ARBITRATION OPINION AND AWARD

In the Matter of Arbitration		
Between		Case 46 No. 60580
MELLEN SCHOOL DISTRICT (Support Staff)		INT/ARB-9449 Dec. No. 30408-A
And		
CHEQUAMEGON UNITED TEACHERS		

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin, 53185-0320

Hearing Held

October 17, 2002
Mellen, Wisconsin

Appearances

For the Employer

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For the Union

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BACKGROUND OF THE CASE

This is an interest arbitration proceeding between the Mellen School District and the Chequamegon United Teachers, with the matter in dispute the terms of a two year renewal labor agreement, effective July 1, 2001 through June 30, 2003, and covering the District's support staff employees. After the parties had failed to reach a full negotiated settlement, the Union on November 23, 2001, filed a petition with the Wisconsin Employment Relations Commission seeking final and binding interest arbitration. Following an investigation by a member of its staff, the Commission issued certain *findings of fact*, *conclusions of law*, *certification of the results of investigation* and *an order requiring arbitration* on June 27, 2002, and on July 23, 2002, it appointed the undersigned to hear and decide the matter.

A hearing took place in Mellen, Wisconsin on October 17, 2002, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and both thereafter closed with the submission of comprehensive post-hearing briefs and reply briefs, after the receipt of which the record was closed by the undersigned effective January 22, 2003.

FINAL OFFERS OF THE PARTIES

Both final offers, herein incorporated by reference into this decision, propose a *two year renewal agreement*, effective July 1, 2001, through June 30, 2003, but they principally differ in the following respects.

(1) In connection with Article VI, entitled **HOURS**, they disagree as described below.

(a) Section B(4) previously provided as follows: "***Inclement weather days*:** The application of inclement weather days shall remain the same as in past years."

(i) *The Employer proposes* substitution of the following language for the above, effective with the date of the arbitral award: "Emergency School Closure - School term and school term plus up to two week employees will be paid for up to 4 days at their normal daily wage when school is closed under the Board Emergency School Closing Policy 723.3P. This provision does not pertain to twelve (12) month employees. School closures in excess of four (4) days will be made up. The Superintendent shall have the sole discretion to determine when school will be closed due to inclement weather or other emergencies and the date such days will be made up. Such closure decisions and make up dates shall not be subject to the grievance

procedure."

(ii) *The Union proposes* no language changes/additions.

(b) Section C(1) previously provided as follows: "Employees who work just the school year plus up to two weeks shall receive the following paid holidays: Labor Day, Thanksgiving and Memorial Day."

(i) *The Employer proposes* the addition of Christmas Day as a paid holiday.

(ii) *The Union purposes* the addition of Christmas Day as a one-half day paid holiday.

(c) Section D(1) previously provided for paid vacations as follows: 40 hours after 1 year worked; 80 hours after 3 years worked; 120 hours after 10 years worked; 160 hours after 20 years worked; and 200 hours after 25 years worked.

(i) The Employer proposes improvement of this benefit to 120 hours after 8 years and to 160 hours after fifteen years, and addition of the following language to their a side letter of agreement dated February 13, 2002:

"All support staff employees hired to fill a 12-month position after June 30, 2000, will have their vacation time allocation determined from July 1 of the fiscal year, July 1 to June 30, in which they were hired for the 12-month position.

Employees hired to fill a 12-month position prior to June 30, 2002, will have their vacation time allocation determined from July 1 of the employee's original fiscal year of hire."

(ii) The Union proposes improvement of this benefit to 80 hours after 2 years, 120 hours after 8 years and to 160 hours after fifteen years, with no proposed change to the existing side letter of agreement.

(2) In connection with Article XIII, entitled **SICK LEAVE**, the parties disagree as follows.

(a) Section B previously provided as follows: "Employees shall be granted ten (10) days of sick leave per year, cumulative to ninety-five (95) days."

(i) *The Employer proposes* no language changes/additions.

(ii) *The Union proposes* replacement of the first sentence of this section with the following: "Employees who work just the school year or up to two weeks longer than the school year shall be granted ten (10) days of sick leave per year. Employees who work more than the school year plus two weeks shall be granted twelve (12) days of sick leave per year. Unused sick leave days are cumulative to one hundred (100) days."

(b) Section F previously provided as follows: "Each employee may take one (1) personal day per year with pay. A second personal day, with pay, will be provided to employees who have been employed by the District for at least five years. Personal leave shall be defined as a circumstance that requires action that cannot be accomplished outside of the

normal work hours."

(i) *The Employer proposes* no language changes/additions.

(ii) *The Union proposes* an increase from one day to two days in the first sentence, and deletion of the second sentence.

(3) In connection with Article X, entitled INSURANCE AND RETIREMENT, the parties disagree as follows.

(a) Section B previously provided, in part, as follows: "The District shall provide the following insurance and pay full premiums for all employees who work twenty or more hours per week.

1. ***Health Insurance*** (full family or single coverage - whichever is needed by the employee)

* * * * *

2. ***Dental Insurance*** (full family or single coverage - whichever is needed by the employee)

* * * * *

3. ***Long Term Disability Insurance***

* * * * *

4. ***Life Insurance***

* * * * *

..."

(b) The parties differ as follows relative to Section B(1).

(i) *The Employer proposes* modification of it to provide as follows:

"B. The District shall provide the following insurances for all employees who work twenty or more hours per week.

1. Health Insurance - single or family coverage, as needed by the employee.

a. Current employees shall be entitled to health insurance paid by the District. Employee drug card cost will be $6 per prescription, effective 30 days after receipt of the Arbitrator's award.

b. Employees hired after the date of implementation of the 2001-2003 Agreement shall be entitled to health insurance with the District paying ninety percent (90%) of the premiums and the employee paying ten percent (10%) of the premiums. Employee's share of the premiums will be deducted from their pay as part of regular biweekly payroll deductions. Employees shall pay a drug card cost of $6 per prescription, effective 30 days after

receipt of the Arbitrator's award.

c. All employees shall pay the $100 single or $200 family calendar year deductible.

d. Coverage shall be equal to or exceed the coverage in effect during the 1990-91 school year. The District has the sole right to change insurance carriers or self-fund subject to the preceding requirement."

(ii) *The Union proposes* the addition of the following language to it:

"Effective 30 days after receipt of the Arbitrator's decision for a 2001-03 Agreement, the employee drug card cost will be $2.00 per prescription for generic drugs and $7.00 per prescription for brand named drugs."

(c) The parties propose as follows relative to Section B(2).

(i) *The Employer proposes* modification to it to provide as follows:

"2. Dental Insurance - single or family coverage as needed by the employee.

a. Current employees shall be entitled to dental insurance paid by the District.

b. Employees hired after the date of implementation of the 2001-2003 Agreement shall be entitled to dental insurance with the District paying ninety percent (90%) of the premiums and the employee paying ten percent (10%) of the premiums. Employee's share of the premiums will be deducted from their pay as a part of regular biweekly payroll deductions.

c. Coverage shall be equal to or exceed the coverage in effect during the 1978-79 school year. The District has the sole right to change insurance carriers or self-fund for the preceding requirement.

(ii) *The Union proposes* no language changes/additions.

(d) The parties propose as follows relative to Sections B(3) & B(4).

(i) *The Employer proposes* that the first sentences of each section begin as follows: "The District paid insurance plan..."

(ii) *The Union proposes* no language change/addition to Sections B(3) & B(4).

(e) The parties agree to the addition of Section D to the agreement, entitled "Retiree Health Insurance/Sick Leave Payout."

(i) *The Employer proposes* that the provision provide as

follows:

"The District will pay for one (1) month of retirement health insurance premiums at the exit cost of a single or single Medicare supplement policy, for each ten (10) days of accumulated sick leave provided the employee had completed at least 20 years of continuous service in the District, has at least 70 days of unused sick leave and is at least 57 years of age.

If upon retirement, the employee is at least 57 years of age, has at least 20 years of continuous service in the District, and has less than 70 unused sick days, the District will pay $25 for each unused sick day."

(ii) *The Union proposes* that the provision provide as follows:

"Employees who retire at age 55, or older, and have at least provided ten (10) years of service in the Mellen School District will receive thirty-five percent (35%) of their daily pay (at the rate they were paid on their last work day prior to retirement) for each unused sick leave day they have accumulated."

(4) The parties have previously agreed to various ***letters of agreement*** to the collective bargaining agreement.

(a) *The Employer proposes* an additional letter of agreement to provide as follows:

"The School District of Mellen ('Board' or 'District') and the Chequamegon United Teachers ('Union') have reached the following Agreement regarding Ron Friske, Murlene Wiener and longevity.

Under the conditions of the 2001-2003 collective bargaining agreement the following agreements exist:

1. Ron Friske will maintain his current annual vacation time of 200 hours.

2. Murlene Wiener is exempt from the 20-year requirement of continuous service to qualify for the retirement health insurance or the sick leave payout.

3. The District will pay a one-time longevity pay increase of $.10 per hour for hours worked during the 2001/2002 school year employees, school year plus two weeks employees, and full time employees that have completed ten (10) years of District service, $.20 per hour to employees who have completed 15 years of District service, and $.30 per hour to employees who completed 20 years of District service. Years of service requirements must have been completed by July 1, 2001 to qualify for this one-time longevity payment. This is a one-time payment.

4. This Agreement shall be non-precedential for any and all purposes."

(b) *The Union proposes* no such letter of agreement.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

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

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

d. Comparisons 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. Comparisons 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 in comparable communities.

f. Comparisons 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 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 pension, 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 hearing.

j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Employer emphasized the following principal considerations and arguments.

(1) That the following principal facts are material and relevant to the outcome of these proceedings.

(a) On July 25, 2002, the parties exchanged proposals for a renewal labor agreement, and they thereafter met twice in an attempt to reach agreement.

(b) On November 20, 2001, the Union filed a petition with the WERC seeking to initiate statutory interest arbitration. A member of the Commission's staff conducted a mediation /investigation session on February 19, 2002, but no agreement was reached.

(c) Approximately three weeks thereafter, all three members of the Union's local negotiating committee, local Union President Margaret Jaeger, Leslie Lee and Donna Jaeger approached District Administer Jeff Ehrhardt and requested an additional meeting with the Board to further discuss negotiations.

(d) On February 28, 2002, the three members of the local negotiating committee met with the Board Negotiation Committee, at which time they reached a tentative agreement on all outstanding issues.[1] The local representatives then indicated that they would confirm the agreement with Northern Tier Uniserv (NTU) Director Barry Delaney of Chequamegon United Teachers (CUT).

(e) On March 13, 2002, District Administrator Ehrhardt was informed by Union negotiator Donna Jaeger that the CUT Board had vetoed the tentative settlement.

(f) On March 19, 2002, Union negotiator Leslie Lee wrote a letter to District Administrator Ehrhardt requesting another meeting with the Board's Negotiating Committee.[2] The Board denied this request.

(g) The parties were thereafter determined to be at impasse, the WERC closed its investigation, the parties submitted their final offers, and the matter proceeded to arbitration.

(2) That the District's final offer should be selected because it represents the bargain that the parties would have reached at the bargaining table.

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[1] Citing the contents of Employer Exhibit #5.

[2] Citing the contents of Employer Exhibit #6.

(a) That the Arbitrator in this proceeding has frequently identified the interest arbitration process as a continuation of the parties' collective bargaining process, and indicated that an arbitrators' normal goal is to attempt to place the parties into the same position that they might have reached at the bargaining table.[3]

(b) In the case at hand, it is easy to discern the settlement the parties should have reached in face-to-face bargaining, because they did reach such a settlement. With two minor exceptions, the District's final offer is identical to the earlier agreement; by way of contrast, the Union's final offer does not contain a single proposal found in the tentative settlement.[4]

(c) As described by District Administer Ehrhardt, the parties participated in a mediation session with WERC investigator Lauri Millot on February 19, 2002, and thereafter, which failed to result in agreement.

(i) The Union was represented at the mediation session by NTU Director Barry Delaney and by local negotiating team members Leslie Lee, Donna Jaeger and President Margaret Jaeger.

(ii) Approximately one week after the failed mediation session, all three members of the local negotiating team approached Mr. Ehrhardt and asked to again meet with the Board; they indicated that they had been in favor of the Board's offer in mediation, had been overruled by Mr. Delaney, and opined that a further meeting between the local and the Board, without Mr. Delaney, would result in a settlement.

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[3] Citing the following decisions of the undersigned: Jackson County (Highway), Dec. No. 28802-A (4/97); Burnett County (Courthouse/Social Services), Dec. No. 29204-A (8/98); City of Washburn (Police), Dec. No,. 27778-A (7/94); Kewaskum S.D. (Teachers), Dec. No. 27092-A (8/92); New Richmond S.D. (Secretaries), Dec. No. 26414-A (11/90); and Hustisford School District, Dec. No. 24380-A (1/88).

[4] It identified the two exceptions as follows: *first*, the District's *final wage offer* provides a more generous catch-up increase in the kitchen helper position than previously agreed upon; and, *second*, the District's proposed elimination of a *cash payout option* for retirees with at least 70 days of accumulated sick leave, because IRS regulations would impose an immediate tax upon such benefit if such retirees had been offered a cash option.

(iii) After a discussion of the specific bargaining items they wished to obtain and the items they thought they could agree upon, it was typed up at their request so they could present them to the Board's Negotiating Committee at its next meeting.[5] At this meeting the parties reached tentative agreement on all of the items set forth in the summary.

(iv) Approximately two weeks later, on March 12, 2002, Lee, Jaeger and Jaeger attended a CUT meeting at which Mellen's tentative settled was scheduled for a ratification vote; by a vote of 5 to 1, the CUT Board rejected the Mellen settlement, ostensibly because it did not comport with CUT's goal of holding the line on insurance benefits.[6]

(v) On March 19, 2002, Leslie Lee sent a letter to Mr. Ehrhardt requesting yet another meeting with the Board, asking for another negotiations meeting in an attempt to avoid going to arbitration.[7] Based upon the failure of its prior good faith efforts and the local's apparent lack of authority to reach agreement, the Board declined the request.

(d) Although the parties' tentative agreement was ultimately rejected by CUT, it is the District's position that the agreement remains the best indicator of the bargain that would have been struck if face-to-face negotiations had been successful.

(i) Any Union argument that no authority had existed to reach a tentative agreement with the local bargaining committee should be rejected: the Board met with the entire local negotiating team which had previously represented it in every prior phase of negotiations; there can be no valid argument that the Mellen CUT affiliate is not a local Union; the agreement, itself, refers to the Mellen Education Association, and CUT's own by-laws refer to "local affiliates and to tentative agreements reached in a local."[8]

(ii) The District does not dispute the fact that CUT's internal organization rules gave it the authority to reject the parties' tentative agreement.[9] Such rejection, however, does not erase the fact that a tentative agreement had been reached, and that it had reflected a settlement deemed reasonable by both the District and the very employees who would be affected by its terms, 99% of whom ratified the settlement.[10]

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[5] Citing the contents of Employer Exhibit #5.

[6] Citing the contents of Union Exhibit #78.

[7] Citing the contents of Employer Exhibit #6.

[8] Citing the contents of Article II of *the 1999-2001 agreement*, and the contents of Union Exhibit #78.

[9] Citing the *testimony of Mr. Delaney* and the contents of Union Exhibits #77, #78, #79 and #80.

[10] Citing the *testimony of Donna Jaeger and Leslie Lee*.

(iii) All three local Union bargaining committee members testified at the hearing, they opined that the tentative settlement had been fair and reasonable, and they described frustration and surprise at finding that CUT had the power to reject their tentative agreement.

(e) Arbitrators have long established that settlements between negotiating parties provide sound guidance to neutrals in fashioning arbitration awards.[11]

(i) With two minor exceptions, the District's final offer is identical to the parties' February 28, 2002, tentative settlement.

(ii) The Union's own negotiating team believed that the tentative settlement was fair and reasonable, and 99% of the support staff unit members approved the settlement in a local ratification vote.

(iii) The fact that the settlement was later vetoed by CUT members from other school districts not covered by its terms, does not diminish the reasonableness of the settlement for the members of Mellen's support staff.

(iv) On the above bases, it urges that the District's final offer should be selected by the Arbitrator in these proceedings.

(3) The District has met the requisite *burden of proof* for its proposal to require newly hired employees to contribute toward health and dental insurance premiums.[12]

(a) The District has demonstrated that a legitimate problem exists.

(i) The continuing escalation of insurance premiums is resulting in spiraling fringe benefit costs: for the majority of the bargaining unit, health and dental insurance costs accounted for 22-40% of total compensation in 2001-2002 and 25-43% in 2002-03; health insurance costs alone averaged $4.66/hour in 2000-01, $6.76/hour in 2001-02 and $8.11/hour in 2002-03.[13]

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[11] Citing the following arbitral decisions: *Board Members Joseph F. Donnelly, Samuel F. Curry and W. Steward Clark* in Durso and Geelan Co., 17 LA 748 (1951); *Arbitrator William W. Petrie*, in Green County Pleasant View Nursing Home, Dec. No. 17775-A (1980); *Arbitrator Gil Vernon* in City of West Bend (Public Works), Dec. No. 29223-A (1988); *Arbitrator Joseph Kerkman* in Mukwonago Area School District, Dec. No. 25821-A (1989); *Arbitrator Edward Krinsky* in City of Marshfield (Firefighters), Dec. No. 27039-A (1992; *Arbitrator Edward Krinsky* in City of Milwaukee, Dec. No. 26196-A (1990); *Arbitrator Milo Flaten* in City of Wauwatosa (Firefighters), Dec. No. 27869-A (9/94); and *Arbitral Board Sharon Imes, William W. Petrie and James Stern* in Dairyland Power Cooperative, A/P P-02-002 (7/02).

[12] Citing the following arbitral decisions of the undersigned: City of Washburn (Police), Dec. No. 27778-A (7/94); Burnett Co., (Courthouse/Social Services), Dec. No. 29204-A; Waukesha Co. (Sheriff's Dept.), Dec No. 29000-A (10/97); and Village of Germantown (Police), Dec. No. 28860-A (6/97).

[13] Citing the contents of Employer Exhibit #36.

(ii) Private industries across the U.S. paid a 2002 average of $1.29/hour for health insurance, while state and local governments paid an average of $2.29/hour.[14]

(iii) In the 1991-92 school year, Mellen's family health insurance premiums were $404.68/month, and today it has increased 139% to $968.90/month. The rate of increase has accelerated recently, with 20% family premium increases in both 2001-02 and 2002-03.[15]

(iv) Mellen's family health insurance premiums exceeded the conference averages by $11.00/month in 2000-01, by $5.00/month in 2001-02, and fell below these comparables by $45/month in 2002-03; among those which self-fund through CESA, however, Mellen had normally had higher family premiums, and it experienced the largest increase in 2001-02 and in 2002-03.[16]

(v) Mellen's insurance benefit levels are exceptionally good, with low deductibles, and no co-pay after meeting deductibles.[17] Further, it does not propose lowering these benefit levels.

(vi) The Wisconsin Taxpayer Alliance projects family health insurance premiums for Wisconsin school districts to more than double between 2001-02 and 2006-07, and various other publications also report increasing health insurance costs nationally and in Wisconsin.[18]

(vii) While some conference districts have experienced higher recent premium increases, Mellen's financial outlook is not rosy, it is a small district with declining enrollment and teaching staff, and it has the lowest equalized value per student among the comparables.[19] Despite the fact that it is the highest aided district in the conference, it has the second highest tax rate, the highest rate of unemployment, and has been experiencing declining relative taxpayer income levels over the past five years.[20]

(viii) Because of steadily declining enrollment, the District has reduced its teaching staff through attrition, and its increasing cost of fringe benefits has strained its finances.

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[14] Citing the contents of Employer Exhibit #36, page 2.

[15] Citing the contents of Employer Exhibit #34.

[16] Citing the contents of Union Exhibits #30-#32.

[17] Citing the contents of Employer Exhibit #33.

[18] Citing the contents of Employer Exhibits #44 and #45.

[19] Citing the contents of Employer Exhibits #16-19 and #23, and Union Exhibit #10 and #63.

[20] Citing the contents of Employer Exhibits #21-22, #25-27, and Union Exhibit #8.

(ix) Union arguments that it has been "*stockpiling*" money by building up its fund balance and paying off a part of its unfunded retirement liability are completely misplaced, in that a school district's fund balance represents neither a cash position nor a "surplus."[21] The Union did not substantiate its allegation that the District's fund balance was going up faster than other districts, and such increases do not signify that a district has more money to spend on wages and benefits.[22] Further, it cited the District's recent payments toward its unfunded retirement liability.

(b) The District has demonstrated that its insurance proposal reasonably addresses the problem.

(c) The District has offered an appropriate *quid pro quo* for its proposed change.

(4) On the remaining issues, the District's final offer is preferable because it mirrors the parties' tentative settlement, while the Union's offer demands improvements in five benefits without providing a corresponding quid pro quo.

(a) Under the District's proposal, the current provision would continue for existing employees, but new employees hired after the effective date of the 2001-2003 contract would be required to pay 10% of their health and dental insurance premiums. The Union's final offer proposes no changes to the current provision on premium contributions.

(b) While the District recognizes that its insurance proposal results in a change to the negotiated status quo on premium contributions, it crafted its proposal to affect only *future* premium contributions by *future employees*.

(c) The District's insurance proposal is identical to the health and dental insurance language voluntarily accepted by the District's teachers in their negotiations for a 2001-2003 contract.[23]

(d) In Wisconsin it is a well-established principle that arbitral changes in the status quo ante can be accomplished when the proponent of change as established that *a legitimate problem exists*, that *the disputed proposal reasonably addresses the problem*, and where *an appropriate quid pro quo has been advanced*.[24]

(e) The District has demonstrated that *a legitimate problem exists*.

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[21] Citing the *testimony of Mr. Ehrhardt* and the contents of Employer Exhibits #28-#31.

[22] Citing the decision of *Arbitrator Gil Vernon* in Black River Falls S.C., Dec. No. 29002-A (11/97).

[23] Citing the contents of Employer Exhibit #40.

[24] Citing the following decisions of the undersigned: City of Washburn (Police), Dec. No. 27778-A (7/94); Burnett Co. (Courthouse/Social Services), Dec. No. 29204-A; Waukesha Co. (Sheriff's Dept.), Dec No. 29000-A (10/97); and Village of Germantown (Police), Dec. No. 28860-A (6/97).

(i) The continuing escalation of insurance premiums is resulting in ongoing and spiraling fringe benefits costs.

- For the majority of unit employees enrolled in the District's plans, health and dental insurance costs accounted for between 22-40% of their total compensation in 2001-02, and between 25-43% in 2002-03.

- The cost of health insurance alone averaged $5.77/hour in 2000-01, $6.76/hour in 2001-02 and $8.11/hour in 2002-03, thus far exceeding the averages across the state and the nation.[25]

- Total support staff fringe benefits costs are also on the rise, increasing from 2000-01 levels of $7.70/hour and 40.86% of total compensation, to 2001-02 levels of $8.82/hour and 43.35% of total compensation, and to 2002-03 levels of $10.15/hour and 45.75% of total compensation.[26]

- Mellen's historical family health insurance premiums increased from $414.68/month in 1991-92 to $968.90/month today, a 139% increase; further, 20% increases in 2001-02 and 2002-03, increased more than in the previous 6 years combined.[27]

- One of the reasons for Mellen's increasing health costs is the fact that it has historically provided topflight benefits at comparatively low cost; the recent nationwide insurance crisis, however, has forced it to *make up* for historically low premiums by charging drastic premium increases of 20% in each of the past two years.

- Mellen's health plan is currently self-funded through CESA 12's Northern Wisconsin School Employee Trust Fund, and the labor agreement requires the District to maintain coverage equal to or exceeding that in effect in 1990-91. Accordingly, in addition to paying 100% of premiums, the District makes direct payments for all health care services that would have been covered under the 1990-91 WEA plan, but are not covered under the current self-funded CESA plan.

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[25] Citing the contents of Employer Exhibits #36 and #44.

[26] Citing the contents of Employer Exhibit #36.

[27] Citing the contents of Employer Exhibit #34.

- When compared with the primary intraindustry comparables (i.e., the 9 other school districts which comprise the Indianhead Athletic Conference), Mellen's insurance premiums exceeded the average by $11/month in 2000-01, by $5/month in 2001-02, and fell below the average by $45/mo in 2002-03. As indicated in the Union's exhibits, however, those comparable districts which also self-fund insurance through the CESA plan, have significantly lower premiums than those which continue to contract through WEA.[28]

- Mellen's health plan contains exceptionally good benefit levels, maintaining low single and family deductibles, no co-pay after the deductibles have been met, and maintenance of the same level of benefits as was provided under the WEA plan.[29]

- The plain fact is that soaring recent health insurance increases in the state and the nation are not expected to slow in the immediate future.[30]

- While some comparable districts have experienced recent premium increases even higher than Mellen's, its 40% increase in just two years cannot be summarily dismissed.

- Contrary to the Union's assertions, Mellen's financial outlook is not a rosy one: it is one of the smaller school districts among the primary comparables; its student enrollment has been declining; and it has the lowest equalized value per student and a higher tax rate than all but one district, despite the fact that it is the highest-aided district among these comparables.[31]

- In a school district where the unemployment rate is the highest among comparables, and taxpayer income levels have dropped in rank from 4th to 7th over the past 5 years, increasing school taxes are not welcomed with open arms by taxpayers.[32]

- Because of steadily declining enrollment, the District has downsized it teaching staff in recent years, since the advent of an early retirement window in the teacher's collective

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[28] Citing the contents of Union Exhibits #30-#32.

[29] Citing the contents of Employer Exhibit #33.

[30] Citing the contents of Employer Exhibit #45.

[31] Citing the contents of Employer Exhibits #10, #16-#19 and #21-#23 and Union Exhibit #8.

[32] Citing the contents of Employer Exhibits #25-#27.

agreement; the ever-increasing cost of fringe benefits, however, continues to strain its finances.

- The District's fund balance is segregated into three categories: reserved, unreserved-designated and unreserved-undesignated. The majority of its fund balance is designated for *payment of liabilities* and for use as *working capital*, and includes *borrowed money* that must be repaid, and monies that are yet to be collected. Contrary to the arguments of the Union, there is no persuasive evidence that the District's fund balance is going up faster than other districts.[33] Further, it has been arbitrally recognized that recurring expenses should not be paid out of a district's fund balance, which should be maintained at a healthy level.[34]

- Contrary to the arguments of the Union, the Board's payment of $42,474 toward its unfunded retirement liability in the summer of 2002, did not represent District affluence. To the contrary, it was a conservative payment toward reducing the District's current unfunded retirement liability of about $289,000, which generates 8% interest charges and which, if not addressed, will result in an unpaid balance of about $226,000 at the end of the projected 40 year amortization period.[35]

- In Mellen, health insurance premiums have increased over 40% in the last two years alone, increases which were unheard of when the parties originally agreed to provide full health and dental insurance to employees; accordingly, the Arbitrator should recognize and consider the fact that the original insurance language is no longer reflective of today's spiraling health insurance premiums.[36] Such considerations should be recognized in these proceedings, particularly since the Employer is not proposing any change in insurance benefits for current employees.

- If ever there was a time to implement employee cost sharing of insurance premiums, it is now, and the proposal of the Employer in this respect is quite reasonable.

(ii) The District has attempted to negotiate a change in

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[33] Citing the *testimony of Mr. Ehrhardt* and the contents of Employer Exhibits #28-#31.

[34] Citing the decision of *Arbitrator Gil Vernon* in Black River Falls S.C., Dec. No. 29002-A (11/97).

[35] Citing the *testimony of Mr. Ehrhardt* and the contents of Union Exhibit #12.

[36] Citing the decision of *Arbitrator Steven Briggs* in Luxenbourg-Cascoe S.D., Dec. No. 27168-A (8/92).

insurance language during at least the last three contract renewal negotiations.

- In the 1997-99 round of negotiations, it proposed three changes: 1) an increase in the deductible from $100/$300 to $250/$500; 2) an increase in the standard for full health and dental benefits from 20 hours/week to 32½ hours/week; and 3) pro-ration of insurance premiums for employees working between 20-32½ hours per week.[37] The Union refused to agree to any of these proposals.

- In the 1999-01 round of negotiations, it again sought changes to the insurance language: 1) an increase in the standard for full health and dental insurance from 20 hour/week to 30 hour/week; 2) an increase in the deductible from $100/$200 to $250/$500; 3) an increase in the drug card from $2 to $10; and 4) capping the District's premium contributions at the 1999 levels.[38] The Union also refused to agree to any of these proposals.

- In the contract in issue, the District again seeks a change in insurance language by proposing a 10% employee contribution toward health and dental, but only for *newly hired* employees. The Employer has thus offered a much less onerous change, one which affects only future employees, and one which was accepted by the Union's bargaining team on February 28, 2002.

- The District's request for more equitable cost sharing of health and dental insurance costs is not new, which enhances the reasonableness of its position.[39]

- Despite the reasonableness of the proposal, the Union continues to reject the District's proposals for more equitable contributions toward health and dental insurance coverage.

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[37] Citing the contents of Employer Exhibit #39.

[38] Citing the contents of Employer Exhibit #38.

[39] Citing the decision of *Arbitrator Edward Krinsky* in City of Marshfield (Water & Electric Utility), Dec. No. 26752-A (8/91).

- The Union has failed to reasonably respond to Employer proposed changes in health and dental insurance coverage: its October and November 2001 proposal for a "phase in" of medical coverage was rejected by the Employer because it provided for no health insurance at all during the first year of employment, which would have severely restricted the ability to hire new employees[40]; a document purporting to show the Union's past willingness to consider insurance modification should be rejected on two bases: 1) it was never received by the Employer; and 2) it would only apply to those working 20-27½ hours/week, and there are no such employees in the bargaining unit.[41]

(iii) The District's health and dental insurance proposal was voluntarily accepted by the Mellen teachers.

- Perhaps the strongest indication that the current health and dental insurance language poses a legitimate problem is the fact that the District's teachers, working in the same buildings and with the same children, voluntarily agreed to the same language proposed by the Employer in these proceedings.[42]

- A proposal to those who support the professional teachers that is identical to that accepted by the teachers, is generally agreed to be reasonable by arbitrators, who frequently recognize the need to maintain internal consistency among bargaining groups.[43]

(iv) The trend toward increasing employee prescription drug co-pays is well documented.[44]

- Neither parties' proposal in this area is, however, consistent with the Indianhead Conference comparables, in that most amounts are lower than either of the final offers.[45]

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[40] Citing the *testimony of Mr. Ehrhardt* and the contents of Union Exhibit #46.

[41] Citing the *testimony of Mr. Ehrhardt, Mr. Warner, Ms. Prenn, Ms. Margaret Jaeger, Ms. Donna Jaeger and Ms. Leslie Hall*, and the contents of Union Exhibit #81.

[42] Citing the contents of Employer Exhibit #40.

[43] Citing the following arbitral decisions: *Arbitrator Sherwood Malamud* in Greendale School District, Dec. No. 25499-A (1989); *Arbitrator Daniel Nielsen* in Manitowoc Public School District, Dec. No. 26263-A (6/90); *Arbitrator Stanley Michelstetter* in Janesville School District, Dec. No. 25853-A (10/89); *Arbitrator Morris Slavney* in Bloomer School District, Dec. No. 27407 (4/93); *Arbitrator Joseph Kerkman* in City of Madison (Police), Dec. No. 16034-A (7/78); and *Arbitral Panel Sharon Imes, William W. Petrie and James Stern* in Dairyland Power Cooperative, A/P P-02-002 (7/02).

[44] Citing the contents of Employer Exhibits #44 and #45.

[45] Citing the contents of Union Exhibit #42 and Employer Exhibit #33.

- The Mellen teachers agreed upon a $6 drug co-pay, and such a figure is also reasonable for the support staff.

(v) Employee contribution toward insurance premiums is the norm among other comparable groups.

- Other public sector employees in the same area do not receive fully paid health insurance even when working full time.[46]

[46] Citing the contents of Employer Exhibits #42.

- In all of the counties in which the comparable school districts are located, unionized employees typically contribute 10% of the cost of family health insurance premiums, the same level proposed by the District; in all but one of these counties, employees must also contribute toward the cost of single coverage.[47]

- Statewide, employee contribution toward health insurance premiums in teaching units is common, and many local private sector employers also require such contribution.[48]

The above evidence has met the District's burden of proof to show that a legitimate problem exists with the current health and dental insurance language, the first prong of the required status quo test.

(f) The District has demonstrated that *its insurance proposal reasonably addresses the problem*.

(i) Arbitrators have widely recognized the validity of employee cost-sharing of insurance premiums and other insurance expenses in the face of rising health care costs.[49]

(ii) In the case at hand the impact of the District proposed premium sharing is significantly reduced by the fact that its offer applies only prospectively to newly hired employees, and no current employees will be affected.

(iii) Union objection to a two-tiered system is neither universally accepted by arbitrators nor consistent with one of its earlier proposals.[50]

(iv) Asking new support staff to contribute to the cost of their health and dental insurance coverage, will create an environment in which both parties may be more willing to address and mutually resolve insurance cost containment issues in future negotiations.

(iv) The District's proposal on health insurance is a reasonable response to skyrocketing cost increases, which is evidenced by its acceptance in the teachers' agreement.

The above evidence has met the District's burden of

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[47] Citing the contents of Employer Exhibit #68.

[48] Citing the contents of Employer Exhibits #41 and #53.

[49] Citing the following principal arbitral decisions: *Arbitrator William W. Petrie* in City of Kaukauna Police, Dec. No. 26061-A (2/90); *Arbitrator David Johnson* in Village of West Salem, Dec. No. 26975-A (2/92); *Arbitrator Robert Mueller* in School District of Rhinelander, Dec. No. 19838 (1/83); *Arbitrator Gil Vernon* in Elkhart Lake-Glenbeulah School District, Dec. No. 26991-A (12/90); and *Arbitrator John Flagler* in Cochrane-Fountain City (Support Staff), Dec. No. 27234-A (10/92).

[50] Citing the contents of Union Exhibit #46, and the decision of *Arbitrator Mary Jo Schiavoni* in Drummond School District (Support Staff), Dec. No. 30067 (10/01).

establishing the second prong of the required status quo test.

(g) The District has offered an appropriate *quid pro quo* for its proposed change.

(i) There are, in fact, several quid pro quos: *first*, an additional day of holiday pay; *second*, a new and generous early retirement/sick leave payout provision, providing one month of retirement health insurance for each 10 days of accumulated sick leave for eligible retirees, and $25 for each sick leave day for certain others; *third*, modification of emergency school closure language providing school year employees with up to four days pay in the event of inclement weather; *fourth*, a one time longevity payout based upon the number of hours worked in the 2001-2002 school year; and, fifth, its *grandfathering* of all current employees under the existing health and dental insurance premium contribution language.[51]

(ii) Time after time, arbitrators have approved prospective proposals which do not impact upon incumbent employees.[52]

(iii) Arbitrators have also stated that when the proposed status quo change involves health insurance, the need for a quid pro quo becomes less imperative, since rising health insurance premiums themselves alter the status quo.[53]

(iv) In Mellen, the District is not proposing anything new, in that the teachers have voluntarily accepted the same insurance changes proposed in these proceedings.

(v) Mellen is also not woefully behind comparable school districts.

- Its fringe benefits are right in line with the comparables.[54]

- The support staff will also receive highly competitive total package increases.[55]

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[51] Citing the contents of Employer Exhibits #8-#10, #54 and #57.

[52] Citing the following arbitral decisions: *Arbitrator Mary Jo Schiavoni* in Grant County (Professionals), Dec. No. 29201-A)9/98); *Arbitrator Gil Vernon* in Oconto County (Sheriff's), Dec. No. 29079-A (3/98); and *Arbitrator James Stern* in Monroe S.D., Dec. No. 26896-A (11/91).

[53] Citing the decisions of *Arbitrator Zel Rice* in Walworth Co. Handicapped Children's Educ. Bd., Dec. No. 27422-A (5/93), and *Arbitrator Gil Vernon* in Cumberland School District, Dec. No. 29938-A (12/00).

[54] Citing the contents of Employer Exhibits #47-#55.

[55] Citing the contents of Employer Exhibit #66.

- The support staffs's 3% increases are higher than those received by the District's teachers.[56]

- Maximum wages for custodian and head custodian are at about the middle of the comparables, those for the teacher aides rank in the top 40%, catch up increases for the cook and head cook positions bring them to about a mid-ranking, and both parties have agreed to significant kitchen helper catch up increases. While the secretary position continues to rank near the bottom of comparables, it encompasses only two of the nineteen bargaining unit employees.[57]

(h) On the above bases, it urges that it has met its burden of establishing that *a legitimate problem exists* with the current health and dental insurance language, that *its proposal reasonably addresses the problem*, and that *it incorporates numerous quid pro quos in exchange for its proposed modifications* to the insurance language.

(5) On the remaining six impasse items, the District's final offer is preferable because it mirrors the parties' tentative settlement, and/or is part of the requisite *quid pro quo*, while the Union's offer demands improvements in five different benefits, without providing any corresponding *quid pro quo*.

(a) In connection with *holidays*, the Employer proposes a full day of pay for Christmas, which is the external pattern and, more importantly, is identical to what was agreed upon in the parties' tentative settlement.[58]

(b) In connection with *personal leaves*, the Employer proposes no change while the Union seeks removal of the five day requirement for a second day, making 2 days per year immediately available. The comparables are mixed in various respects, the parties tentative agreement made no change in the existing personal leave provisions, and the District's offer is fully consistent with this agreement.[59]

(c) In connection with *sick leave*, the Employer proposes no change while the Union seeks substantial increases. While the current sick leave benefit ranks near the bottom of comparables, the parties' tentative agreement made no change in the existing provisions.[60]

(d) In connection with *vacations*, both parties propose reduction of the eligibility requirement for 3 weeks of vacation from 10 to 8 years and to reduce the eligibility requirement for

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[56] Citing the contents of Employer Exhibits #65 and #67.

[57] Citing the contents of the following: Employer Exhibits #59-#60 and Union Exhibit #19; Employer Exhibits #62-#63 and Union Exhibits #16-#17; Employer Exhibit #64 and Union Exhibit #15; and Employer Exhibits #8 and #58 and Union Exhibit #18.

[58] Citing the contents of Employer Exhibit #47.

[59] Citing the contents of Employer Exhibit #49 and Union Exhibit #58.

[60] Citing the contents of Employer Exhibit #50 and Union Exhibit #57.

4 weeks from 20 to 15 years, and to remove the 5 week benefit entirely; and the Union also proposes reduction of the eligibility requirement for 2 weeks of vacation from 3 to 2 years. The comparbles are mixed, none provides a 5th week of vacation, the Employer made significant concessions in this area, and its vacation offer is identical to the parties' tentative agreement.

- The District's final offer contains a typo of "June 30, 2002," which should have read "June 30, 2000," and it also refers to a letter of agreement dated "February 13, 2002" which should have been dated "February 2001."

- When the February 28, 2002 tentative agreement was reached, *both* parties mistakenly relied upon dates in the February 2001 side letter.

- While the Union may argue that the District's final offer is fatally flawed, the intent of the offer is clear, and the District's intention to abide by all of the side letters of agreement explicitly appears in the first sentence of its final offer.

- Arbitrators have recognized that where unintentional ambiguous language appears in a party's final offer, the offer should not be summarily rejected on this basis alone.[61]

(e) In connection with *school closures*, the District proposes to modify the existing school closure procedure by providing up to 4 days pay for school year employees in the event of such closure due to inclement weather.

- The District's proposal is more generous than comparables, is identical to the parties' tentative agreement, and is part of the quid pro quo for its proposed insurance changes.

- The intended application of the proposal was clear to all parties during the negotiations process, despite Union arguments at arbitration that it was unclear. Simply stated, the parties discussed two categories of employees, 12 month employees and all others; 12 month employees are required to report to work on inclement weather days, while non-12 month employees are not so required, and both parties intended this language to apply solely to the non-12 month employees.[62]

- Contrary to arguments of the Union, there is no uncertainty related "*flaw*" in this element of the District's final offer, which would justify its arbitral rejection.

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[61] Citing the decision of *Arbitrator Stanley Michelstetter* in Clintonville S.D., Dec. No. 23051-A (9/86).

[62] Citing *the testimony of District Administrator Ehrhardt and Union bargaining committee members Margaret Jaeger, Donna Jaeger and Leslie Lee*, in addition to the contents of Employer Exhibits #51, #55 and #56 and Union Exhibit #66.

(f) Both parties propose to add early retirement/sick leave benefits to the new agreement: the Employer proposes one month of retirement health insurance premiums at the exit cost of a single policy for each 10 days of accumulated sick leave for eligible retirees, and an exemption for recent retiree Murlene Weiner to ensure her inclusion in this category, or $25 per day for ineligible retirees; the Union proposes a sick leave payout of 35% of the employee's daily rate of pay for each unused sick leave for those at least 55 years of age with at least 10 years of service.

- The District's proposal is more generous than the comparables, in that 6 of the 9 provide no paid health insurance benefit to retirees, and 4 of the 9 provide no sick leave payout for retirees. By way of contrast, the Union's final offer calls for a cash payout significantly higher than any of the comparables.[63]

- The District's final offer mirrors the parties' earlier tentative agreement, with the single exception of eliminating a cash payout option for those eligible to apply their accumulated days of unused sick leave toward retiree health insurance; this change was necessitated by IRS regulations which treat the right to a cash option as taxable income.

- The Union's final offer for this significant new benefit, is unsupported by the requisite quid pro quo.[64]

It is highly unlikely that the District would have agreed at the bargaining table to grant the Union a brand new sick leave payout benefit, additional holidays, additional personal leave, additional sick leave, and additional vacation, for the Union's sole concession of a $2/$7 prescription drug co-pay. The Union simply seeks too much for too little, and the District's final offer is thus the more reasonable.

(6) The interest and welfare of the public support the District's final offer.

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[63] Citing the contents of Employer Exhibits #51, #53 and #54.

[64] Citing the decisions of *Arbitrator Irving Brotslow* in Hurley School District (Teacher Aides), Case 44 No. 59148 INT/ARB-9078 (10/01), and *Arbitrator Daniel Nielsen* in Cudahy S. D., Dec. No. 15125-A (6/88).

(a) Because the District's final offer incorporates a one-time longevity payout and an additional one-half day paid holiday each year beyond what is offered by the Union, total compensation increases over the two year duration of the agreement are higher under its final offer. While it is not pleading inability to pay, it urges that it is supported by the public interest criterion in its unwillingness to be the sole financier of future health and dental insurance costs for prospective employees.[65]

(b) Ashland County's unemployment rate has historically been higher than average within the State, and higher than the average unemployment rate in all of the counties embracing the comparable school districts.[66]

(c) Ashland County's unionized employees received pay increases in the range of 3% in 2001, and in 2002 only the law enforcement unit has settled, which settlement included a 10% employee contribution for health insurance in exchange for a wage increase slightly in excess of 3%. The County's other bargaining units, which currently include payment of $20 per month toward health insurance premiums, are headed to arbitration over the same 10% contribution level agreed upon in the law enforcement unit.[67]

(d) The District's other unionized employee group, the teachers, received total package increases of 4.6% in 2001-2002 and 4.36% in 2002-2003, far less than the 8.3% (2001-2002) and 9.04% (2002-2003) offered to the support staff.[68]

(e) Mellen is not a *rich* district, its student enrollment has been declining, it has the lowest equalized value per student of any conference district, and it must thus tax at a higher rate than all but one comparable district, even though its costs per student are not out of line and it is the highest aided district in the conference.[69]

(f) Mellen's higher tax rates are an increasing burden to taxpayers whose income levels are not keeping pace.[70]

(g) Union data relating to a decline in mill rate for Mellen's taxpayers since 1992-93, is marked by a failure to show the historic mill rates for comparable districts; because of 1993, which included establishment of 2/3 funding from the State, mill rates for all districts decreased thereafter.[71]

(h) Given the high tax rates and low income of the District's taxpayers, the "interest and Welfare of the public"

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[65] Citing the contents of Employer Exhibit #11.

[66] Citing the contents of Employer Exhibit #27.

[67] Citing the contents of Employer Exhibit #68.

[68] Citing the contents of Employer Exhibits #11 and #67.

[69] Citing the contents of Employer Exhibits #18, #19, and #20-#23..

[70] Citing the contents of Employer Exhibits #25 and #26.

[71] Citing the contents of Union Exhibit #10 and Employer Exhibit # 22.

criterion favors selection of its final offer.

The above evidence establishes that the interest and welfare of the public criterion favors selection of the District's final offer.

(7) The cost of living criterion also favors selection of the District's final offer, rather than that of the Union.

(a) The District's final offer will provide total package increases of over 17% for the two year renewal agreement, as compared to 16.5% increases under the Union's offer, both of which exceed recent increases in cost of living.[72]

(b) The true cost of the Union's offer must be calculated on the basis of the future impact of dollars allocated to payment of health insurance premiums for new employees.

On the basis of the overall impact of the Union's final offer, including its future costs, it urges that the cost of living criterion favors selection of the District's final offer.

On the basis of all of the above, the District offers the following summarized conclusions:

(1) The District's offer is preferable in that it represents the bargain that the parties would have reached if negotiations had been successful. The Union's offer, however, deviates from the parties' own tentative agreement on every single issue in dispute.

(2) The District has met its burden of proof to require newly-hired employees to contribute 10% toward their health and dental insurance.

(a) Health and dental insurance premiums have been skyrocketing in recent years and are expected to continue to do so.

(b) The District has been attempting to achieve insurance changes at the bargaining table for at least the last 3 contract renewals.

(c) The District's teachers agreed to the same insurance language proposed for the support staff.

(d) Arbitrators have recognized the inherent reasonableness of employee cost-sharing of health insurance expenses.

(e) The District's offer will not reduce existing insurance premium contribution levels for current employees.

(f) The District has offered several quid pro quos in exchange for its proposed changes.

(3) On the remaining issues, the District's final offer is preferable because it mirrors the parties' tentative settlement, while the Union offer demands significant improvements in five benefits without providing a corresponding quid pro quo.

(4) The interest and welfare of the public and the cost of living

[72] Citing the contents of Employer Exhibits #8-#10.

criteria support the District's final offer.[73]

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two before the arbitrator, the Union emphasized the following principal considerations and arguments.

(1) That certain *legal and troublesome issues* are raised in various components of the District's final offer.

[73] While both parties submitted lengthy and detailed reply briefs, the material contained therein essentially elaborated upon considerations already addressed in their initial briefs; while they have been thoroughly reviewed and considered in the final offer selection process, no appropriate purpose would be served by their separate summary.

(a) That the portion of the Employer's final offer addressing vacations is deficient in certain respects.[74]

(i) Two signed letters of agreement which were agreed upon after the ratification of the previous agreement, cannot be considered tentative agreements because of the effective dates within the two signed agreements.[75]

(ii) That two paragraphs in the Employer's final offer create a legal issue concerning a two year overlap. The first paragraph covers employees hired after June 30, 2000 and the second deals with those hired prior to June 30, 2002; they do not address the status of those hired to fill a twelve month position after June 30, 2000, but prior to June 30, 2002.

(iii) That the last paragraph of the Employer's final offer is in conflict with the letter of agreement signed by the parties on 6/12/01 and 6/22/01, as it could apply to employees hired prior to July 1, 2002, who currently hold a non-twelve month position.

(iv) The District's final offer does not delete any part of the letters of agreement signed in February and March of 2001, nor any parts of the agreement signed in May/June of 2001; the above referenced conflicts are thus legitimate legal concerns.

(v) The District's Administrator testified that he could not find a signed copy of the May/June 2001 letter of agreement, and therefore had not known that there was such an agreement.[76] This testimony is inconsistent with the first sentence of the District's final offer.[77]

(vi) On the above bases, the District's two paragraphs concerning vacations in its final offer cannot be ignored, and the conflicts between this document and the prior letters of agreement cannot be overlooked.

(b) That the portion of its final offer concerning *emergency school closure is also deficient*.

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[74] Citing the contents of Article VI, Section D(1).

[75] Citing the contents of Union Exhibits #49 and #50.

[76] Citing the contents of Union Exhibit #3.

[77] Citing the contents of Union Exhibit #2.

(i) That while it addresses affected employees who work 36 weeks per year and those who 38 weeks per year, it does not address what happens to employees who work more than school term plus two weeks, but are not twelve month employees.[78]

(ii) The above consideration has created a District overstatement of costs totaling $666.00.[79]

(iii) The Employer costing data for school closings does not provide for wages for kitchen workers for late starts or for early releases, despite the fact that nothing in its proposed language indicates that they would be treated differently than other unit employees.[80]

(iv) In a letter dated September 24, 2002, the District informed the Union that in the event of a partial closing only custodian and office staff would remain.[81]

(2) That the District's rationale in support of its *health and dental insurance* proposal is inconsistent with the evidence.

(a) It argued that employers are reducing health benefits and/or requiring employees to pay a higher share of health insurance premiums, but such actions have not occurred among the comparable school districts.

(b) The comparable median drug deductible for 2002-03 is $2.00, and the District proposed offer of $6.00 would be the highest among comparable districts.[82]

(c) The comparable premiums for family health and dental insurance indicate as follows: Mellen's annual premiums per employee for 2000-01 and 2002-03 were $813.00 and $996.00 below the median annual premium for the comparables; Mellen's rankings in these premiums for 2000-01 and 2002-03, were 8 out of 10.

(d) The above considerations have not demonstrated the requisite need for a change in the status quo ante.

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[78] Citing the contents of Union Exhibit #75, page 3.

[79] Citing the contents of Employer Exhibit #57.

[80] Citing the contents of Union Exhibit #75.

[81] Urging a conflict between Union Exhibit #75, item #4, and Employer Exhibit #57.

[82] Citing the contents of Union Exhibit #42.

(3) That arbitral consideration of *the total compensation* for the three Mellen positions versus the primary comparables, shows that Mellen is not a total compensation leader but rather that its employees are in need of a catch-up.[83] That the position of the Union in this respect is consistent with various Wisconsin interest arbitration decisions.[84]

(a) The District has shown that it does not plan on dollar savings through having new employees paying 10% of the health care premiums, in that it intends to hire only new employees working fewer than 20 hours per week.

(b) During the October 2, 2001, negotiations, the Union proposed that new employees would receive no health insurance benefit during their first year of employment, single health care insurance during their second year of employment, and 75% and 88% of the health insurance premiums during their third and fourth years, and the same coverage as other employees during their fifth year of employment.[85] The District claim that such a provision would interfere with its hiring of new employees is inconsistent with the fact that it has filled jobs entailing fewer than 20 hours per week of work, without providing health insurance.

(c) The District's offer of requiring new employees to pay 10% of their health care costs would not save it any monies, in that the agreement ends on June 30, 2003, and there has been no anticipation of new hires prior to that date.

(d) While the Union has flexibility on health care issues, it did not propose any change in its final offer, because they would not be supported by the comparable districts, and because arbitrators prefer that issues of health care be settled on voluntary bases.

(4) That the District had failed to provide an appropriate *quid pro quo* in support of its final offer.

(a) The District's final offer takes away various previous benefits: it reduces the maximum amount of vacation time a twelve-month employee can earn from 200 hours to 160 hours; it requires new employees to pay 10% of health care insurance; and it increases the prescription drug deductible from $2 to $6 per prescription.

(b) The 10% employee payment of health and dental insurance and increasing the deductible are unique among comparable districts, and the quid pro quo should be comparable in value.

(c) Among comparable districts, the median years of work for 2 weeks of vacation is 2 years, the median for 3 weeks of vacation is 7 years, and seven of the none comparables

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[83] Citing the contents of Union Exhibits #75, page 3, #39, #40 and #43.

[84] Citing the following decisions and awards: *Arbitrator James L. Stern* in Waunakee Community School District, Case 18 No. 5996 INT/ARB-9285 (9/10/02); *Arbitrator Edward B. Krinsky* in Merrill School District, Dec. No. 30050-A (10/18/01); and *Arbitrator George R. Fleischli* in Cedar Grove-Belguim Area School District, Case 13 No. 41283 INT/ARB-6061 ((7/20/90).

[85] Citing the contents of Union Exhibit #46.

provide 4 weeks after 15 years or less.

(d) The District's offer reflects less vacation time than the median for those working 2 years, less than the median for those who have worked 7 years, and it ties the median for those who have worked 15 years.

(e) The value of the District's quid pro quo is insufficient.

(f) The District has also failed to offer an appropriate *quid pro quo* for new employees who will be hired in the future.

(5) The District has failed to provide appropriate information relating to the projected savings from it *prescription drug deductible* offer.

(a) Information provided to the Union from the WEA Trust Plan approximated the month premium savings at $9.70 per month for single and $19.60 per month for family coverage.

(b) The approximate premium savings to the Employer for the current bargaining unit would be $3,763 per year, added to the $1,248 per employee yearly savings for new employee premium payments.

(6) The District's offer of *Christmas Day as a paid holiday* would cost $804.40 per year.[86] The four paid holidays proposed by the District, compare with a median of 5 paid holidays among the comparables.[87]

(7) The *wage increase components* of the two final offers are identical. The Union submits, however, that the offers do not provide for wages above and beyond the median wages for the comparables; accordingly, it urges that the wage offers provide no quid pro quo to support the District proposed changes in group health insurance coverage.

(8) The District's one-time longevity offer is unique, in that it is only in effect for the 2001-02 school year, and it only affects 9 of the 19 employees in the bargaining unit.[88] It submits that it cannot be considered an adequate quid pro quo for the Employer proposed changes in group health insurance.[89]

(9) The District's offer provides for two treatments for unused sick leave upon retirement: *first*, if an employee has 70 such unused days, is at least 57 years of age, and has completed 20 years of continuous service, he/she will receive on month of District paid health insurance for each 10 days of accumulated sick leave; *second*, if an employee has fewer than 70 such unused days, is at least 57 years of age, and has completed 20 years of continuous service, he/she will receive $25 for each unused sick day.

(a) Six of the nine comparable districts have some sort of retirement benefits: five have no age limit; one has five years, one has ten years, and three have 15 years.

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[86] Citing the contents of Union Exhibit #75, page 3.

[87] Citing the contents of Union Exhibit #56.

[88] Citing the contents of Union Exhibit #68.

[89] Citing the decision of *Arbitrator Fred R. Dichter* in Wittenberg-Birnamwood School District, Dec. No. 9209 (5/22/02).

(b) Of the three such districts which offer health insurance, Glidden provides three years of single health insurance regardless of the number of unused sick days; Hurley provides $25 per day and 5 years of full family or single health insurance, regardless of the number of unused sick days; Drummond provides $5 for each unused sick leave plus 1 month's health insurance per five days of unused sick leave for 12 month employees, one month's health insurance for each 7½ days of unused sick leave for school term employees who work 8 hours per day, and one month's health insurance for each 10 days of unused sick leave for school term employees who work at least 6 hours per day.

(c) The Employer proposal means little for those in the bargaining unit since only two have retired since the beginning of the 2002-03 school year, and only four others could retire within the next ten years.[90]

(d) The proposal is uneven and inequitable in its distinction between hypothetical employees with 30, 69 and 70 days of unused sick leave, unused sick days in excess of 70 are lost by retirees, and those with 70 sick leave days or more must take single insurance coverage in lieu of $25 per day, even if the cash payment would be more favorable to them.

(10) The District's offer on *emergency school closure* is deficient in various respects.

(a) Only four of the nine comparables provide for no loss of pay for school closure, either paying the employees or allowing for makeup days with pay.[91]

(b) The District provides that school terms employees and school term employees plus two weeks do not have to make up the first four school closure days and will be paid for such days, and closures in excess of four days will be made up.

(c) The District proposal benefits only aides, in that the four custodians work 12 months, one secretary works 12 months and the other works 44 weeks, and the five kitchen employees would not receive the benefit for late starts and early releases; thus 11 of the 19 employees would thus not receive a benefit equivalent to that of the 8 aides. The eleven employee positions which are not covered, or partially covered by the school closure offer, are equally affected by the health care insurance impasse item.

(11) The District's quid pro quo offers fall into one or more of the following categories: an issue which reflects what the comparables already have and in which Mellen is in a catch up position; where the proposed quid pro quos are not applied evenly throughout the bargaining unit; where

[90] Citing the contents of Union Exhibits #61, #62 and #71.

[91] Citing the contents of Union Exhibit #66.

a quid pro quo applies once only, while the health care impasse items continue in effect; where new employees will lose much more in dollars than they will ever gain in the total quid pro quo.

(12) That the *Union's final offer* and *quid pro quo requirements* are justified and sufficient.

(a) Its *sick leave proposal* is preferable on the following principal bases: it does not change the ten sick leave days per year for those who work the school term or the school terms plus two weeks; it increases sick leave accumulation from 95 to 100 days; and it is supported by the external comparables.[92]

(b) Its *personal day proposal* is preferable on the following principal bases: personal days are not restricted to action which cannot be accomplished outside of normal work hours; it provides two personal days per year for all employees; and it provides equity within the Mellen bargaining unit comparable to that provided by the comparables.[93]

(c) Its *Christmas Day holiday* proposal is preferable on the basis of the comparables.[94]

(d) Its *wage rate proposal*, even though identical to that of the Employer, is considerably lower than comparables.[95]

(e) Its *vacations for 12-month employees* proposal is justified by the comparables.

(f) Its *retirement* proposal is more equitable and is justified by the comparables.

(g) The Union's offers on *sick leave*, *personal days*, *vacations*, *paid holidays*, and the bump of *kitchen employee's wage rates* are strongly supported by the comparbles, and a *quid pro quo* is not needed to support such catch-up issues.[96]

(13) The position of the Union on various remaining issues is as follows.

(a) The District proposed addition of "The District paid

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[92] Citing the contents of Union Exhibit #57.

[93] Citing the contents of Union Exhibit #58.

[94] Citing the contents of Union Exhibit #56.

[95] Citing the contents of Union Exhibit #36-38.

[96] Principally citing the decisions of *Arbitrator June Miller Weisberger* in Bristol School District No. 1, Case 8 No. 46794 INT/ARB-6312 (10/30/93), and *Arbitrator Gil Vernon* in School District of Cumberland, Case 30 No. 58227 INT/ARB-8849 (12/10/00).

insurance plan..." to the long term disability insurance and the life insurance provisions are "*non-starters*."

(b) The District letter addressing Ron Fiske's vacation time is not needed.

(c) The District proposed exemption of Murlene Wiener from the 20 year requirement contained in its final offer is acceptable to the Union, but all future retirees should be able to receive their retirement benefits on the same basis as she had.[97]

(14) That the final offers of neither party are in conflict with either *the greatest weight* and *the greater weight criteria.*

(15) That there is nothing to indicate that the Union's final offer goes beyond the *lawful authority of the municipal employer criterion.*

(16) That the District's final offer costs more than the Union's over the two year duration of the agreement, and the cost of the Union's proposal does not impinge upon *the District's ability to meet the costs* of the proposal.

(17) Both final offers provide that the parties' *tentative agreements would become part of the renewal agreement*, but the District proposed allocation of vacation time is in conflict with this commitment.

(18) The *comparison of all of the impasse items with the primary external comparables*, the Indianhead Athletic Conference, supports the position of the Union in every category, including the vacations, health and dental insurance, premiums, paid holidays, wage rates for each category of workers, retirement benefits, sick leave days per year and accumulation, personal leave days, and total compensation.

[97] Citing the decision of *Arbitrator Byron Yaffe* in Freedom Area School District, Decision No. 20142 (6/30/83).

(19) That since the cost of the District's final offer for the two year agreement exceeds that of the Union, the *cost of living* criterion favors arbitral selection of the Union's final offer.[98]

FINDINGS AND CONCLUSIONS

Prior to applying the statutory arbitral criteria, reaching a decision and rendering an award in these proceedings, the Arbitrator will review *the specific impasse items in issue*, the *nature of the interest arbitration process*, certain *status quo considerations*, the *negotiations history criterion*, the *group medical and dental insurance impasse item*, *additional arbitral criteria urged by the parties*, and *miscellaneous remaining considerations*.

The Impasse Items in Dispute

By way of review, it is again noted that the parties are at impasse on the following principal items.

(1) The Employer proposed introduction of new language into Article VI, Section B(4) of the agreement, to govern *emergency school closure*.

(2) The parties' proposed modification of Article VI, Section C(1), wherein the Employer proposes the addition of *one additional paid holiday* and the Union *one-half additional paid holiday*, for Christmas Day.

(3) The parties' proposed changes in Article VI, Section D(1), wherein they disagree as to *the years worked threshold for 80 hours of paid vacation*, with the Union proposing *two years* and the Employer *three years*, and wherein the Employer proposes adoption of vacation time allocation determined on the basis of a July 1 to June 30 fiscal year for 12 month support staff employees hired after June 30, 2000.

(4) The Employer proposed modification of Article X, Section B(1) to provide an *employee drug card cost of $6.00 per prescription*, versus Union proposed adoption of *drug card costs of $2.00 per prescription for generic drugs and $7.00 per brand name drugs*, effective 30 days after the Arbitrator's award; and the Employer proposed *10% health and dental insurance premium contributions for employees hired after the date of implementation of the agreement*, to be effective 30 days after the Arbitrator's award.

(5) The Employer proposed addition of Article X, Section D to the agreement to provide for the following: one month of retirement health insurance premiums for each ten days of accumulated sick leave for employees who are at least 57 years of age, have accumulated at least 70 days of unused sick leave, and have completed 20 years of continuous service; for such employees with less than 70 days of unused sick leave it proposes payment of $25.00 for each unused sick day. The Union proposes that retirees at least 55 years of age with at least ten years of service, be

[98] See footnote #73 above.

paid 35% of their then current daily pay rate for each unused day of paid sick leave.

(6) The Union proposed modification of Article XIII, Section B to provide for *increased accumulation of sick leave from 95 to 100 days*, and to *increase from ten to twelve days of sick leave per year, for employees who work more than the school year plus two weeks*.

(7) The Union proposed modification of Article XIII, Section F to provide *two paid personal days per year* for all employees, an increase of one such day for all employees with fewer than five years of service.

The Nature of the Interest Arbitration Process

As previously emphasized by various Wisconsin interest arbitrators, including the undersigned, it is widely recognized that interest arbitrators operate as *extensions of the contract negotiations process*, and their normal goal is to attempt, as closely as possible, to put the parties into the same position they would have occupied had they been able to reach full agreement at the bargaining table. In so doing, they consider all of the statutory arbitral criteria, including such factors as parties' *past practices* and *negotiations history,* which implicit criteria fall well within the scope of Section 111.70(4)(cm) (7r)(j) of the Wisconsin Statutes. These principles are well addressed in the following excerpt from the authoritative book by Elkouri and Elkouri:

> "In a similar sense, the function of the interest arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
>
> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should in negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to? ... To repeat, our endeavor will be to decide the issues, as upon their evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[99]

[99] Volz, Marlin M. and Edward P. Goggin, Co-Editors, *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Fifth Edition - 1997, page

Due to Wisconsin's statutory *final offer format*, which requires arbitral selection of the final offer of one of the parties *in toto*, it is sometimes impossible for arbitrators to render decisions close to the settlement the parties might have or should have reached at the bargaining table, which is particularly true where, as in the case at hand, there are multiple impasse items, and/or where the parties have little or no *bargaining room* on one or more of the impasse items. A party who submits a final offer significantly above or significantly below what should have or could have been reached at the bargaining table, will normally face arbitral selection of an opposing final offer which is closer to what might reasonably have been reached at the table.

Status Quo Considerations

The Employer proposed 10% group insurance premium contributions for future bargaining unit employees would modify a previously negotiated and long standing employee benefit providing that the Employer would pay the full premiums for such group medical and dental insurance coverage, and the Union objects to any such change in payment of insurance premiums. There is no dispute that Wisconsin interest arbitrators, when faced with demands for significant change in the negotiated status quo ante, normally require the proponent of change to demonstrate that *a legitimate problem exists which requires attention*, that *the disputed proposal or proposals reasonably address the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*, which criteria also fall well within the scope of Section 111.70(4)(cm) (7r)(j) of the Wisconsin Statutes. The parties disagree, however, in the outcome of the application of these considerations in the proceedings at hand.

In applying the above criteria to proposed changes, it must be recognized that *public sector* interest arbitrators are inherently more receptive to proposed changes in the status quo ante than their *private sector* counterparts, due to the normal non-availability in the public sector of such

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135. (footnotes omitted)

economic weapons as strikes and lockouts. Without arbitral receptivity to proposed changes in public sector interest arbitrations, either labor or management could totally avoid even badly needed changes, through the simple expedient of *refusal to seriously consider such changes*!

The Negotiations History Criterion

The impact of prearbitration negotiations and tentative agreements, and the relationship of these factors to the expectations of the parties is well described in the following excerpt from the authoritative book by Elkouri and Elkouri:

> "**Prearbitration Negotiations**
>
> It has been said that the award in a wage dispute seldom falls outside the area of 'probable expectancy' and that this area is the normal resultant product of the parties' negotiations and bargaining prior to submitting their differences to arbitration. In this regard too, one arbitration board concluded:
>
> > An examination of the wealth of evidence submitted in this matter in conjunction with the provisions of settlement worked out by the parties indicates that the most satisfactory award which the Board could render would be one in general agreement with those terms on which the parties were able at one time to substantially agree. Obviously, these terms are not what either party wanted. They represent compromise by both parties. However, since the general terms indicate a meeting of the minds, the Board consider that they hold the basis of a just award."[100]

Chequamegon United Teachers represents six bargaining units among the primary intraindustry comparables which comprise the Indianhead Conference, and in preparing for the negotiation of renewal labor agreements the six units coordinated their bargaining efforts and adopted certain *minimum bargaining goals*. On February 13, 2002, a coordination meeting took place, at which time the following changes were agreed upon:

> "**Action Item**

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[100] *Elkouri & Elkouri* How Arbitration Works, pages 1137-1138. (footnotes omitted)

> For 2001-02, 2002-03, 2003-04, each local agreed to change the previous minimum settlement allowed to 3% increases of wage rates each year and no health and dental insurance reductions (take backs) except a local can reduce the insurance benefits for new employees who work 4-6 hours/day with the district paying the same percentage of premiums as for other support staff bargaining members."[101]

Enforcement of the minimum bargaining goals are provided for in Article VI of the By-Laws for CUT, entitled *Ratification of Collective Bargaining Agreements*, which provide in part as follows:

> "**Section 1.** When a tentative agreement has been reached in a local that has selected Chequamegon United Teachers as the bargaining agent a local vote shall be taken by secret ballot. Such a vote shall be held at a local membership meeting where only CUT members are eligible to vote. No Absentee ballots will be allowed and a simple majority of the ballots counted is needed for ratification.
>
> **Section 2**. In situations where the tentative agreement is equal to or exceeds the minimum bargaining goals established by the CUT, the CUT Board will not vote for ratification. In such cases the agreement shall be considered ratified upon a successful ratification vote of the local membership.
>
> **Section 3.** In situations where the tentative agreement does not meet the minimum bargaining goals established by Chequamegon United Teachers or when CUT has not established any bargaining goals, the tentative agreement must be ratified by the CUT Board and by the local membership..."[102]

[101] See the contents of Union Exhibit #80.

[102] See the contents of Union Exhibit #78.

The Mellen contract renewal negotiations remained stymied by the District proposed 10% health insurance contribution for new employees, which was contrary to the minimum bargaining goals previously established by CUT. After having been frustrated by their inability to reach agreement in negotiations presided over by Mr. Delaney, who was carrying out his responsibility to respect CUT's minimum bargaining goals, the local members of the Mellen Bargaining Committee independently initiated a meeting with the District's negotiators. The Bargaining Committee and the District then reached a tentative agreement which, among other things, provided for a 10% group health insurance contribution from new bargaining unit employees. This settlement was overwhelmingly ratified by the members of the Mellen bargaining unit, but failed ratification by the CUT Board on the evening of March 12, 2002, due to the fact that it contained health insurance premium contributions for new employees.[103] This rejected tentative agreement was identical to the District's final offer in these proceedings, with the exception of two things: *first*, additional 25¢ per hour increases in each of the three wage steps for the Kitchen Helper classification; and, *second*, elimination of a cash payment option for retirees with accumulated sick leave, due to IRS treatment of the cash value of any such accumulated sick leave as taxable income. The Union's final offer, however, not only continued to reject any employee health insurance premium contributions, but added five additional fringe benefit enhancements, beyond those provided for in the tentative agreement: *first*, 80 hours of annual paid vacation after two rather than three years of service; *second*, employee drug card costs of $2.00 for generic and $7.00 for brand name drugs, rather that $6.00 per prescription; *third*, broadened eligibility and enhanced daily reimbursements for unused sick leave upon retirement; *fourth*, increases in sick leave accumulation and in earned sick leave per year; and, *fifth*, an increase in paid personal days.

[103] See the contents of Employer Exhibit #5 and Union Exhibit #78.

Since the tentative settlement between the Mellen Bargaining Committee and the District was ratified by the members of the bargaining unit, and it could not have been rejected by the CUT Board ***but for*** the 10% health insurance component contained therein, it is extremely persuasive evidence of the agreement the parties would have made at the bargaining table had they been able to do so, with the single exception of the health insurance impasse item which resulted in its rejection.[104] As described above, Wisconsin's final offer interest arbitration process normally results in arbitral selection of the final offer closest to what the parties would have or should have agreed upon at the bargaining table, and since the final offer of the District is clearly closer to the parties' earlier tentative agreement than that of the Union, the *negotiations history criterion* clearly and persuasively favors the position of the District in these proceedings.

The Group Medical and Dental Insurance Impasse Item

As noted above, and despite the significant number of apparent impasse items, the *determinative issue* is the Employer proposed *cost sharing of the group medical and dental insurance premiums* by future employees, in which connection the parties principally urge as follows.[105]

(1) The Employer principally relies upon the significant *escalation in the cost of providing such insurance*, *its frustrated attempts to achieve premium sharing* in past contract negotiations, the *rejected tentative agreement* reached with the members of Mellen bargaining committee which provided for premium sharing, and *internal comparisons*, whereby other new Mellen employees, both represented and non-represented, have assumed the 10% premium contribution proposed by it in these proceedings. It also urged that one previously discussed Union alternative, *gradual implementation of fully paid medical and dental coverage for new hires after an initial hiatus*, would seriously interfere with the hiring of new employees, who would thus be deprived of any employer provided medical and dental insurance for an extended period of time following their date of employment.

(2) The *Union principally relies upon* comparisons with the primary comparables within the *Indianhead Conference*, the alleged lack of a sufficient *quid pro quo*, and the financial ability of the

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[104] For this reason, various Union arguments challenging the merits of items other than health insurance which had been included in the parties' tentative agreement, are simply unpersuasive.

[105] While the parties also differ on the extent of *drug card prescription costs* to be borne by employees during the term of the agreement, the determining factor relating to the health insurance impasse item, is clearly the District proposed *10% new employee premium contribution*.

Employer to continue to pay the insurance premiums.

The application of the criteria governing changes in the status que ante will normally vary significantly from case to case, notably including impasses involving proposed changes in *group medical and/or dental insurance*, which principal is addressed in the following excerpts from a prior decision of the undersigned.

> "...'If public sector neutrals were precluded from recognizing change or innovation, the matter could not be rectified by the parties in their next negotiations, at which time they had the power to undertake economic action in support of their demands! A union dedicated to the avoidance of change in a context where all impasses moved to binding interest arbitration, rather than being open to strikes and lockouts, could forever preclude an employer from achieving change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.'
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> * * * * *
>
> Wisconsin public sector statutory interest arbitrators have recognized the occasional need for innovation or for change in the status quo ante, provided that the proponent of such change or innovation has demonstrated that a legitimate problem exists which requires attention and that the disputed proposal reasonably addresses the problem. The Wisconsin interest arbitrator, operating as an extension of the contract negotiations process, normally attempts to place the parties into the same position they would have reached over the bargaining table had they been able to agree, and an appropriate quid pro quo may be required to justify the proposed elimination of or substantial change in an established, existing and defined policy or benefit; the rationale for the so-called quid pro quo requirement is that neither party should gain either the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced a bargaining quid pro quo equivalent to that which normally would have evolved from the give and take of conventional bargaining...
>
> * * * * *
>
> What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. While comparisons should not alone justify movement away from the negotiated status quo, if it has been established that the requisite significant and unanticipated problem exists, arbitral examination of comparables can go a long way toward establishing the reasonableness of a proposal for change.
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> * * * * *

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the matter of health care cost increases for early retirees is an unanticipated and significant mutual problem, that the escalation of such costs has arisen through external circumstances beyond the control of either party, that a reasonable proposal addressing such a mutual problem is not the type of proposal that should require a significant quid pro quo, and that the reasonableness of the Employer's proposal in the case at hand is persuasively indicated by an examination of the primary intraindustry comparables."[106]

[106] See the decision of the undersigned in Algoma School District -and- Algoma Education Association, Case 18, No. 46716, INT/ARB 6278, pp. 23-26 (November 10, 1992), containing a partial quote from an earlier decision cited therein; also see and compare the decision of the undersigned in Iowa County -and- Iowa County Courthouse & Social Services Employees Union, Case 84, No. 52908, INT/ARB 7697 (April 2, 1997). See also the decisions of the various other Wisconsin interest arbitrators cited in the Employer's initial brief, wherein they reached similar conclusions.

The dramatic and ongoing escalation in public and private sector health care costs, nationally, statewide, and within the Mellen School District is beyond dispute, and significant numbers of private and public sector labor negotiators are addressing reduced levels of coverage and/or employee cost sharing in their attempts to address this situation. The following cost data submitted by the Employer clearly indicate the impact of this problem within the Mellen School District: *first*, its monthly family health insurance premiums have risen from $404.68 in 1991-92 to a current level of $968.90; *second*, its health care costs within the bargaining unit averaged $4.66 per hour in 2000-01, $6.76 per hour in 2001-2002, and $8.11 per hour in 2002-03; and, *third*, health insurance costs for Wisconsin school districts are persuasively projected to double between 2001-02 and 2006-07.[107] Without unnecessary elaboration, it is quite clear that the District has conclusively established *the existence of a very significant and legitimate problem which requires attention*.

It is next noted that the Employer has limited its proposed 10% employee health insurance premium contribution to new hires only, and it agrees that the levels of coverage shall continue to equal or exceed that provided to employees in the past. So-called *two tier* wage or benefit structures are not ideal, but the District's relatively modest proposal will continue to provide fully paid health insurance premiums for incumbent employees. While the Union had apparently previously indicated to the District its receptivity to a delay in eligibility for group health insurance for new hires, its final offer proposes no such change, and the Employer has persuasively urged that such a gap in eligibility for health insurance would significantly hinder its hiring of new employees. On these bases, the undersigned has determined that *the Employer's group health insurance proposal reasonably addresses the problems of the parties' rapidly escalating health insurance costs*.

[107] See the contents of Employer Exhibits #34, #36, #44 and #45.

What next of whether the District has provided an *appropriate quid pro quo* in support of its proposed cost sharing of group insurance premiums for new employees. In this connection it must be recognized that the District is not proposing the elimination or major modification of a *recently negotiated and stable benefit*, but rather is addressing a long standing health insurance benefit, the costs of which have dramatically escalated to the extent where they no longer resemble the conditions present when they were agreed upon by the parties; accordingly, it is unreasonable to conclude that any *major quid pro quo* should be required in support of the Employer's modest proposal addressing this significant and *mutual problem*.[108] Despite this determination, it is noted that the parties' earlier tentative agreement contained various elements of a *quid pro quo* which was then acceptable to the Mellen Bargaining Committee and the District, and the Employer's final offer also improved the wage increase component of the tentative settlement. These improvements, therefore, provide a significant *quid pro quo* in support of the Employer proposed health care changes.

On the above described bases the undersigned has determined that the Employer proposed changes in group health insurance are fully consistent with the *arbitral standards governing significant changes in the negotiated status quo ante*, including its having met the requisite *quid pro quo requirement*.

Additional Arbitral Criteria Urged by the Parties

What next of the additional statutory interest arbitration criteria urged by either or both parties in support of their positions on the health insurance impasse item, i.e., *ability to pay*, *comparisons*, *overall compensation*, and *cost-of-living*.

While the Union *affirmatively* urged arbitral consideration of the Employer's ability to continue to pay the entire cost of all employees' health insurance premiums, the *ability to pay criterion* has historically been applied in *negative* rather than *positive* contexts, within two principal situations:

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[108] Indeed, the members of the Mellen Bargaining Committee were unanimous in emphasizing their dual status as employees and taxpayers, and in expressing their convictions as to the appropriateness of the 10% health insurance premium sharing for new employees.

first, where the record indicates an *absolute inability to pay* by an employer; and/or, *second*, where the selection of one of the final offers would *necessitate a disproportional or unreasonable effort on the part of an employer*. The addition of the "*greatest weight*" and the "*greater weight*" criteria, however, somewhat changed the application of the *ability to pay criteria*:

(1) Specific limitations on expenditures or revenues **must** be present to trigger the application of the "*greatest weight*" criterion, which are not present in the case at hand.

(2) The "*greater weight*" criterion does not require such limitations and it can apparently be applied in at least two ways: *first*, by ensuring that an employer's economic conditions are fully considered in *the composition of the primary intraindustry comparables*; and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the *"...economic conditions in the jurisdiction of the municipal employer."* In other words, *like employers should be compared to like employers*, and *undue and disparate economic burdens should not be placed upon an employer without appropriate statutory consideration of comparable economic conditions*, neither of which situations are present in the case at hand.

Despite Employer arguments based upon certain negative economic circumstances in Mellen and in Ashland County, the undersigned has determined that neither the "*greatest weight*" nor the "*greater weight*" criteria is entitled to significant weight in these proceedings, and, accordingly, the *ability to pay* criterion would have carried significant weight in the final offer selection process *only* if a question had been raised about the Employer's impaired ability to pay the costs of one of the final offers. Since no such question has been raised, the *ability to pay criterion* is entitled to no significant weight in the final offer selection process in these proceedings.

What next of the parties' reliance upon the *comparison criteria* in support of the health insurance component of their final offers? The *intraindustry comparison criterion* is normally the most significant and persuasive of the various comparisons in wage and benefits impasses. While four of the nine other Districts within the Indianhead Conference have some form of employee contribution for health and dental insurance premiums, none has adopted the contribution scheme proposed by the District in these

proceedings.[109] Six of the comparables, however, are represented by CUT, and thus restricted in their individual abilities to agree to the type of health insurance premium contribution proposed by the District in these proceedings.[110] Despite the fact that three of the five other Districts represented by CUT have a limited form of employee health insurance premium contribution which apparently falls within CUT's current *minimum bargaining goals*, the Union's final offer proposed no such employee premium contributions.[111] On the above described bases, the undersigned has determined that the *intraindustry comparison criterion* does not strongly favor the position of either party in these proceedings.

It is undisputed that other District employees, including those in the teacher's bargaining unit, have already accepted the same future employee health insurance premium contribution proposed by the Employer in these proceedings.[112] Arbitral consideration of the *internal comparables*, therefore, supports the position of the District in these proceedings.

In next addressing the statutory *overall compensation criterion*, it is noted that this factor sometimes comes into play in connection with comparisons of wages, benefits, and conditions of employment, between comparables with diverse union/management philosophies. If certain comparables emphasize wage increases rather than fringe benefits while others emphasize fringe benefits at the expense of wages, for example, the only equitable and accurate comparison would have to include "...direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received." While the Union advanced various arguments which, in effect, questioned the adequacy of various wages or benefits not directly in issue in these proceedings, the alleged adequacy or inadequacy of the parties' previously agreed upon wages and benefits are

[109] See the contents of Employer Exhibits #32 and #46.

[110] See the contents of Union Exhibits #78 and #80.

[111] See the contents of Union Exhibit #80.

[112] See the contents of Employer Exhibit #40.

not directly before the undersigned in these proceedings. Without unnecessary elaboration, it is clear to the undersigned that consideration of this statutory criteria does not significantly favor the position of either party in these proceedings.

Since health care costs are a component of the market basket of goods and services utilized by the Bureau of Labor Statistics in determining movement in its various cost-of-living indexes, the rapid escalation in such health care costs fall well within the scope of the statutory *cost-of-living criterion*. It is quite understandable that the Union wishes to preserve fully paid medical and dental insurance for its constituents and the Employer wishes to join a substantial number of parties who have adopted/negotiated employee contributions to the costs of such insurance as a means of gaining some measure of cost control. While the Employer's final offer costs slightly more in the short term than that of the Union, it is quite clear that its offer would result in significant cost control over health insurance over the long term. To this extent, the cost-of-living criterion supports the health insurance component of the District's final offer.

Miscellaneous Remaining Considerations

The following considerations advanced by either or both of the parties are briefly addressed below.

(1) All of the cases cited by the parties in their comprehensive briefs were carefully reviewed and considered by the undersigned prior to reaching a decision and rendering an award in these proceedings. While all of the principles relied upon by the cited arbitrators were valid and appropriate, the application of these principles depends upon the individual facts and circumstances present in each case.

(2) In connection with the *alleged ambiguity* and *erroneous dates* arguments advanced by the Union, the undersigned notes that he fully agrees with the position of Arbitrator Michelstetter, as cited by the Employer, to the effect that final offers should not be dismissed from consideration on the basis of ambiguity or obvious errors which can be explained on the record. In the case at hand at least one of the mistaken dates resulted from *mutual* oversight, the errors were fully explained, neither the Union nor the employees were damaged, and the District has committed itself to apply the dates and side letters in accordance with their mutually intended application. Accordingly, neither these correctable errors nor other alleged ambiguities can be assigned significant weight in the final offer selection process.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has

reached the following summarized, principal preliminary conclusions relative to the various impasse areas in dispute.

(1) Wisconsin interest arbitrators operate as *extensions of the contract negotiations process*, and their normal goal is to attempt, as closely as possible, to put the parties into the same position they would have occupied had they been able to reach full agreement at the bargaining table.

(a) In carrying out the above responsibilities, the arbitrators consider all of the statutory arbitral criteria, including such factors as parties' *past practices* and *negotiations history,* which implicit criteria fall well within the scope of Section 111.70(4)(cm) (7r)(j) of the Wisconsin Statutes.

(b) Due to Wisconsin's statutory *final offer format*, which requires arbitral selection of the final offer of one of the parties *in toto*, it is sometimes impossible for an arbitrator to render a decision close to the settlement the parties might have or should have reached at the bargaining table. This situation is particularly true where, as in the case at hand, there are multiple impasse items and/or where the parties have little or no *bargaining room* on one or more of the impasse items.

(2) When faced with demands for *significant change in the negotiated status quo ante*, Wisconsin interest arbitrators, normally require the proponent of change to demonstrate that *a legitimate problem exists which requires attention*, that *the disputed proposal or proposals reasonably address the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo.*

(a) The Employer proposed 10% group insurance premium contributions for future bargaining unit employees would modify a previously negotiated and long standing employee benefit providing that the Employer would pay the full premiums for such group medical and dental insurance coverage.

(b) *Public sector* interest arbitrators are inherently more receptive to proposed changes in the status que ante than their *private sector* counterparts, due to the normal non-availability in the public sector of such economic weapons as strikes and lockouts. Without arbitral receptivity to proposed changes in public sector interest arbitrations, either labor or management could totally avoid even badly needed changes, through the simple expedient of refusal to seriously consider such changes.

(3) The *negotiations history criterion* applies to the case at hand as follows.

(a) Chequamegon United Teachers represents six bargaining units among the primary intraindustry comparables which comprise the Indianhead Conference, and in preparing for the negotiation of renewal labor agreements the six units coordinated their bargaining efforts and adopted certain *"minimum bargaining goals"* including *no health and dental insurance reductions* such as that proposed by the District.

(b) Tentative agreements equal to or exceeding the preestablished minimum bargaining goals are subject to ratification by local membership, but those not meeting such goals must be ratified by *both* local membership and the CUT

Board.

(c) The local membership's Bargaining Committee and the District reached a tentative agreement which included group health insurance premium contributions by new employees, which agreement was ratified by local membership, but subsequently rejected by the CUT Board.

(d) Wisconsin's final offer interest arbitration process, in effect, requires arbitral selection of the final offer closest to what the parties would or should have agreed upon at the bargaining table, and since the final offer of the District is clearly closer to the parties' earlier tentative agreement than that of the Union, the *negotiations history criterion* clearly and persuasively favors the position of the District.

(4) The *group health insurance impasse item* is the determinative issue in these proceedings.

(a) The Employer proposed changes in group health insurance are fully consistent with the *arbitral standards governing significant changes in the negotiated status quo ante*.

(b) The *ability to pay criterion* is entitled to no significant weight in the final offer selection process in these proceedings.

(c) The *intraindustry comparison criterion* does not significantly favor the position of either party in these proceedings.

(d) The *internal comparison criterion* favors the position of the District in these proceedings.

(e) The *overall compensation criterion* does not significantly favor the position of either party in these proceedings.

(f) The *cost-of-living criterion* favors the position of the District in these proceedings.

(5) On the above described bases, the undersigned has determined that the record clearly supports the position of the District with respect to its employee health care proposal.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily concluded that the final offer of the District is clearly the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the School District of Mellen is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the District, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

March 21, 2003