**BEFORE ARBITRATOR WILLIAM EICH**

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| IN THE MATTER OF: THE INTEREST ARBITRATION BETWEEN<br><br>**MANITOWOC PUBLIC SCHOOL DISTRICT**<br><br>AND<br><br>**MANITOWOC SCHOOL DISTRICT EMPLOYEES [CUSTODIAL/MAINTENANCE], LOCAL 731, AFSCME, AFL-CIO** | **CASE 55**<br><br>NO. 60773<br><br>INT/ARB-9507<br><br>DEC. NO. 30473-A |

## APPEARANCES

For the District: William C. Bracken, Employment Relations Services Coordinator, Davis & Kuelthau S.C., 219 Washington Avenue, Oshkosh WI 54903-1278

For the Union: Neil Rainford, Staff Representative, Wisconsin Council 40, AFL-CIO, 14002 County Road C, Valders WI 54245

## INTRODUCTION

On October 4, 2002, the Wisconsin Employment Relations Commission issued an order determining that the parties had reached an impasse in bargaining and initiating these arbitration proceedings. On November 5, 2002, the undersigned was appointed Arbitrator and was directed by the commission "to issue a final and binding award, pursuant to sec. 111.70(4)(cm)6 and 7, of the Municipal Employment Relations Act, to resolve said impasse by selecting either the total final offer of the [District] or the total final offer of the [Union]."

A hearing was held at the District's offices in Manitowoc on January 17, 2003, at which both parties had the opportunity to present evidence, and some 800 pages of

exhibits were received. The hearing was not transcribed. The parties exchanged and filed briefs with the Arbitrator on April 24, 2003.[1]

The sole issue in these proceedings relates to the health insurance benefits provided to members of the District's custodial and maintenance employees, and the amount the employees will contribute toward the insurance premiums in each year of the two-year collective bargaining agreement. The Union's offer is as follows:

> For the period commencing July 1, 2002, the district payment will be $811.50 per month for family, $378 for single, or 95% of either, whichever is higher. For the period commencing July 1, 2003, the district payment will be $959.38 per month for family, $466.42 per month for single, or 95%, whichever is higher.

The District's offer specifies $770.93 for family and $359.10 for single for the first year of the contract, and $911.23 and $424.46, respectively, for the second. (The 95% alternative remains the same in the District's offer.)

For several years—since 1990—the health insurance section of the parties' successive collective bargaining agreements has provided that the District would pay either a specified amount toward the premiums, or 95% of the actual premiums charged, whichever sum was higher.[2] Since that time, when each successor contract was negotiated by the parties, the actual amount of the premium for the first year of the agreement was either known or readily ascertainable, and the "cap"—the dollar amount set aside for payment of the first-year premium—was set at an amount equal to 100% of the actual premium cost. The parties would then estimate the premium increase for the second contract year and agree to an increased "cap" for that year. Over the years, the

[1] The parties' briefs are as voluminous as they have been helpful to the Arbitrator—comprising more than 130 pages of argument; and while every argument or assertion made in the briefs may not be the subject of a separate discussion in this decision, each point made by the parties has indeed been considered and evaluated.

caps were adequate to cover the premiums in both contract years. All that changed in 2000, however, when escalating health insurance costs resulted in actual premiums exceeding the caps for both years—requiring the employees to contribute 1.4% of the premiums in 2000-2001, and the contract maximum of 5.0 % in 2001-2002.

In the proposals at issue in these proceedings, the District's first-year cap is calculated at 95% of the known premium cost, and the second-year figure is pegged at 18.2% more. The net effect of the District's proposal is that the employees will pay 5% of the costs for the first year, and, as before, will take the chance that the premium estimates for the second year will be adequate to cover actual increases. The Union's offer sets the first-year cap at 100% of known premium costs, and they, too, have used an 18.2% increase to arrive at the second-year figure. Other facts will be discussed below.

## SUMMARY OF THE PARTIES' POSITIONS

Both parties claim that the other's offer constitutes an unbargained-for and impermissible change in the *status quo*. The District also contends that its offer: (1) is preferred under both the "greatest weight" and "greater weight" criteria, and is in the best interest and welfare of the public; and (2) is in line with both internal and external comparables and "heavily favored by arbitral opinion."

The Union says that the "greatest weight" criterion is inapplicable and that its offer is more reasonable under both the "greater weight" factor and the internal and external comparables.

## DECISION & AWARD: SUMMARY

For the reasons that follow, I conclude that: (1) neither party's offer would impermissibly alter the *status quo*; and (2) that, while the question is quite close, the

[2] Beginning in 1990, and continuing to the present, the contracts also contained an 80%-20% co-pay plan for the first $3000 of covered benefits.

Union's offer more closely adheres to the applicable statutory criteria than does the District's, and is therefore preferred.

## APPLICABLE STATUTES

Section 111.70(4)(cm)7, *Stats*., dictates three levels of "weight" the Arbitrator is to give to various listed criteria in arriving at a decision and issuing an interest arbitration award. First, he or she is to "give greatest weight" to "any state law or directive … to an …. Agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer." Second, the Arbitrator is to "give "greater weight" to "economic conditions in the jurisdiction of the … employer." Finally, the Arbitrator "shall also give weight" to the following factors:

a. The employer's "lawful authority."

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 with "other employees performing similar services."

e. Comparisons with "other employees generally in public employment in the same community and in comparable communities.

f. Comparisons with other employees in private employment in the same community and in comparable communities.

g. The cost-of-living index.

h. The "overall compensation presently received by the … employees …, the continuity and stability of employment, and all other benefits received.

> i. Changes in any of the foregoing during the arbitration proceedings.
>
> j. Such other factors traditionally taking into consideration in making the necessary determinations in the case.

## DISCUSSION

### *Change in the Status Quo*

Before considering the applicable statutory criteria, it is appropriate to take up the parties' claims that the other side's offer must be rejected because it represents an unbargained-for change in the *status quo*.

I agree with the many arbitrators who have recognized that the collective bargaining process, not arbitration, is the "appropriate means by which fundamental changes in relationships should be achieved, so that arbitration will not become a substitute for bargaining." ***School District of Barron***, Decision No. 16276, November 9, 1978 (Krinsky). It is generally recognized that "any major changes proposed in existing language negotiated by the parties must be for compelling or demonstrated need or else left for voluntary negotiations by the parties and not imposed by an arbitrator." ***Washington County (Social Services)***, Decision No. 29363-A, December 11, 1998 (Torosian). In ***Washington County***, Arbitrator Torosian applied the following well-accepted test for considering proposed changes in the *status quo***:**

> In cases where one party is seeking to make significant changes in existing language or benefits … the interest of the parties and the public is best served by imposing on the moving party the burden of establishing (1) a compelling need for the change, (2) that its proposal reasonably addresses the need for the change, and (3) that a sufficient *quid pro quo* has been

> offered. In each case, the sufficiency and weight to be given to each element must be balanced.

***Id.***

As I have discussed earlier, the parties have, for several years, negotiated specific dollar-amount "caps" for health insurance premiums in each of the contract years, with the proviso that the District's payment is to be either the stated amount or 95% of the actual premium cost, "whichever is higher." As also indicated, the first-year "caps" have generally been set by mutual agreement at an amount adequate to cover 100% of the premiums for the first year. Only in the second year was there any "risk" to the employees that they would pay a portion (up to a maximum of 5%) of that year's premium. And that risk became a reality for the employees in the 2000-2001 contract term, when, for the first time, actual premium costs exceeded the caps, triggering the employee-contribution terms of the contract and requiring employees to pay 1.4% of the premiums the first year and the full 5% in the second. The District's offer for the first-year cap in the current 2002-2003 negotiations will result in employees paying 5% of the first-year premium, and, as before, "risking" a similar percentage payment should second-year premium costs exceed the first year's by more than the specified increase in the cap.

The Union claims the District's act of—for the first time—pegging the first-year cap to only 95% of the known premium costs constitutes a reduction of an existing benefit and is thus a "significant departure from the *status quo*." (Brief, at 51.) It says the District's proposal also renders the "risk sharing" language obsolete—that the 95% cap was intended as a "floor" for the District's premium contributions in the second year of the contract in the event premiums were to rise "quickly and unexpectedly." (Id.) The "ceiling" on those

contributions, according to the Union, was expressed in dollar amounts "that were clearly intended, and have historically remained, equal to at least 100% of the actual [premium] rates for the first year of the agreement when the … costs were known to both parties in bargaining." (Id.)

The District says it is the Union's offer, reflecting as it does 100%-District-paid premiums, that departs from the *status quo*. Stressing the fact that employees paid a percentage of their health insurance premiums in both years of the 2000-2001 contract (1.4% and 5%, respectively), the District says the Union is now trying to change the *status quo* by requiring the District to pay 100% of the premium costs. The District also points out that its dollar-amount proposal for the first year of the 2002-2003 contract is 31.3% over its contribution for the preceding year, and increases by 18.2% in the second year of the contract, which its says is more than reasonable. And it characterizes the Union's offer for full payment by the District—which, it says, amounts to an increase of 38.2% over 2001—as excessive and unreasonable.

I note first that neither the District's nor the Union's proposal purports to change the underlying language of the contract. The only "changes" being proposed are the parties' dollar-amount proposals for setting the cap for each contract year; and this, too, is in line with the parties' past practice in the years since 1990—bargaining the yearly caps within the five percent "ceiling" prescribed by the terms of the contract.

That, then, has been the status quo: the "capping provisions" have remained the same; only the specific yearly caps have been negotiated—and, apparently, always successfully, at least until the current negotiations. In short, the successive collective bargaining agreements have always provided for employee contributions to their health insurance premiums—at least in any year in which

actual costs exceed the negotiated caps. And I do not consider that either the District's proposal for the first-year cap (which is essentially certain to once again trigger the 5% employee contributions) or the Union's proposal (to set the cap at 100% of the expected premium rates), to be the type of "fundamental," "major" or "significant" change that would constitute an alteration of the *status quo*, as discussed in ***School District of Barron***, ***Washington County (Social Services)***, and similar cases. The contract language, and the bargaining of annual caps under that language, continues as before; and that is the very definition of *status quo*: "the existing state of affairs (at any specified time), or the existing condition (of anything specified)." *Webster's New Twentieth Century Dictionary of the English Language*, at 1778 (1976).

While neither party has satisfied me that, from a technical standpoint at least, either offer proposes the type of change in the contract *status quo* that would compel favoring one party's offer of the other without resort to any of the other statutory factors, I do believe the parties' bargaining history in this regard is properly considered in arriving at a decision in these proceedings. And, as may be seen in my discussion in the concluding paragraph of this decision, I have considered that history—particularly the District's consistent agreement to setting the first-year cap at 100% of premium costs over the past decade—as favoring, to a degree at least, the Union's offer.

## ***The Statutory Factors***

### *The "Greatest Weight" Standard*

The District maintains that the current state budget deficit will undoubtedly result in tighter funding for schools once the legislature passes the biennial budget. It says there is no question there will be "less money and cuts in state services and budgets as the state tries to bridge the $3.2 billion deficit." According to the District, this will surely mean

"greater revenue controls and the potential loss of state aid"[3] for the Manitowoc school system—which, according to evidence offered at the hearing, is already facing a $1.2 million deficit in its own budget. The District says this is evidence that the state revenue caps—which it characterizes as "[a] state law …plac[ing] limitations on expenditures that may be made or revenues that may be collected…," within the meaning of § 111.70(4)(cm)7, *Stats*.—are indeed affecting its ability to adequately fund its operations. And it says that while arbitrators have, in the past "downplayed the importance" of the "greatest weight" criterion, "[they] can no longer do so" in light of the economic realities of the time." (Brief, at 16)

I agree that the "greatest weight" factor appears to have been designed to allow arbitrators, in appropriate circumstances, to take into account the "impact and pressures that come to bear under legislative revenue limitations," *see*, ***Tomahawk School District***, Decision No. 30024-A, 9/28/01 (Vernon); but I do not feel that factor controls the result in this case. The evidence offered by the District is inconclusive as to whether—or, if so, precisely how—these budgetary problems, while undoubtedly real and serious, will affect the District's ability to live with state-imposed revenue caps and/or other restrictions. Rather, I agree with Arbitrator Weisberger who, in an earlier case involving the District, rejected an argument that state revenue caps should be given "greatest," or controlling weight in choosing between the offers:

> If these Employer arguments were to prevail in this proceeding, they would determine the outcome herein without further consideration of any other arguments made by both parties…. Although the undersigned is able to conceive of circumstances in which there is unmistakable evidence of some specific facts which would direct such a result [under §111.70(4)(cm)7], she does not believe that the evidence and arguments in this proceeding are sufficient to require such a summary result. State imposed school district cost controls are applicable to all school districts. There is no specific state law or directive which limits implementation of the Union's final

[3] The District's evidence shows that enrollment has dropped from 5520 to 5371—a 2.7% decrease—since 1998, and it suggests that this means lower state spending caps.

> offer by the District. While state revenue controls must be considered in this proceeding, the undersigned concludes that their existence is insufficient by itself to mandate adoption of the Employer's final offer at this state in her analysis of [the] statutory factors.

***Manitowoc School District***, Dec. No. 29491-A, 5/6/99 (Weisberger). I believe Ms. Weisberger's analysis is equally applicable here.

Additionally, while I don't doubt for a minute that revenue and expenditure limits have had—and will continue to have—an impact on the Manitowoc School District, the same is most probably true for all other districts in Wisconsin; and this, too, militates against accepting the District's offer on this basis alone. *See*, for example, ***Wittenberg-Birnham School Dist.***, Decision No. 3185-A, 5/22/02, at 8 (Dichter).

The general evidence put forth by the District has not satisfied me that the revenue limitations it faces—in company with school districts across Wisconsin—are such as to prohibit it from meeting the Union's offer. In short, I do not believe the evidence is either specific enough, or generally sufficient, to warrant giving greatest, or controlling, weight to statutory revenue restrictions.[4] The ultimate

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[4] I also note in this regard that arbitrators have consistently declined to give budgetary and revenue constraints "greatest weight" when the difference between the parties' proposals represents an insignificant part of the employer's overall budget. *See*, for example, ***School District of Omro***, Decision No. 29313-A, 10/98 (Dichter); ***Northland Pines School District***, Decision No. 30042-A,8/01 (Stern). And while the District submitted an exhibit purporting to calculate and compare the "total package" costs of its offer and that of the Union, concluding that the resulting difference amounted to, on average, something in excess of $24,000 per year, I tend to agree with the Union that the figures may be overstated as a result of the District's "compounding" some of the calculations. The Union says, and I agree, that a simpler, more basic calculation would apply the different premium amounts in the two offers to the number of employees in the bargaining unit, the differences in the premium amounts in the two offers, resulting in a figure approximately half that proffered by the District. Comparing either figure to the District's 2002 general fund expenditures of $39,405,396, however, leads to the same conclusion: that, in context of the District's budget, the difference in the offers is insubstantial—at a maximum, approximately six one-hundredths of one percent of the District's annual budget.

question of the reasonableness of the two offers must, therefore, be determined by consideration of the other factors set forth in the statute.

*The "Greater Weight" Standard*

The "greater weight" standard, as indicated above, emphasizes economic conditions in the local area, and the District offered considerable evidence—both general and specific—on the point.

The District begins by pointing to Revenue Department income statistics purporting to show that Manitowoc ranks "fourth out of eight comparable school districts"—using, in addition to itself, Fond du Lac, Plymouth, Sheboygan, Two Rivers, Green Bay, Kiel and Sheboygan Falls, as the comparables. As I discuss in greater detail below, *infra*, at 15-16, I believe the comparables established in two prior arbitrations—***Manitowoc Public Employees Local 731***, Decision No. 53616, 8/14/97 (Tyson), and ***Manitowoc Educational Paraprofessionals***, Decision No. 56149, 5/6/99 (Weisberger)—should be equally applicable here. Indeed, the District concedes as much in its brief. (Brief, at 6) Using the parimary comparables established in the earlier arbitrations—Fond du Lac, Plymouth, Sheboygan and Two Rivers—Manitowoc ranks second in average income—approximately 7.1% above the average of other areas.[5] (Dist. Exh. 18a; Union Exh. M).

The District also offered Department of Workforce Development figures indicating that the median household income in Manitowoc County ($43,286) is only very slightly below the statewide figure ($43,791). The *per capita* income in Manitowoc County was, however, some 9% lower; although it compared

somewhat more favorably with the national average, being only 4.6% off the national figure.[6] (Dist. Exh. 23, p. 9) And while average wages in the Manitowoc County in 2001 were nearly 7% below the statewide average, unemployment rates were closer to the average: 4.9% to 4.3%. (Dist. Exh. 21) On a nationwide basis, the unemployment rate in Manitowoc county was comfortably under the national average of 5.4% during the same period. (Id.) The City of Manitowoc, with an unemployment rate of 5.9% in September, 2002, ranked seventh of the State's twenty-eight largest cities. (Id.)

In addition to emphasizing Manitowoc's generally favorable position with respect to average income, the Union points out that property values in the District rank very favorably with those in the comparable districts: it has the second highest level of the five; its property values increased as fast or faster than all but one in the period 2000-2002; and its levy rate is lower than three of the four comparables. (Union Exhs. M; N) The Union also suggests that increases in the District's "extraordinary fund" balance over the past few years is further evidence that the District is not as "poor" as it claims. The District presented evidence, however, that, most recently, the fund's balance—which it says is necessary for cash-flow and insurance reserve purposes—has dropped from $13.8 million to $9 million, largely as a result of expenditures for building-and-grounds renovation projects the board felt were necessary to undertake. And while the Union says the District should not be permitted to make expenditures for facility repair and renovation "and then claim[] hardship when it comes to employee wages and benefits," I must decline the Union's offer to, in effect, second-guess the District's building and spending priorities. The evidence presented has not satisfied me that this is a case, where—as in an uncited arbitration to which it refers, ***Suring School***

[5] According to the District's exhibit (18a), the figures are: Manitowoc-$38,000; Fond du Lac-$34,761; Plymouth-$40,004; Sheboygan-$35,261; and Two Rivers-$33,043.

***District***, the district was apparently criticized for similar pleas of poverty after "year after year [of] planned surpluses."

The evidence seems to me to be so nearly balanced on either side—lower-than-average *per capita* income/higher average income; lower-than-average wages/higher-than-average property values; slightly higher-than-average unemployment (but still well under the national average)/lower-than-average mill rate—as to be inconclusive on the point. In other words, no compelling case has been made that either party's final offer should be adopted—or rejected—based on economic conditions in the District. Thus, while I believe that certain of the economic factors brought forth by the District are worthy of consideration—and will in fact be considered—in the ultimate disposition in these proceedings, I do not believe they are entitled to "greater" or controlling weight.

*"Other Factors"*

The Public Interest. The District, pointing to the voluminous evidence it presented relating to the stagnant economic conditions in the area, state and nation, stresses that the "recession" in which the State of Wisconsin now finds itself "supports the District's more modest offer as being in the best interest of the public." Stated that broadly, however, the argument would dictate automatic acceptance of the lowest-in-dollar-cost offer whenever the state's economy is found to be suffering—when it is stagnant or receding, rather than advancing. And I don't believe that is what the legislature had in mind when it fashioned the "public interest" criteria set forth in the statute. Again, the State of Wisconsin and its municipalities—like the rest of the nation—are in an economic slump; but the District has not shown that it is suffering to such a greater extent than other

[6] District Exh. 23, p. 9, shows Manitowoc County's *per capita* personal income as $25,371, compared to the state average of $28,100 and the national average of $29,469.

districts—or other areas—throughout the state and nation, that the public interest warrants acceptance of its offer in these proceedings. The "public interest" factor does not favor the District's position.

Internal Comparables. The District maintains that its offer—requiring, in essence, that the custodial/maintenance employees absorb 5% of the health insurance premium costs (at least in the first year of the contract) "matches the contribution levels of other support staff employees" in the district. It asserts, for example, that "clerical employees paid 5.0% of the premium in 2000-2001 and 5.0 percent in 2001-2002." (Brief, at 38) It may be that the clericals, like the custodial/maintenance employees, paid a portion of their health insurance premiums in the past two years, but, as is the situation here, it was not a bargained-for contribution. Rather, the applicable provisions of the clericals' contract match those at issue here: estimated annual "caps," coupled with a 5% "whichever is higher" clause. And the exhibit the District cites in support of the assertion (Dist. Exh. 14), is simply its 2003 offer to the unit—an offer which was countered by the Union's offer requiring District payment of 100% of the premium; and the matter is apparently now in arbitration. There is no evidence that the clericals actually settled on such a provision in their contract with the District. Similarly, the District states that its paraprofessional employees "contributed 3.6 percent of the premium in 2000-2001 and 5.0 percent of the premium in 2001-2002…" (Brief, at 38). Again, the supporting exhibit (Dist. Exh. 17) indicates only that the paraprofessionals, like the clericals, and like the employees in this case, were required under similar contract language to pay those percentages—not because they were specifically bargained for with the units in question, but because of the effect of concededly unexpected health insurance cost increases on the "whichever is higher" language of the contracts.

With respect to administrators and non-represented District employees, the District's witness testified only very generally that they "will be paying" 5% of health insurance premium costs. He also stated that the District's current budget was put together on the assumption that all employees would make similar contributions.

The Union, pointing to the similar nature of the comparables' contracts, asserts that none of the District's bargaining units has a settled contract providing for a 5% pick-up of health insurance premium costs. Emphasizing that the District's assertion that other units "will be paying" 5% of those costs presumably refers to matters still in the bargaining or "proposal" stages, and which have never been agreed to in negotiations, the Union says those assertions are of little relevance here. I agree. In ***City of Marshfield***, Decision No. 27039-A, April 13, 1992, Arbitrator Krinsky noted that where purported internal comparables are based on offers, rather than prior settled agreements—even where those offers might "suggest the beginning of a pattern of acceptance … by the Unions," they do not amount to "an established pattern which [the] Union should be compelled to accept through arbitration rather than voluntary bargaining, even though the proposed changes are reasonable ones."

On this record, then, the District has not shown that the internal comparables favor its position; and the Union's evidence on the point is neutral.

External Comparables. Some discussion of the identity of the comparables is appropriate. While the District, in the introductory sections of its brief, says there is no dispute as to comparables—relying on those selected in prior arbitrations—it has referred in its argument to both the primary and secondary comparables determined in those earlier cases.

It has long been recognized that use of a consistent set of comparables is beneficial to the collective bargaining process because it adds stability to the parties' relationship. *See*, for example, ***Wisconsin Professional Police Association/LEER Division***, Decision No. 29916-A, January 19, 2001 (Torosian). For this reason, once a set of comparables has been established as appropriate in a prior arbitration, "it will not be disturbed unless there has been a sufficient change to support a persuasive argument for change. ***Id***., at 16. There is no dispute that, in two prior Manitowoc School District arbitrations, ***Manitowoc Public Employees Local 731***, Decision No. 53616, 8/14/97 (Tyson), and ***Manitowoc Educational Paraprofessionals***, Decision No. 56149, 5/6/99 (Weisberger), Fond du Lac, Plymouth, Sheboygan and Two Rivers were selected as the primary comparables.[7] Since the District has put forth no convincing reasons why the primary comparables should be considered inadequate, thus allowing recourse to the secondary comparables, I limit my discussion here, as I did earlier,[8] to those selected as primary in the former proceedings: Fond du Lac, Plymouth, Sheboygan and Two Rivers

According to the District's exhibits, employees contribute 5% of family health insurance premiums in Fond du Lac and Sheboygan, while the districts pay the full amount of the family premiums in Plymouth and Two Rivers. (Dist. Exh. 19) As for single policy premiums, employees pay 3% in Fond du Lac, while the districts pay the full amount in the other The Union's full-pay proposal in this case does not, as the District claims, "run[] counter" to the comparables. (Brief, at 39). The District also points out that Manitowoc County employees, like City of Manitowoc employees, pay 5% (and sometimes more) toward their health

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[7] The secondary comparables established in the prior arbitrations were: Green Bay, Kiel and Sheboygan falls. *See*, ***Manitowoc Public Employees Local 731,*** Decision No. 2891-A, August 14, 1997 (Tyson), at 19.

[8] *See*, p. 11 , *supra*.

insurance premiums, as do several other districts in the Fox Valley area. (Dist. Exh. 20; 20a; 20b. Union Exh. J)

The Union doesn't dispute these statistics. It asserts, however, that, when considered in terms of the actual out-of-pocket medical expenses paid by employees, its members "shoulder a much larger portion of their annual … health insurance expenses" than do employees in the comparable districts. (Brief, at 43) The parties' bargaining history explains the point. Prior to 1990, the insurance plan in place consisted of a fully-insured base/major medical plan under which employees had deductibles of $100 (single) and $300 (family), and contributed 1/12$^{th}$—or 8%—of the annual premium. (Union Exh. 2, p. 11). In 1990, the parties negotiated changes in the health insurance provisions of the Collective Bargaining Agreement. The 1990-1991 contract contained an 80/20 co-pay provision under which the employees were responsible for 20% of all expenses up to an annual maximum of $600 (single) or $1200 (family). (Union Exh. 9). Those provisions continue to the present day. As noted earlier, the 1990-1991 contract also established the negotiated dollar-amount "cap" and the "five-percent-or-whichever-is-greater" provisions which have continued in all successive agreements.

The net result of all this, according to the Union, is that its members incur significantly higher out-of-pocket medical expenses than do employees in the comparable districts—and its exhibits appear to bear this out. Under the co-payment plan, District employees face maximum annual out-of-pocket expenses of $600 in the single plan and $1200 in the family plan, compared with zero in Fond du Lac,[9] $100/$200 in Plymouth, and $200/$400 in Sheboygan and Two Rivers.

[9] The zero figure is for "Level 1 in network" employees. Those employees opting to use level 2 network or level 3 non-network are required to pay service-based charges of between $600 and $2200 for what the Union describes as a "decidedly richer" plan. (Brief, at 45; Union Exh. 5). Even so, out-of-pocket levels in

(Union Exhs. 5, 6) So, while employees in the other districts do contribute to the premiums, they enjoy more economical coverage in the long run.

With respect to comparables within Manitowoc County, the District points out that county employees pay five percent toward both single and family health insurance premiums, while in the City of Manitowoc, employees pay between five and ten percent of family premiums (although one unit pays zero), and, as to single policies, employees pay ten percent in six bargaining units and zero in the other four. (Dist. Exh. 20; 20a. Union Exh. J). The Union, disagreeing, again points out that employee out-of-pocket expenses are significantly higher with respect to its members than for Manitowoc city and county employees when the 80/20% co-payment provisions are factored in. The maximum employee out-of-pocket expenses in the City of Manitowoc plan, for example, are $350 and $700, and in Manitowoc County $100 and $300—compared to the District employee figures of $600 and $1200. (Union Exhs. H, I) In addition, as the Union also points out, gross premium levels in the City and County plans suggest those plans are, as the union claims, somewhat "richer" than the District's.[10]

Even though employees in some of the comparable districts pay a percentage of their health insurance premiums, when consideration is given to the co-payment and other provisions of the Manitowoc plan, its employees would be paying more for their coverage under the District's proposal than employees in most of the comparable districts—many of whom may have plans with greater benefits than Manitowoc's. And while it is indeed a close question, I conclude that the external comparables favor the Union's offer.

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Manitowoc are substantially above those in the other three comparables, Plymouth, Sheboygan and Two Rivers.

*Cost of Living*. The District says that when considered as a "total package"—a combination of wages and fringe benefits—the increase it is offering the custodial/maintenance employees is 5.5%, which it says significantly surpasses the Consumer Price Index, which has only increased between 1.5% and 2.8% in the past two years. (Dist. Exh. 8) And it states that the total package increase proposed in the Union's offer is 6.0%. (Brief, at 47). The Union disputes the District's use of "total package" costing. It says that, when considering consumer prices, it makes little sense to include fringe benefits because "[e]mployees cannot use health insurance or retirement system contributions to purchase groceries … or to pay the heating bill…" (Brief, at 64-65) I agree with the arbitral authority cited by the Union on the point: that cost-of-living criteria "should be compared to the percentage wage increases and not to the cost of the package;" and that this is so because "[i]t is the wage increase [not the cost to the employer] that insulates employees against the erosion of the dollar caused by inflation." ***Brown County***, Decision No. 26207-A, May, 1990 (Kerkman). *See*, also, ***Vernon County***, Decision No. 26360-A, September, 1990 (Friess); ***Monona Grove School District***, Decision No. 28339-A, October, 1995 (Kessler); ***Village of Butler***, Decision No. 26501-A, December, 1990 (Slavney). I agree with the Union that the District's "total package" CPI comparison is inapposite, as wages are not at issue in these proceedings.

## CONCLUSION

As the foregoing discussion indicates, general consideration of the various statutory factors fails to clearly identify the preferred offer. Considered in their entirety, however, they tip the scales, however slightly, in the Union's favor. As may be seen, of the several statutory criteria, only one—comparison to external

[10] Gross family premiums in the City for 2003 are $983, and, for the County, approximately $1140. (Union Exhs. G and J)

comparables—favors one of the parties' offers (the Union's). In addition, however, while I have concluded that, in the technical sense at least, the District's offer does not amount to an alteration of the *status quo* established under the provisions of prior contracts, it does depart from the position the District has consistently taken since 1990, when it first agreed to set the cap on its insurance premium liability at 100% of the known premium cost for the first year. And an offer that, for the first time twelve years later, sets the cap at 95% of the known premium is no less a benefit reduction than if the District had proposed a specific 5%-employee-contribution provision for insertion into the collective bargaining agreement. It is the type of change that should be bargained, not imposed by arbitration.

> The County has a laudable goal. It is reasonable for it to want to reduce its health costs, and it is also reasonable and efficient to have the same health insurance arrangements for all of its employees….but it must bargain those changes…."

***AFSCME, Council 40, AFL-CIO***, Decision No. 28987-A, September 24, 1997 (Krinsky).

There is no doubt that the District—like all other Districts in the state (and probably the nation) is feeling the pain of a sluggish economy. Nor is there any doubt that the District is facing hard choices as it attempts to parcel out its limited revenues and still provide quality education for its students. In my opinion, however, it has not established that these conditions demand that, for the first time, its custodial employees must be required to pay 5% of their health insurance premiums when, because of the design of the District's health plan—particularly its co-payment provisions—they are already paying more, out-of-pocket, for their coverage than are other public employees in Manitowoc County and in the comparable school districts. I agree with the District that rising health costs

mandate that employees contribute to at least some degree to the costs of their health insurance. These employees are already doing that; and, considering all of the applicable statutory criteria as applied to the particular circumstances of this case, I conclude that—even though it is, as I have said, a very close queston—the Union's offer more closely adheres to the statutory criteria and is thus preferred.

## AWARD

The Union's offer is to be incorporated in the parties' 2002-2003 Collective Bargaining Agreement, along with those provisions agreed upon during their negotiations and those in their expired agreement which they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 22nd day of May, 2003

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William Eich, Arbitrator