In the Matter of the Petition of

WEYAUWEGA-FREMONT EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

To Initiate Arbitration Between Said Petitioner and

WEYAUWEGA-FREMONT SCHOOL DISTRICT

Case 26
No. 60513
INT/ARB-9428

Decision No. 30449-A

Appearances:

Mr. Timothy E. Smith, UniServ Director, Central Wisconsin UniServ Councils, 625 Orbiting Drive, P.O. Box 158, Mosinee, WI 54455-0158, at hearing and on briefs, and Mr. Greg Spring, Negotiations Specialist, Wisconsin Education Association Council, at hearing and on reply brief, appearing on behalf of the Weyauwega-Fremont Educational Support Personnel Association.

Ms. Susan M. Love and Mr. Robert J. Simandl, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202-6613, appearing at hearing and on briefs on behalf of Weyauwega-Fremont School District.

ARBITRATION AWARD

Weyauwega-Fremont Educational Support Personnel Association (hereinafter Association) is a labor organization maintaining its offices at 625 Orbiting Drive, Mosinee, WI. The Weyauwega-Fremont School District (hereinafter District) is a municipal employer maintaining its offices at 410 East Ann Street, Weyauwega, WI. At all times material herein, the Association has been and is the exclusive collective bargaining representative of a bargaining unit consisting of all full-time and regular part-time non-confidential secretaries, assistant bookkeepers, custodians, groundskeepers, maintenance workers, assistants, cooks, servers, head mechanic, assistant mechanics, and bus drivers employed by the District, excluding the bookkeeper, superintendent's secretary, head cook, supervisors, professional employees, managerial employees, confidential employees, and all other employees.

The Association and the District have been parties to a series of collective bargaining agreements. At a date not clear in the record, They exchanged their initial proposals and bargained on matters to be included in the successor collective bargaining agreement. On November 2, 2001, the Association filed with the Wisconsin Employment Relations Commission (hereafter Commission) a petition to initiate interest arbitration with the District. On February 13, 2002, a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked

in their negotiations. By August 22, 2002, the parties submitted their final offers to the Commission. On September 4, 2002, the Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The Commission furnished the parties with a panel of arbitrators for the purpose of selecting a single arbitrator to resolve said impasse. On September 19, 2002, the parties advised the Commission that they had selected the undersigned as arbitrator in this matter.

Hearing in this matter was scheduled for November 19 and 20, 2002, at the District Offices in Weyauwega, WI. On or about November 15, 2002, this arbitrator received a voice mail from the District's counsel at that time saying that the District was considering changing counsel and requesting that the hearing in this matter be postponed pending that determination. The Association stated that it was not in favor of postponing the arbitration. This arbitrator granted the request to postpone. In a letter received via facsimile on November 18, 2002, current counsel stated its appearance. In a letter dated December 20, 2002, this arbitrator scheduled the hearing in this matter for January 20, 2003, at the District Offices in Weyauwega, WI. In a letter dated December 26, 2002, counsel for the District submitted a revised copy of the District's final proposal, and stated that the Association did not object to the submission of the document.

Hearing was held on January 20, 2003, in Weyauwega, WI. Settlement efforts were made and all but one issue was resolved. At that time, the District submitted a revised final offer without objection by the Association. The Association's position was that of *status quo*, including tentative agreements reached by the parties. At hearing the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs and, after waiting to see if their were any objections, the record was closed on May 21, 2003. Full consideration has been given to all the evidence and arguments of the parties in reaching this decision.

FINAL OFFERS

District

In addition to the tentative agreements between the parties, the District submitted the following:

ARTICLE XVII – MISCELLANEOUS PROVISIONS

Section 125 Plan: Offer a Section 125 Premium Only Plan to all employees at no cost to the Association.

ARTICLE XVIII – INSURANCE PROVISIONS

2. Health Insurance
The District shall institute the WEA Insurance Plan for the 1999-

2000 school year. The District shall pay 86% per month **of the basis** for the family health premium and 75% per month **on the basis** for the single health premiums for those full-time employees who wish to be insured. **The basis for the 2002-2003 premium shall be 117.5% of the 2001-2002 premium.** ~~The same percentage will be used for the 2000-2001 rates.~~ For the purposes of this provision, full time shall be determined according to 1440 hours annually. Eligible employees who work less that 1440 hours annually shall receive pro-rated payment for insurance.

Appendix A and B[1]
A ~~4.0~~ **6.5**% total package **including a $0.35 per hour wage increase** for the ~~1999-2000~~ **2002-2001 costing** ~~budget~~. A ~~3.9~~ **5.96**% total package **including a $0.35 per hour wage increase** for the ~~2000-2001~~ **2002-2003** contract year will be figured in July of 2000 **August of 2002** based on the ~~1999-2000~~ **2001-2002 costing** ~~benefit~~.

Association

In addition to the tentative agreements between the parties, the Association did not submit a final offer but for the *status quo*.

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. 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

[1] The wage increase of $0.35 per hour each year was agreed to by the parties; nonetheless, the District included it in their final offer. This issue is not in dispute.

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:

1. The lawful authority of the municipal employer.

2. Stipulations of the parties.

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

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

5. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

6. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

7. The average consumer prices for goods and services, commonly known as the cost of living.

8. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

1. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

10. 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.

POSITIONS OF THE PARTIES

District on Brief

The District argues that because the Association failed to introduce any evidence regarding the cost of the two final offers, the arbitrator must accept the District's figures as accurate; that the cast forward method of costing accurately portrays the value of the proposed settlement; that the District's set of comparables is more relevant than the Association's; that the District has identified the following external comparable school districts as being comparable to Weyauwega: Iola-Scandinavia, Manawa, Omro, Shiocton, Tomorrow Rivers, Tri-County, Waupaca, and Wild Rose; and that the District identified its comparables because they are similar to Weyauwega-Fremont based on geographic proximity, student enrollment, socio-economic characteristics such as equalized value per member, total revenue, and property tax, and community of interest with Weyauwega-Fremont, such as the athletic conference.

The District also argues that its offer is favored by requiring employees to shoulder a reasonable portion of the health insurance costs; that there can be no doubt that health care costs have sky rocketed in recent years; that the District's offer does not reduce an expensive and valuable benefit; that it simply asks employees to pay a small portion of its costs to maintain it; that the District's offer meets the *status quo* change test; that while it is true that the District is changing the *status quo* by seeking to have employees pay a greater dollar cost of the premium, the District has articulated a compelling reason for the change; that the overwhelming evidence and arbitral opinion clearly shows that the District has proven a need to change the *status quo*; that it is reasonable for employees on the single plan to pay $171.10 to have an excellent health insurance plan;[2] and that it is reasonable for family plan employees to pay $281.46 to maintain their existing health insurance plan.

In addition, the District argues that, because of the tax advantages of sheltering the employee's contribution under the proposed Section 125 Plan, the employee's effective contribution rate is actually much less; that a Section 125 Plan allows employees to make premium contribution on a pre-tax basis which explains the adjustment to their contribution rate; that the employees realize an increase in net cash under the District's offer; that, in year two, upon implementation of the Section 125 Plan, they actually pay less for insurance than they would under the Association's offer; that the concession sought by the District does not seek an unreasonable burden on employees; that it would not create an undue hardship on any employee; that, in fact, it would result in a net gain for the employees; that the District has agreed to a total package, including a substantial wage increase,

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[2] All premiums are "per month" unless otherwise indicated.

which takes into account the increased contributions; that the District is willing to buy the employees' participation in health insurance increases with a very generous total package increase; that, moreover, under the District's proposal, the employees actually realize an increase in earnings because of the tax benefits of the Section 125 Plan; and that the Section 125 Plan, with a net gain of $11,718.05, is clearly a *quid pro quo* for the increased contribution for 2002-2003.

The District further argues that its offer is more competitive than the Association's offer; that if the Association is looking for the *quid pro quo*, it need look no further than the District's offer of the Section 125 Plan, as well as the outstanding array of fringe benefits support staff employees in the District already receive; that the District offers lucrative vacation, holidays and sick leave benefits, personal leave, dental insurance, life insurance and long term disability insurance; that all of these benefits show that the District provides a high standard of wages, hours and working conditions for its support staff employees; that all the District is asking for is a little reciprocity for help in the face of the staggering health insurance costs; that the District does not believe a *quid pro quo* is absolutely necessary in light of the above increases in health insurance; that economic reality forces a change and justifies a modest increased participation rate by employees; that so long as the District's offer is competitive in other respects, and it is, its offer on insurance should prevail; that if the arbitrator applies a *quid pro quo* standard to insurance, he should also apply that same standard in raising salaries in the first place; that the District is unaware of any *quid pro quo* being offered by the Association for the agreed upon salary increase; that the District believes that economic reality dictates the District's position in this case; and that it is justified and reasonable and should be supported by the Arbitrator.

The District also argues that its offer is the preferred way to make employees realize how expensive insurance really is; that then employees are more likely to be receptive to redesigning the existing health insurance plan if they have some limited stake in sharing the cost increases; that the District's offer is another step towards containing health insurance costs; that the prevailing practice supports the District's position; that there is no doubt that public and private employers have been shifting the burden of health insurance to employees; that arbitral opinion heavily favors the District's offer; and that arbitrators have strongly supported employer's attempts to contain sky-rocketing health insurance costs and make employees aware of the cost by having them pay a portion of the premium.

In terms of the 'Factor given greatest weight' criterion that imposes revenue controls on the District, the District argues that its offer is preferred; that the impact of revenue controls strongly supports the District's offer; that the District has the responsibility and obligation to oversee its budget and decide how scarce resources, now limited by revenue controls, are allocated; that just because the District can fund the Association's offer does not necessarily mean that the Association is entitled to it; that the evidence in the case will show that, in fact, the Association's offer is unreasonable when measured against the statutory criteria; that the District must balance the need to provide a fair and equitable increase to its employees and, at the same time, maintain a high quality instructional program while still remaining within the state-imposed revenue limitation; that this is a difficult task; that the issue in this case is whether the money can be allocated to those priorities determined by the District; that this case is not about the ability to pay; that the District does not contend that it could not pay the Union's final offer; that this does not mean that the arbitrator should award the

Association's offer; that it means that the District's offer gives the support staff a significant increase; that the difference between the offers can be better spent on other priorities; that the Union has offered no convincing proof or rationale why employees should receive a 7.0% increase in 2001-2002 and an 8.5% increase in 2002-2003; that the new statutory criteria says that the arbitrator must give greatest weight to the fact that revenue controls exist, not whether the District has the ability to pay the Association's offer; and that, in light of the revenue controls, the District's offer should be awarded over the Union's offer.

In terms of the other statutory criteria, the District argues that neither offer is preferable under the 'Factor given greater weight' criterion of local economic conditions; that the District's offer is in the best interests and welfare of the public; that the arbitrator cannot ignore the current economic and political environment that has a tremendous impact on the parties as they tried to reach an agreement; that all employees of the District must assume the responsibility of keeping wage and fringe benefits to a reasonable level, given the legislature's intent on delivering property tax relief; that with the District facing revenue limits at a fixed amount, the District's two year offer of 12.07% to support staff employees is over generous, while the Association's offer of 15.87% is excessive; that the District's offer is above the cost-of-living and should be preferred on this factor; that the overall compensation factor strongly supports the District's offer; that the Association cannot have both relatively large wage increases and preserve expensive health insurance benefits at the same time; that it is clear that, when viewing fringe benefits, the District provides its support staff employees with an enviable list of benefits; that the arbitrator should accept the total package approach as being the best way to meet the "total compensation" criterion under that statutes; and that the Association's offer is unreasonable because it fails to recognize the cost to the District of preserving health insurance benefits

In conclusion, the District argues that its position that the parties must deal with all wage and fringe benefits is most appropriate; that the only way to capture the value of any bargain is through a total package approach; that the District's set of comparables is more relevant and meets the traditions factors for determining comparability; that with the presence of revenue controls, school districts have a fixed amount of money to spend on all district operations; that the District's final offer, amounting to over 12.07% total package over two years, best meets the greatest weight criterion in the statute; that the Association's final offer of 15.87% would have the District spend about $43,195.80 more when such increase has never been justified; that the District has proven a need to control health insurance costs; that the District's offer recognizes the concept of *quid pro quo* and offers employees a total package well in excess of the CPI to induce employees to share the cost of insurance increases; that this is fair; that the District's offer is above the cost-of-living; that when measured against the historical cost-of-living, employees' wages have gained in very real terms; that the overall compensation criterion is the most important one in this proceeding; that the District's offer incorporates all wage and fringe benefits; that the Association concentrates solely on wages; that the arbitrator should reject the Association's unreasonable approach to measuring the value of the total amount of wages and benefits both parties bargain; that, for all these reasons, the District's offer emerges as the most reasonable when measured against the statutory criteria; and that the District respectfully requests that the arbitrator select its offer.

Association on Brief

The Association argues that the District failed to make an affirmative claim that it was unable to afford the Association's offer; that, tacitly, the District appears to be indicating that it is only unwilling to fund the continued health insurance premium contribution amounts of 86% for family and 75% for single; that in terms of growth of student population, the District fared better than all comparable districts on both the number and percent of gain in pupils from 1999-2000 school year to the 2002-2003 school year; that another measure relied upon to determine whether a municipal unit is able to afford a proposed increase is the analysis of the allowable revenues under revenue controls; that since 1993, the revenue control law has restricted funding for all districts; that based on the formula contained in the law, however, districts experienced varying rates of increase in "allowable revenue," the amount of new money that can be raised each year; that the District's increase in per pupil allowable revenue was the 46th largest dollar increase of the state's 426 districts; that the increase in per pupil allowable revenue is one of the best indicators by which to measure a district's ability to fund education under present law; that on dollars gained, the District ranks in the top ten percent of districts statewide; that the vast majority of districts gained less per pupil revenue than did the District; and that the District ranked first among comparables in dollars gained per pupil, and sixth on percent gain in per pupil revenues.

The Association also argues that the District's balance fund is in the top 30% of districts statewide in its percent of reserve funds; that, statewide, districts hold an average of 18% in Fund 10 reserves; that the District listed a 26% Fund 10 balance in it Annual Report for 2000-2001; that of the comparable group, Weyauwega-Fremont ranks fourth on the percent of funds it holds in reserve; that the District received $90,195.23 in credits for prior service payments to the Wisconsin Retirement System (hereinafter WRS); that on October 31, 2002, the District paid in full its prior service balance of $720,355.92; that, as a result, the District's payment to WRS declines from 10.3% to 9.0%, thereby reducing its monthly obligation; that the District did not tap its Act 11 credits to use toward this lump sum payment; that, as a result, the full amount of the credit is still intact for future use; and that, although the Association does not qualify for any of the Act 11 credits, the manner if which the District paid this large expenditure shows that its financial health is very, very good.

The Association argues that another measure relied upon to determine whether a municipal unit is able to afford the cost of maintaining the current level of its health insurance contribution is the analysis of relative school district levy rates; that the District receives about 56% of its funding from the state; that under revenue controls, its levy or mill rate decreased 43% from the 1992-93 school year to the 2000-01 school year; that there are three factors responsible for declining levy rates: increased property values created a larger tax base, the revenue control law limited school funding, and the state increased its share of aid; that with these factors combined, school costs declined as a share of property wealth; that homeowners today are paying a smaller share of their property wealth toward schooling that they have at any time during the last decade; that per capital income gains suggests that residents in the District can more easily afford school funding today relative to the rest of the state; and that income in the county increased more per capita income statewide, suggesting an enhanced economic capacity on the part of District residents to residents statewide.

With respect to the 'Factor given greatest weight' criterion, the Association argues that the District is quite able to afford to pay the health insurance rates at the current level; that the District could assume more of the health insurance premium cost; that an analysis of the relevant greatest weight factors shows that the District enjoys a very advantageous economic position in terms of its Fund Balance, School District levy rate, Act 11 credits, and relative costs per pupil; that with a steadily rising student enrollment, juxtaposed with a steadily declining levy rate, economic conditions suggest that the Association could legitimately be seeking a larger share of the health insurance contribution, along with additional compensation on salary to make the District's support staff more competitive with its comparables; that the District's relative economic capacity allows it to easily accommodate the Associations's current level of health insurance it receives from the District; and that neither party raised the argument that the 'Factor given greater weight' criterion would be a factor in the arbitrator's decision.

In terms of the comparability analysis, the Association argues that, of all the organized districts in the Central Wisconsin Athletic Conference (hereinafter CWAC) since 1997, the Association has continued to outpace the other districts for contribution toward their health insurance premiums; that employees are now paying 14% for family and 25% for single health insurance premiums; that the District pays the rest; that the average increase for the family plan among the Association's comparables for the six year period is $22.39 ; that the Association contribution increase during this period was $82.44 ; that the average increase for the single plan for the six year period among the Association's comparables is $4.70 ; that the Association contribution for the single plan increased $65.37 ; that the Association is paying more than any of the comparable districts in the CWAC; that the significant increase in health insurance costs over the years has reduced the buying power of Association members; that for the 2001-02 school year, the Association contribution was $122.47 for family and $99.16 for single; that this is nearly $40 more than the closest district; and that the Association's offer maintains the *status quo*.

The Association asserts that it realizes the substantial increase in health insurance premiums during the 2000-01 school year; that the Association has had to pay more toward health insurance premiums over the past six years; that the District wants to add more to the burden of the Association; that, ironically, the District's logic regarding this matter provides additional support for the Association position; that the Association's already low wage standing would be even lower if its contribution toward health insurance would increase to the level that the District is proposing; that the Association's offer has the employees contributing $163.16 for a family plan and $130.16 for a single plan; that this would be an increase of $40.69 for a family plan and $31 for a single plan; that the District's offer would have the Association paying $281.46 for a family plan and $171.10 for the single plan; that the employees are already bearing a substantial reduction in real wages as a result of the serious inflation in health insurance premiums under the District's final offer; and that this is never considered in the District's equation.

In summary and conclusion, the Association argues that the District's final offer regarding capping the health insurance at 17.5% is substantially below the pattern of settlements of comparable school districts; that the Association's modest final offer of $0.35 per hour in both years is congruent with the settlement pattern; that the District enjoys many positive economic attributes; that it ranks among

the wealthiest school districts with respect to per capita value of its residents' property; that it enjoys one of the lowest property tax rates and one of the fastest growing Fund 10 balances in the state; that the State has permitted the District to increase its overall revenue cap in 2001-02 by 4.69%; that it enjoys an expanding student population; that in spite of these positive economic factors, the District wants to continue to minimize the value of its support staff with rollbacks on its contribution to the significant health insurance premium increase; that while the cost of health insurance has influenced wage bargaining to some degree, the District enjoys the smaller employer contribution toward its plan among all of its comparable units; that the District's final offer that was presented to the Arbitrator, although agreed to by the Association, was a complete change from the final offer that was being proposed during the last 18 months; that this conduct raises questions regarding the future stability of the bargaining relationship; that when the principle of promoting a voluntary settlement is compromised, the entire process becomes flawed; and that, for all the reasons cited above, the Association respectfully requests that the arbitrator select its final offer.

District on Reply Brief

The District argues that the final offers should be the focus of the arbitrator; that the arbitrator should not penalize the District because it continued to attempt to reach a voluntary settlement right up to the day of the interest arbitration hearing; that the bargaining law encourages the parties to reach a voluntary settlement; that the District modified its position repeatedly throughout bargaining; that the parties reached tentative agreement on numerous issues; that to penalize a party for continuing to attempt to reach a voluntary resolution is not only contrary to the law but is destructive to the collective bargaining relationship; that the Association's argument regarding the financial well being of the District is not supported by the evidence; that it is not whether the District "can" afford the Association's offer but whether the offer is appropriate in light of all the other obligations of the District; that it is not; that the District must balance the needs of the community, the students and all employees when determining budget expenditures; and that this is precisely what the District has done in proposing the improvements under the new contract with the Association.

The District also argues that while revenues have increased, so has the student population being served; that expenditures have increased due to increased wages the Association negotiated under the last contract and significant increases in health insurance; that a more appropriate picture of the financial health of the District is a review of the budget; that budget cuts have been necessitated over the past three years because of the rising budget constraints; that the increase in per pupil revenues over the past ten years does not support the Associations exorbitant 20.1% increase over this two year contract; that the Act 11 settlement and WRS prior service balance payment reduced the District's available reserves; that the District determined it was advisable to make the payment at that time because of interest rates; that the Association's argument regarding the mill rate decline misconstrues the data; that the mill rate decreased because revenue limits were imposed; that the District receives 56% of its funding from the state; that this funding is in jeopardy in these trying financial times; that, regardless of how "property rich" residents may be, the District does not have revenues to support full funding of health insurance costs; and that, even if the "property rich" residents could afford to pay more to support the schools, revenue limits would prevent it.

In addition, the District argues that the Association's selective use of generic statistics does not accurately demonstrate the current financial health of the District; that the District is experiencing tight economic times, as demonstrated by the budget cuts the District was forced to take over the past three years; that given the economic reality, the District's offer is more appropriate; that the District's health insurance proposal is supported by the greater weight of the evidence; that the Association ignores the Section 125 Plan and its impact on the cost of the District's offer; that it is perplexing why the Association would reject an offer which is more lucrative when the Section 125 Plan benefit is considered; that, clearly, the District's offer is the more favorable offer; that based on the evidence, testimony and exhibits presented, the District's final offer, amounting to 12.07% total package increase over two years, best meets the 'Factor given greatest weight' criterion in the statute; that the Association's offer of 15.87% increase over two years would have the District spend about $43,195.80 more when such increase has never been justified; that for all of these reasons, the District's offer emerges as the most reasonable when measured against the statutory criteria; and that the District respectfully requests that the arbitrator select its offer.

Association on Reply Brief

The Association argues that no reasonable union would agree to what the District is proposing; that the facts presented at hearing and in its initial brief bear that out; that no other comparable employees pay as much toward health insurance as does the District's support staff; that this will remain true even if the Union's final offer is selected; that the District's offer is unreasonable and out of line with all other settlements; that the District is enjoying remarkable financial health; and that, certainly, the Association's final offer is more reasonable than the District's.

The Association asserts that the District raises three minor issues in its attempt to influence the arbitrator: the use of cast-forward costing method in non-teacher negotiations; the selection of school districts comparable to the District; and the trend that employees are to share in the costs of health insurance. In terms of the costing method, the Association argues that it is not bargaining total package; that it is not required by law to bargain total package; that the District claims that hundreds of arbitration awards have used cast-forward costing; that the fact is that most awards involving non-teachers in school districts do not use cast-forward costing at all; that, in fact, it has been totally rejected by a number of highly respected arbitrators; that the District's discussion of the Qualified Economic Offers (hereinafter QEO) ignores the fact that neither the QEO nor the costing method it establishes apply to support staff; that arbitral citations to support the District's position either relate to teachers or are otherwise irrelevant in the instant case; that, contrary to the District's claim, arbitrators have not "normally or traditionally" adopted the QEO methodology to evaluate nonprofessional school employees' final offers; that the converse is true; that arbitrators have long recognized that the costing of increments or steps is not appropriate in support staff cases; that the District's reliance on total package costing to justify its health insurance proposal is puzzling, given that no supporting documentation was offered at the hearing; that there was no evidence presented by the District to support these types of calculations; that the District did not show its total package offer was similar to the total package settlements of comparable school districts; and that, even if total package bargaining was the acceptable method, without showing comparisons to other districts, it lacks any valid context.

In terms of the selection of comparables, the Association asserts that the comparables should be members of the CWAC; that no evidence was presented to support the District's assertion that its comparables are supported by labor markets; that this conclusion is purely speculative and not supported by any evidence; that the Association's comparables have been selected by an arbitrator in an interest arbitration involving one of the comparables; that non-unionized districts were excluded; that while the District is "shopping" for comparables, the Association has arbitral support for its list; that there is never a claim by the District that any set of comparables will show that the support staff is getting paid more money or paying less for insurance; that the Association's offer is more reasonable than the District's, no matter what set of comparables is chosen; that the Association does not want to shop for comparables; that the CWAC is the appropriate set of comparables; that the District's set of comparables and their argument regarding the set of comparables is not relevant to this case; that the Association asks that the arbitrator use the set of comparables consisting of the unionized districts in the CWAC; and that, looking at that group, it is evident that the Association's final offer is more reasonable than the District's.

In terms of sharing the costs of health insurance, the Association argues that employees already do share in the health insurance premium; that every time the health insurance increases, the employees pick up 14% of the family plan and 25% of the single plan; that these employees contribute more than any of the comparables do toward health insurance in the CWAC; that the wage increases are certainly warranted; that the Section 125 Plan, in fact, rewards the District because it reduces the amount it has to pay toward Social Security; that the Association's offer toward single and family premiums for 2002-03 is more reasonable; that to increase it to what the District is asking makes it unreasonable; that, in fact, the employees are paying a greater portion of their health insurance than their comparables; that the wages are not high enough for them to be paying a greater portion of their health insurance than their comparables; that this is even rue after the agreed upon $0.35 an hour increase; and that this increase does not take the employees out of line with the comparables.

The Association also argues that, contrary to the allegation by the District, it does not recall any evidence that the Association refused to discuss modifying benefit levels; that what the District is attempting to do here is simply shift costs; that there was no evidence provided that would indicate that the Association was unwilling to discuss a different way of looking at stemming the rising costs of health insurance; that the District's argument that the District is not changing the *status quo* is ludicrous; that the test question for the arbitrator would be, "Are the comparables increasing the employee's share and, if so, is the employee's share here out of line?"; that that is not going to be the case; that, in regard to the Section 125 Plan, there is no evidence that shows what impact is on these individual employees or that they are in the 30% estimated tax bracket used by the District; that, again, the wages are in line with the wages in their comparables; that the Association did not see the District giving anything to these employees for the type of concession that they want in health insurance; that there is no reason for health insurance to be viewed as a problem in this District when other districts are coping with it; that the benefits received by the employees are not out of line with the comparables; and that if they thought these benefits were out of line, they should have attacked them, and not health insurance which the employees are already contributing more than any other district in the CWAC.

In conclusion, the Association argues that the District is attempting to change the *status quo*

regarding its payment toward health insurance premiums; that it has the burden to show why it is necessary to do so; that the District has failed to meet that burden; that, instead, it offers up smoke and mirrors to confuse what would otherwise be a relatively simple case; that the District's attempt to use total package costing and non-union comparables has been refuted above; that its plea that employees should share in the cost of health insurance is exaggerated; that the fact is the employees already pay more toward the costs of health insurance premiums than employees in comparable school districts, both in terms of percentage and dollars; that the District is asking this arbitrator to do something that no arbitrator has ever done – to take the lowest ranking district in a comparability pool and make them even lower and increase the distance between them and the next lowest comparable; and that based on all the evidence and arguments as presented by the Association, its final offer is much more reasonable than the District's offer.

DISCUSSION

Introduction

These parties have never been to interest arbitration. They have, over the years, been able to agree on their collective bargaining agreements without an outside arbitrator telling them what to include in their agreements. Sometime in the past, the Association and the District agreed that these employees would share in the cost of providing health insurance, with the District paying 84% and the employees paying 14% of the family health premium and the District paying 75% and the employees paying 25% of the single health premium. This agreed upon health insurance contribution ratio makes the District's contribution the lowest and the employees contribution the highest among any of the comparables. But the economy is in dire straits, and health insurance costs are escalating almost out of control.

That sets the stage for this arbitration. There is one main issue: the amount of contribution to be paid by each of the parties for health insurance premiums. The District seeks to set a cap for its contribution at 117.5% of the 2001-2002 health insurance premium, while the Association seeks to keep the *status quo* in terms of percentage of contribution to the health insurance premium by each of the parties. A second issue brought forth by the District is the institution of a Section 125 Premium Only Plan to all employees at no cost to the Association. The District offers this, in part, to alleviate some or all of the financial increase to the employees caused by the District's cap on the health insurance premium, and, in part, to serve as a *quid pro quo* for the change in the health insurance.

But there are two preliminary issues that must be dealt with prior to facing the main issues: the method of costing and appropriate comparable pool.

In terms of the method of costing, the District advocates the cost-forwarding method used in teacher bargaining and codified in state law through the QEO, while the Association advocates the more traditional actual cost method. If the decision in this matter would have been dependent on the method of costing, I would offer a long discourse on the pros and cons of each method, citing some

cases that fall both ways, and then decide. But the costing method has no impact on the decision I reach in this case. Whatever way you cost the packages, my decision is the same. I leave the issue at that.

Comparables

The District identified the following school districts as being comparable: Iola-Scandinavia, Manawa, Omro, Shiocton, Tomorrow Rivers, Tri-County, Waupaca and Wild Rose. The Association identified the CWAC, of which the District is a member, as its comparable school districts. The included districts are Bonduel, Bowler, Iola-Scandinavia, Manawa, Menominee Indian, Rosholt, Shawano, Shiocton, Wild Rose and Wittenberg-Birnamwood. But the Association excluded CWAC members Tomorrow Rivers and Tri-County for the only reason that they are not represented for purposes of collective bargaining.

The District came to their list through a complicated procedure. First, the District looked at 19 school districts[3] and identified those districts which were geographically proximate[4]. The District determined the following school districts met this criterium: Almond-Bancroft, Berlin, Iola-Scandinavia, Manawa, Marion, New London, Omro, Shawano-Gresham, Shiocton, Tomorrow Rivers, Tri-County, Wild Rose, Winneconne, and Waupaca. Applying this criterion to the Association's comparables, the District excluded Bonduel, Bowler, Menominee Indian, and Wittenberg-Birnumwood as being too geographically removed from the District. This appears to be the major inclusive criteria – if a school district does not include geographic proximity, it is not included in the District's comparables. Some school districts that meet the geographically proximate criteria established by the District are excluded on other bases.

The District then compared the 19 school districts based on student enrollment and found Bonduel, Iola-Scandinavia, Manawa, Omro, Shiocton, Tomorrow Rivers, Tri-County, Wild Rose and Winneconne to be comparable[5]. The District determined that the Almond-Bancroft, Bowler and

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[3] This number varies, depending on the criterium being discussed. This number includes all the school districts which the District considered in its comparable determination.

[4] It is unclear in the record what standard the District used to make this determination.

[5] Again, the District does not share how it determined the range for school districts to be included or excluded, based upon student enrollment.

Marion school districts were too small, and that the Shawano-Gresham and Wittenberg school districts were too large.

And here the problem begins for the District in terms of its list of preferred comparables. The District has 1152 students. Wild Rose was declared by the District to be close enough in size to be included in the District's comparables, even though, with 752 students, it is 400 students smaller that the District. Yet Wittenberg, an Association comparable with 1397 students, 245 students more than the District and, therefore, closer in size to the District than Wild Rose, was determined by the District to be too large and, therefore, it was excluded from the District's comparables. Winneconne with 1610 students, Berlin with 1730 students, and New London with 2558 students were also determined by the District to be too large to be a comparable. And, yet again, Waupaca with 2716 students, 1541 more students than the District, more students than Berlin, New London, Winneconne and Wittenberg, is declared by the District to be comparable.

Perhaps the District's criteria is based only upon the geographic proximate criteria. Yet Almond with 545 students and Marion with 638 students, both of which are much closer in enrollment to the District than Waupaca, and both of which are included in the list of geographically proximate, are excluded by the District as too small. Why schools districts that are geographically proximate (Almond, Berlin, Marion, New London, Shawano and Winneconne) and that are within the student population range of 752, the smallest school district included, and 2716, the largest school district included, (Berlin, New London, Winneconne and Wittenberg) are excluded is unclear in the record.

The District might argue that there are the other criteria they looked at in making its determination of appropriate comparables. Indeed, the District looked at the CWAC,[6] equalized value, property taxes and revenue. Some districts met some criteria and others met others. The only school district to meet all the criterium, as best I could tell, was Iola-Scandinavia, a school district that appears on both the District's and the Association's list of comparables. And one school district, it appears to me, did not make any of the other criteria: Waupaca, which is on the District's list of preferred comparables. Bonduel met all the criteria except geographic proximity, and yet it was excluded. Rosholt, Wide Rose, and Wittenburg met a majority of the criteria and were excluded. I charted all the criteria provided by the District and analyzed it and I was unable to determine how the District choose the eight school districts that it did. They were not really able to tell me either.

The Association, on the other hand, looked only at the CWAC for its list of comparable.[7] Using the

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[6] Though the District looked at the CWAC, it only stated, "Berlin, New London, Omro, Waupaca and Winneconne did not meet this criteria." District Brief in chief at page 12. The District did not mention all the districts that do meet this criteria, 11 of whom are on the Association's comparable list and only four of whom are on the District's list.

[7] At one point, the District asserts that the Association relies upon revenue gain per pupil, Fund 10 balance, Act 11 credits and property value, in addition to the CWAC, to identify its comparables. See District Brief in Chief at Page 10. I do not read the Association's position that way. Their argument on comparables rests solely on the CWAC.

athletic conference is a convenient, consistent and uncomplicated way to determine comparables. Athletic conferences are made by neutral people uninterested in labor relations but very interested in
grouping comparable school districts together. The District presented no convincing argument as to why such a comparable group is inappropriate and, as the District's comparables lack a understandable and consistent selection methodology, I will use the CWAC for the comparable group.[8]

The Association does exclude two school districts from the CWAC whose employees are not represented for purposes of collective bargaining: Tomorrow Rivers and Tri-County. Both of these school districts appear on the District's list of comparables. The District argues vehemently that school districts should not be excluded based only upon the fact that they are not represented. They provide many arbitral citations to support their position. One view of the arbitrator's role is that the arbitrator puts the parties in a position they would have been if both sides had been reasonable and come to an agreement. Obviously, in final offer only arbitration, the arbitrator is limited to selecting the one offer which is closest to that to which reasonable parties would have agreed.[9] And, in that sense, unrepresented groups do not provide any guidance to an arbitrator as to what reasonable parties would have arrived at through negotiations as their wages, hours and conditions of employment are determined for them. Yet, I will look at such units to the extent that, all else being equal, they provide a sense of the total employment environment in the athletic conference. But the main comparable group consists of the organized bargaining units in the CWAC though, if the case is close and if the unrepresented units parallels a consistent pattern of settlements, they will be given some weight.[10]

But, in a sense, it really is not an issue here for, like the costing, the comparables could include those two school districts as equals and the outcome in this matter would be the same. Indeed, the

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[8] This is consistent with Arbitrator Dichter's finding for a comparable group in School District of Wittenberg-Birnamwood, Dec. No. 30185-A (5/22/02).

[9] Also, obviously, this is controlled by the statutory criteria, though said criteria are not inconsistent with this arbitral goal.

[10] See Arbitrator Dan Nielsen's somewhat similar discussion in a case cited by the District: City of Marshfield, Dec. No. 25298-A (12/21/88) at page 17.

outcome would be the same if the District's comparables were used. Therefore, I will use the CWAC, as proposed by the Association, and, to be sure I have made the correct decision, I will also look at the District's comparables, which include Tomorrow Rivers and Tri-County School Districts, the two districts excluded by the Association based upon a lack of representation. But, officially, the Association's comparables are chosen as proper for this matter.

Health Insurance

The District's final offer caps its insurance premium contribution for 2002-2003 117.5% of the 2001-2002 premium. To lessen or eliminate the additional costs to employees and to serve as part of its *quid pro quo*, the District offers a Section 125 premium only plan to all employees at no cost to the Association. The Association offers the *status quo*, with the District paying 86% and employees paying 14% of the family premium and the District paying 75% and employees paying 25% of the single premium, including any increases in the premium.

On brief, the District notes that the parties have previously acknowledged the importance of employee contribution to insurance since a contribution is currently in the contract. At some point in time, though the record is unclear as to when, the Association and the District did indeed voluntarily agreed that the District would pay 86% of the family plan and 75 % of the single plan, with the employees paying 14% of the family premium and 25% of the single plan. No arbitrator forced this on the parties – they came to an agreement. The record is unclear as to whether this was the only agreement on health insurance contribution or the last in a series of agreements. Looking at the family premium, I do not know if the parties agreed to a 95/05 split one contract, a 90/10 split in a successor contract and then moved to the current 86/14 split. The record is clear, however, that the District is not contributing 95% or 90% but 86% of the family premium, and that employees are not paying 5% or 10% but 14% of the family premium.

On brief the District argues:

> The District's proposal is simply an extension of the agreement to include greater equality in sharing increased insurance premiums...The District believes that employees should be willing to pay a small portion of the increases to maintain this expensive fringe benefit.[11]

This argument seems to ignore the fact that the employees are paying a portion of the increases, 14% for the family plan and 25% for the single plan. The District notes that everyone is concerned about health insurance costs and their exorbitant increase. I agree. I remember that first contract I mediated that included an agreement for an employer to contribute $400 for the health insurance premium, and we all asked, Where is this going to end? Obviously, that was a long time ago, but we are still asking that question. Employers and labor organizations are struggling with this very

[11] District Brief in Chief at page 18.

issue in many if not all collective bargaining agreements. In this case, the District argues that increased contributions by employees are the preferred way to make employees realize how expensive insurance really is. But I note here that these employees are aware of the increased insurance costs because their contribution increased at the same rate as the premium. When the premium increased 24% one year and 33% the next year, the amount they contributed increased 24% and 33%, respectively. Whatever the premium is, they are contributing 14% of said premium, and as the premium goes up, so does their contribution to it.

'Factor given greatest weight'

But, the District argues, its offer is preferred under the 'Factor given greatest weight' criterion that imposes revenue controls on the District. This criterion requires that the arbitrator "shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer." Indeed, it requires that the arbitrator "shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision."

But let us be clear as to what this does not mean. This criterion does not give school districts *carte blanche* to determine what is and what is not in collective bargaining agreements with their employees. Nor does it mean that an arbitrator has to accept a school district's unreasonable or arbitrary proposal because the school district has cloaked such proposal in the name of "limitations on expenditures...or revenues." It certainly does not mean that the QEO concept is applicable to non-teachers. Nor does it mean that an employer automatically sways an arbitrator to its position when it says that it wants to lower the percentage of its contribution to the insurance premium previously agreed upon with its bargaining unit because, even though it can pay it, it wants to spend that money elsewhere and so, therefore, the employees should pay the amount it no longer wants to contribute.

I have reviewed the financial documents presented by the District. I acknowledge that hard cuts have been made in the past. And until the politicians in control can make appropriate economic decisions which bring back some of the prosperity this country experienced in the last years of the previous century, more hard decisions about budget cuts will have to be made. I do not envy any member of any board of education that has to make these kind of decisions. And I read the many, many pages submitted by the District as to the health insurance crisis and its impact on employers, employees and collective bargaining. I am convinced that there is a health insurance crisis, and that it is pressing particularly hard on school districts operating under revenue controls. And I am convinced that revenue controls are handicapping school districts to offer the programs students need while compensating employees fairly.

Both the budget hurting health insurance premium increases[12] and the state imposed revenue

[12] Not only is the District's budget hurt by increase insurance premiums, these employees' personal budgets are hurt as well as they contribute 14% or 25% of the insurance premium.

controls are compelling reasons for economic concerns by this District, I am also convinced that this District did not make an appropriate response to the insurance costs and revenue control crises by choosing to cut back its contributions to health insurance premiums. I would be more sympathetic in this case if the facts were different. If this were a case in which the employees were not contributing a penny to their insurance, as in at least one of the cases cited by the District, I would be writing about how employees need to share in the cost of health insurance. If in that scenario, the employer was suggesting a 95/05 split, they would have my attention. If in that scenario, the employer was suggesting a 90/10 split, or if the employees were already contributing 5% and the employer proposed a 90/10 split, I would be listening closely to that possibility.

But in this case, the employees are already contributing 14% for the family premium and 25% for the single premium. Under the District's proposal, the percentages change to a 76/24 split for the family Premium and a 67/33 split for the single premium. This seems like unusually low employer contribution rates and unusually high employee contribution rates. But maybe I am wrong about that. Maybe that is employer/employees contribution ratio found in comparable districts.
So let us take a look at the comparables, and let us start with the District's comparables and District documentation. For the single plan, four of the eight District comparables offered 100% employer paid premium. That is one-half or 50% of the District's comparables. One of the remaining comparables is at 96.51 % and two more are at 95%. Thus, a total of 87.5% of the District's comparables offers single coverage with the employer paying 95% or more of the premium.

The one exception is Iola-Scandinavia at which, the District asserts, the employer pays 83.96% of the single premium.[13] Even with the Iola-Scandinavia number, the average of the District's eight comparables is 96.31%, according to the District's exhibits. The Association's comparables come in with three at 100%, one at 99%, three at 95%, one at 94%, one at 91% and two at 90%. The average is 95.36%, almost a percent less than the District's comparables, but still 20% over the Association's offer in this matter and over 28% above the District's offer.

For the family plan, the District's comparables range from an employer contribution of 78.62%[14]

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[13] District Exhibit 17E. Association Exhibit 21K takes exception to this, stating that the employer's share for single coverage at Iola-Scandinavia is 97%.

[14] This is the District's figure for Iola-Scandinavia. Again, the parties disagree with the Association stating that this figure is 91%.

to 100%. The average is 91.54% for the employer contribution for the family premium. For the Association's comparables, they range from 90% to 100%, with the average of 95.36% for its 11 comparables. Again, these averages are substantially above the Board's final offer of 75% and the Association's *status quo* offer of 86%. All, not just the Association's, but all of the comparables support the Association's position.[15]

[15] This includes the two districts that the Association excludes from its comparables because they are not represented, but which comparables are included in the District's comparables.

This is not to say that insurance costs are not out of hand, that things do not need to be done to contain them, and that state imposed regulations do not hinder school board's abilities to manage their districts. In the foreseeable future, school districts and their employees will have to find creative and mutually beneficial ways to deal with the costs of insurance.[16] But it is also not to say that this is a problem unique to the District. Every school district in the state of Wisconsin is experiencing increasing health insurance costs. Every school district in the state has the same revenue controls. But the numbers above raise the question of how every other school district in both sets of comparables is able to live with these revenue controls and the vast majority of them contribute 91.54% or even 95% and more to their employees' health insurance premiums, while this District contributes 75% or 86% and wants relief from that commitment.

Let us be clear that the District is not claiming it does not have the money to continue the *status quo* on health insurance for this bargaining unit. The District's ability to pay is not at issue here. The District is saying it wants and needs to spend the money else where, that it wants to budget its money differently. It is not claiming that the Association's offer of the *status quo* unduly pressures it to exceed its statutory revenue limits. Indeed, after considering the revenue limits that the professional politicians in Madison have placed upon this and every local school district, and after giving the greatest weight to the revenue controls imposed by the state legislature on this and every district, I find that the Association's offer does not unduly pressure the District to exceed its statutory revenue limits, that the Association's offer in no way hinders the District in carrying out its duties required by statute and contract, though it may not be able to do so exactly as it wants. But such has been the case since collective bargaining came into existence.

Other Criteria and Issues

And in terms of the 'Factor given greater weight', I have reviewed the many, many pages submitted by both the District and the Association on the economic conditions of the District, and nothing there
convinces me that the economic conditions in the jurisdiction favor one party or the other. The District does not seem to be in any worse financial condition than the comparables and, in fact, may be in somewhat better shape. The Association's final offer of the *status quo* is less than that of all the comparables offered by both parties in terms of health insurance premium contribution, so its impact will be less than on all the other comparables of school districts, even the ones argued by the District.

In terms of the remaining criteria, there is no argument that either offer in any way compromises the lawful authority of the municipal employer. It can be argued that both offers serve the interest and

[16] When this case first came across my desk, there were many issues unresolved. Since the District's present counsel entered the case, some issues were resolved in the weeks before hearing and some more were resolved just prior to hearing, leaving just one issue unresolved. One can only speculate what might have occurred if present counsel had been involved earlier.

welfare of the public, so this criterium cuts both ways. No evidence was offered of internal comparables or of private sector comparables, so these criteria have no impact of the final decision. The comparison of public sector employees was covered in detail above. Both final offers are above the cost of living, with the District's being closer to it and, therefore, on this criterium, the District's offer is preferred. In terms of the overall compensation factor, these employees appear to be in the middle of their comparable group in most categories, except for health insurance, the very one the District chose to try to change, in which they already contribute the most to their premium. The wage settlement agreed to by the District and the Association appears in line with other settlements; at least neither side argued strongly to the contrary.

In terms of the Section 125 Plan, the Association takes exception to the placing these employees at the 30% tax rate to show the savings using this plan. I agree. The 30% figure is based upon a national average, not on support staff employees whom, I would argue, make less than the average employee with a Section 125 Plan. While the District has shown this arbitrator that insurance costs are escalating and that they are in crisis, the District did not show, in light of the comparables, a compelling reason to change the *status quo* in terms of health insurance contributions. Indeed, it did not clearly enunciate how it came up with the cap of 117.5%, changing its contribution from 86% to 75% for the family plan and from 75% to 67% for the single plan. Why not a cap of 110% or 130% or 100% or what ever number you want to come up with? The choice appears arbitrary; at least the District has not presented convincing evidence to the contrary. While there may need to be a change in how these two parties deal with health insurance, the District did not convincingly show that it had a persuasive reason for choosing the manner it chose to deal with the issue. And in terms of the Section 125 Plan serving as a *quid pro quo* for the forced change in health insurance contributions, it too comes up short. The District argues that the wage settlement is also part of the *quid pro quo*, but the District did not present any convincing evidence that this settlement was above the norm for this comparable group, so it too fails to serve as a *quid pro quo*.

Summary

In summary, the arbitrator finds that there was no clearly enunciated process by which the District picked its comparables and that, therefore, they are rejected; that the Association's comparables of the local athletic conference provide a reasonable basis for decision making and that, therefore, they are accepted; that the two unrepresented districts in the athletic conference would be reviewed if the issue was close; that the conflict over the method of costing these offers does not impact the final decision; that after considering and giving the greatest weight to the state imposed revenue controls, the District is determined by the arbitrator to be able to continue the *status quo* in terms of health insurance contributions without unduly pressuring it to exceed said limits; that after considering and giving greater weight to the economic conditions in the District, the arbitrator determines that said conditions are such as to not support either parties' offer; that the District's offer is preferred in terms of the cost of living; that the Association's offer is strongly preferred based on the comparable school districts; that the District, in its legitimate concern for health insurance costs and state imposed revenue controls, was not persuasive that it had chosen an appropriate way to deal with these issues, especially in light of the comparables; that in its attempt to alter the *status quo*, the District's offer of a Section 125 Plan as *quid pro quo* for the drastic change in health insurance

coverage proposed by the District is insufficient; and that none of the other criteria impact to any great extent the determination of this Award.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

That the final offer of the Association shall be incorporated into the collective bargaining agreement between the parties.

Dated at Madison, Wisconsin, this 18th day of July, 2003.

By _____
James W. Engmann, Arbitrator