what was settled with the custodians and food service employees does not change this.

Further, the District argues, the cost impact of the insurance issue is a major consideration, contrary to what the Union claims. In this regard, the District points out that the custodians and food service employees at the 2,000/1,000 hour threshold was a continuation of what they had and not a new benefit. This, therefore, is not the same situation as here.

Contrary to the Union's assertion, the District argues that the cost impact is not a tiny percentage of the budget. Using insurance costs for 2000-2001 this unit's cost would increase from \$47,584 to \$77,528, nearly double of its current expense. This, it is argued, is not tiny.



Further, the District argues that there is no justification offered by the Union for its proposal to guarantee employees with the equivalent of health insurance money to be placed in salary if an employee decides not to take coverage.

With respect to comparables, the District claims some of the Union's external health insurance data is erroneous. However, despite the discrepancies, the District recognizes that a number of primary comparables provide some type of pro-rata health insurance benefits. But, the District argues, in this round of negotiations the first order of business was to address the wage rates and structuring of competitive salary schedules. This results in a significant outlay of money. The District argues that the Union is asking for too much and offers no quid pro quo in return.

With respect to the District's economic condition, the District takes issue with the Union's claim that the District is in "excellent financial condition." The District points out that the District has cut a total of \$126,365 from each of the three school's budgets.

As to wages, the District reiterates its claim that its offer is reasonable in that it provides increases of 13.39%, 11.63% and 11.68% for a total of 36.70% over three years. This is much more reasonable, the District contends, than the Union's offer that generates a unit-wide first-year increase of 30.02% and second and third year increases of 5.91% and 7.35%, respectively. The cumulative impact is 43.28% and generates \$86,593 more in back pay.

With respect to the bookkeeper position, the District denies it is qualifying said position as a "clerical" position. It does however argue that it is appropriate to qualify the position with the same wage raises as the secretarial positions. Over a three-year period she will receive a 18.67% wage increase.

Lastly, the District contends that the appropriate comparables offered by the Union, the Bay Athletic Conference, are not appropriate. All of said schools are larger and all are geographically proximate to Green Bay. Oconto is considerably north of Green Bay, and it is not reasonable to consider the Green Bay area schools comparable to Oconto.

For all the above reasons, the District, again, argues that its proposal is the most reasonable of the two.

## DISCUSSION:

### Motion to Strike

After the filing of initial briefs, the District filed a Motion to Strike the Union's entire Appendix attached to its initial brief and new evidence referred to in its brief.

For obvious reasons, new evidence, without agreement of the parties, cannot be produced and relied upon once hearing has been concluded. Here, there was no such agreement. The purpose of the hearing is to produce evidence through testimony and exhibits in support of one's position. Said evidence can be questioned, challenged and rebutted by the opposing party. Arguments are then made relying on the record evidence. Evidence produced after the hearing is not subject to the same review process. The opposing side is deprived of its right to cross-examine witnesses and to present rebuttal testimony or evidence.<sup>1</sup> Therefore, all Union post-hearing evidence, as cited by the District, is stricken except for the following: Motion to Strike No. 8, because the \$400,000 "spend down" was raised at the hearing; student enrollments for the Packerland Conference schools and the four contiguous school districts, because they are the

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<sup>1</sup> See Sturgeon Bay School District, Dec. No. 30095-A, Tyson (12/02), Tigerton School District, Dec. No. 24280-A, R.J. Miller (6/87) and Two Rivers School District, Dec. No. 19837-A, Michelstetter (4/83).

same figures entered into evidence by the District; the job description<sup>2</sup> because the District entered it in its set of exhibits; and the Bookkeeper, Bookkeeper, Grants/Accounts Payable individual contracts signed by both the employee and District because they are District documents and not really in dispute.

### Criteria

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 given 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.

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<sup>2</sup> However, the “additional duties” attached to the job description will not be considered.

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 the greater weight, internal and external comparables and ability to pay criteria. The District relies primarily on the greatest weight and internal and external comparables. The remaining criteria not addressed by the parties are determined to be non-determinative, as, apparently, did the parties.

### “Greatest Weight” and “Greater Weight” Factors

With respect to the “greater weight” criterion, the Arbitrator does not find the economic conditions in the school district’s jurisdiction to be such that it weighs against the Union’s offer. The record establishes (Union Exhibit A) that from the 2000 census (reflecting changes from 1989 to 1999), Oconto County median household income rose 37.7% to \$41,201, its poverty rate fell 5% to 7.1% and the median home value rose 59.5% to \$89,900. All such percentage changes were considerably above the state averages of 14%, -2% and 37.6%, respectively.<sup>3</sup> Thus, while the Union’s final offer may be rejected in favor of the District’s offer for other reasons, it cannot be rejected because of the poor economic conditions in the jurisdiction of the School District.

The “greatest weight” however favors the District’s final offer because there is sufficient record evidence establishing that the District has serious budget problems and that the Union’s final offer might well cause it to exceed the revenue cap. Of course, there is always some maneuvering of money within a budget that can be made or a re-evaluation of choices and priorities in balancing a budget. Here, however, the District has imposed 10% cuts, cut equipment, supplies and materials and for the 2002-2003 school year, and 2 of the 4 teachers will who retired not be replaced. Additionally, 1 custodian; 2 administrative assistants, and 2 paraprofessionals were laid off, and the hours of 3 paraprofessionals were reduced. Each of the three schools cut approximately \$127,000 from their budgets. Thus, this factor favors the District and will be considered with the other criteria as discussed below.

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<sup>3</sup> No other evidence was presented with respect to the County’s economic condition.

### Appropriate Comparables

There is a threshold issue with respect to the appropriate comparables for comparison purposes.

The parties agree that the primary comparables should be the schools in the Packerland Conference. They differ as to the appropriate secondary comparables.

The District would include the four contiguous school districts of Coleman, Lena, Oconto Falls and Peshtigo in its comparable pool. It argues that said districts share the same labor market as Oconto, and for said reason are relevant and should be included.

The Union argues that if the secondary comparables offered by the District are included, then the Bay Athletic Conference schools should be included because they also share the same labor market as Oconto School District.

In choosing appropriate comparables, factors such as school districts of similar size, staff and equalized value are considered. But, typically, the principle factors considered are school districts of geographic proximity and size. Proximity reflects the labor market and size reflects the Employer's relative ability to compete.

The District in proposing its second tier of comparables offered data comparing the wage rates and averages of employees in said school districts with those of Oconto School District. The Union argued for the inclusion of the Bay Athletic Conference school districts, but produced little evidence in support thereof at the hearing. The only evidence presented at the hearing with respect to said comparables was a comparison of wage rates, but only as it relates to the bookkeeper position. No other data was presented either as to the proximity issue or the wage rate comparison issue as it related to secretaries and paraprofessionals, or to the issue of benefits.

The Arbitrator concludes from the record evidence that the four contiguous school districts are appropriate as secondary comparables because of their proximity to the Oconto School District. However, the Arbitrator recognizes that there may be others (in or outside the Bay Conference) that may also, based on proximity, be appropriate as well. However, there simply is not enough evidence in the record to make such a determination. A final determination, however, should be left open for determination in a subsequent case when a more complete record can be developed addressing the issue.

It should also be noted that in this case, the Arbitrator, in the final analysis, reaches his decision primarily relying on the primary comparables. However, the decision reached is supported by the secondary comparables.

#### Issues

The critical issues, as identified by the parties, are the insurance-related issues, wages and longevity pay.

Of the five issues, the Arbitrator does not find the longevity issue to be critical when considered in with the mix of the wage and insurance issues. In other words, in this case given the parties' differences as they relate to the other more important issues and the lack of impact of the longevity issue on the overall package, the longevity issue will not be influential in deciding this case. It is noted however that there is little internal or external support for such a proposal among the primary comparables. Internally, the custodial and food service employees do not have a longevity plan and externally only two of the other eight districts in the primary comparable group provide longevity payments. On the other hand, it is supported by three of the

four contiguous districts proposed by the District as secondary comparables, and it is not a costly proposal. Therefore, such a proposal could be acceptable as a part of a reasonable total package wage proposal in the future, but here it is not a make or break issue.

The remaining issues addressing health and dental insurance, wages, and wage schedule must be considered as a package in determining which of the two final offers is more reasonable.

In this regard, there is nothing inherently unreasonable with the Union's objective of lowering the eligibility threshold for insurance so more unit employees can qualify for coverage, and in proposing higher-than-average wage increases to "catch up" to the wage rates paid by the external comparables school districts. But insurance and wage improvements can be costly. Thus, ultimately, the overall cost of the Union's final offer in achieving its objectives must be determined to be more reasonable than the District's final offer, in order for the Union to prevail.

To begin with, in making such an analysis, the single most important issue separating the parties, in the opinion of the Arbitrator, is the definition of a full-time employee for the purposes of determining employee eligibility for health and dental insurance coverage. The Union, consistent with the Custodial/Food Service contract definition, based on calendar year and school year employees, defines full time as 2,000 hours for Bookkeeper(s) and Administrative Assistants and 1,000 hours for Paraprofessionals. The Employer's definition is 2,000 hours for all, and no pro-rata premium payment for those working less than 2,000 hours.

Interestingly, each party claims the other is changing the status quo. Status quo in bargaining is determined by the conditions of employment, wages and benefits in place for unit employees at the time the parties begin negotiations of their collective bargaining agreement. It need not be established in writing or by agreement. Here, the employees in this unit have never



been eligible for insurance benefits at the 1,000 annual hours' threshold. Full time has been defined as 2,000 annual hours for all employees and only those employees meeting said threshold were entitled to the District's payout of 90% of the premium. There was no pro-rata payment for those who did not meet the 2,000 annual hour threshold. Thus, the District is not proposing a change to the status quo. Its proposal is to continue paying 90% of the premium for those meeting the 2,000 hour threshold.

The Union is correct when it points out that the District is already paying premiums, including on a pro-rata basis, using the 2,000/1,000 annual hours thresholds. This, of course, is with the custodial/food service unit of employees which is important and may be influential when making internal comparisons, but it does not, and cannot, establish the status quo for the instant unit or any other unit of employees. Thus, it is the Union that is proposing to change the status quo in this case.

Since it is the Union proposing a change, it is incumbent upon the Union to establish a need for the change and a sufficient quid pro quo. The Arbitrator is convinced there is a need for improvement in the definition of a full-time employee in order to entitle more unit employees coverage and for the pro-rata payment of premiums. The internal comparable of the custodial/food service unit supports the Union's offer as do some of the external comparables. The Arbitrator agrees, and has stated in other decisions,<sup>4</sup> that when it comes to benefits internal comparables are more important than external comparables. This is so because of the concern of fairness and the impact on the morale of employees who work for the same employer, but who are not treated the same.

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<sup>4</sup> See Rio Educational Support Team and Rio Community School District, Dec. No. 30091-A (10/2001) and City of Wausau (Support/Technical), Dec. No. 29533-A (11/99).

However, having the support of internal comparables and the need for the uniformity of fringe benefits, especially insurance, does not automatically entitle the Union to the benefit. Here, the Union's definition of a full-time employee and its proposal to extend insurance benefits to part-time employees on a pro-rata basis is a new benefit to more than half of the unit. This is so because the Union's offer would more than double the number of employees eligible for health insurance and the accompanying 90% premium contribution by the Employer. Currently, 8 of the 20 employees meet the full-time 2,000-hour definition and receive the insurance benefits. Under the Union's offer an additional 10 would be considered full time with the remaining 2 part-time employees eligible for pro-rata District paid health and dental benefits.

The District calculates a future cost of the Union's health and dental insurance offer to be about \$140,000, taking into consideration the rise in insurance premiums from year to year. While this figure is not a hard figure, it is undoubtedly a fairly reliable figure. Further, the District will not realize any savings if the paraprofessional employees elect not to take insurance because of the Union's proposal that entitles said employees to have said monies used for salary increases instead of premiums. There is no similar language in the internal comparables.

As discussed earlier (aside from the above-noted insurance language), there is internal support for the Union's attempt to get unit employees on equal footing with other comparable city employees. However, it is well established through numerous interest arbitration awards that a quid pro quo is required where one side, the Union here, seeks to change the status quo. There is no set answer as to what constitutes a sufficient quid pro quo. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the quid pro quo need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the quid pro quo.

Here, the cost impact of approximately \$140,000, even prospectively, is substantial for a unit of 20 employees. The proposed insurance changes cannot be granted on the basis of need and internal comparables alone. The Arbitrator is aware of no interest arbitration award in which such a benefit has been granted without something of value in return. Again, it does not have to be of equal value, but there must be something given in exchange. In this case there is no sufficient quid pro quo offered.

In determining whether there is a sufficient quid pro quo, the Arbitrator looks to the parties' total package. Here, parties' insurance proposals will be considered as a package with the wage issue.

Clearly, and undisputedly, the wage rates of this unit of employees are at the bottom of the primary comparables. Without question they are entitled to "catch up." Both final offers move towards that objective. The Union's wage schedule gets employees to the maximum in five steps and the District's in six steps. Under both, however, employees reach the top in 10 years. Thus, the Arbitrator is of the opinion that more important than the differences in the schedule are the wage rates and the amount of wage increases employees will receive. In making comparisons to the primary external comparables, the parties are in agreement as to the figures. The minimum-maximum rates at the third, and last year of the contract, compare as follows with the primary comparables:

Paraprofessionals

Average	9.21 – 12.10
District Offer	8.85 – 10.26
Union Offer	7.91 – 10.17

### Secretaries

Average	10.54 – 12.26
District Offer	10.45 – 12.11
Union Offer	10.53 – 13.19

The District's unit-wide wage increases for the first, second and third years is 13.39%, 11.63% and 11.68%, respectively, for a total of 36.70%, while the Union's is 30.02%, 5.91% and 7.35% for a total of 43.28%. The Union's front-end loading of its wage package to the tune of 30% is simply too much too fast. Such an increase the first year in an attempt to catch up is simply unrealistic, especially with a "catch-up" insurance proposal, albeit delayed. Further, this is not a case where the Union's offer becomes palatable because of an unrealistic or unreasonable Employer offer. Here, the Employer's total package of 36.70% over three years is reasonable and improves the unit's standing with its comparables. The secretaries' ranking, under the District's offer, goes from 9/9 to 5/9 by the third year, while the Union's jumps to 2/9. The improvement to 5/9 is a reasonable catch-up movement, whereas the Union's proposed improvement from last to 2/9 is more than a catch-up. The paraprofessionals, who were far below the average in wages, go from last to 8/9 under both offers. However, the District's maximum is about 9¢ higher than the Union's.

With respect to a comparison of Oconto School District's average hourly rate to the primary comparables' average hourly rate, both offers gain substantially on the average. The secretaries go from about \$1.00 per hour below the average to almost even (-4¢ per hour) under the District's offer, to about \$1.04 above the average under the Union's offer.

The paraprofessionals who began \$3.10 per hour below the average will end up at -73¢ per hour below the average under the District's offer and -82¢ under the Union's.

When comparing the total three-year percentage increase of wage rates, the rankings and average wage rates among comparables before and after the offers and the total cost of the two offers, the Arbitrator concludes that the District's is the more reasonable of the two. The District's 36.70% increase over three years reasonably addresses the "catch-up" issue while the Union's 43.28% total wage increase, front-end loaded with a first year increase of 30%, is excessive.<sup>5</sup> Such an increase may be warranted, but not in one contract.<sup>6</sup> This is especially true when considering that the Union's offer also includes a substantial insurance benefit for 10 of the 20 unit employees. The difference between the offers amounts to approximately \$87,000. This is a substantial difference for a unit of 20 employees.

### Conclusion

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 District should be favored over the offer of the Union, and in that regard the Arbitrator makes and issues the following

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<sup>5</sup> This is at a time when the cost of living for 1998, 1999, 2000 and 2001 rose an average 1.34%, 2.23%, 3.48% and 2.75%, respectively.

<sup>6</sup> As discussed earlier, there is justification for the Union's attempt to improve access to insurance benefits by unit employees and to provide pro-rata premium payment as well as continue to catch-up to its comparables with respect to wage rates. The Arbitrator is of the opinion that all of those issues can be addressed in the next contract if reasonably packaged.

Also, as guidance to the parties in their next negotiations regarding their dispute over the proper wage rate for the Bookkeeper, Grants/Accounts Payable position, the Arbitrator agrees with the Union that the position should be treated as a separate classification and that it be compared to, and its wage rate determined by, comparing it to the same or similar classification among the external comparables, provided the duties are similar.

AWARD

The District's offer is to be incorporated in the 1998-1999, 1999-2000, and 2000-2001 three-year collective bargaining agreement between the parties, along with those prior issues agreed upon during their negotiations.

Dated at Madison, Wisconsin, this 9<sup>th</sup> day of October, 2002.

Herman Torosian /s/

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Herman Torosian, Arbitrator