

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Arbitration of the
Dispute Between the

**Stevens Point Area School District Employees
(Food Service) Local 309, AFSCME, AFL-CIO
and**

WERC Case 71
No. 58367
INT/ARB 8893
Decision No. 30492

Stevens Point Area School District

Appearances:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 35, Plover WI 54467 for the Union. Mr. Dean R. Dietrich, Ruder Ware, Attorneys at Law, 500 Third St., Wausau, WI 54402-8050 for the Employer.

Sworn Testimony was received from:

Ms. Gayle Wald, Director of Food Services, Stevens Point Area School District

Background

On or about August 12, 1999, representatives of Stevens Point Area School District (hereinafter referred to as the "District" or the "Employer") and Stevens Point Area School District Employees Local 309, AFSCME, AFL-CIO (hereinafter referred to as the "Union" or the "Employees") exchanged proposals on issues to be included in a new collective bargaining agreement (for the years 1999-2002). The Union had been certified shortly before and represents all full time and part-time calendar year and school year food service employees of the Stevens Point Area School District, excluding managerial, supervisory, and confidential employees (approximately 60 employees). The Parties met on about seven occasions and failed to reach an agreement. On Dec. 27, 1999 the Union filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Richard B Mc Laughlin, a member of the Commission's staff, conducted numerous mediation sessions with the parties. He then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by October 23, 2002. On November 5, 2002, the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed December 17, 2002. He conducted a hearing on the matter on February 13, 2002 at the Stevens Point Area School District offices in Stevens Point, Wisconsin. No transcript of the hearing was taken. Both parties had an opportunity to present exhibits and testimony and to outline their

arguments in this dispute. They agreed to a schedule for submitting certain additional exhibits, and exchanging briefs and replies, the last of which was received on May 24, 2003.

The Issue(s)

As an initial agreement, many issues arose but were resolved in the bargaining process. Two issues remain in contention: the Employer's contribution to the family health insurance and the number of paid holidays. The Union's proposal is that the District pay 62% of the premium in 1999-2000, 64% in 2000-01, and 66% in 2001-02 while the Employer proposes to continue paying 60%. The Union proposes that school year employees receive 4 holidays in the 1999-2001 years and 7 holidays beginning July 1, 2001 while calendar year employees receive 5 holidays in 1999-2001 and 10 holidays beginning July 1, 2001. The Employer proposes that school year employees continue to receive 4 holidays in the 1999-2001 years and 5 holidays beginning July 1, 2001 while calendar year employees continue to receive 7 holidays in 1999-2001 and 8 holidays beginning July 1, 2001. Currently school year employees receive holiday pay for 4 days and calendar year employees are paid for 7 holidays. Under both offers school year employees receive pay for the Fourth of July if they work that week (which rarely occurs).

The Employer contends that its offer improves on the *status quo* somewhat while the Union's offer for the increased insurance payments and holidays takes unit employees "too far, too fast" considering the other gains in the tentative agreement. The Union contends that its offer merely begins to move unit employees towards what other, similar employees receive.

A related issue has factored in this dispute. This is the matter of what constitutes the appropriate external comparable group. The Union would use the Wisconsin Valley Conference to which the District belongs, but exclude Wausau and D.C. Everest since food services employees there are not unionized. The Employer would use the somewhat more proximate districts which are mostly significantly smaller than Stevens Point.

Cost Costing of the proposals by the Employer is as follows:

		<u>Salary and Benefits Costs Under the District's Offer¹</u>				
		<u>1999-2000</u>	<u>2000-01</u>	<u>%change</u>	<u>2001-02</u>	<u>%change</u>
Wages	\$	462,614	\$ 476,500	3.0%	\$ 490,812	3.0%
health		46,549	55,261		64,645	
WRS		51,813	50,509		50,554	
SS		35,390	36,452		37,547	
add'l holiday					2,644	
Total Comp.		596,366	618,722	3.7	646,201	4.4

¹Ex 7, 9

<u>Salary and Benefits Costs Under the Union's Offer²</u>					
	<u>1999-2000</u>	<u>2000-01</u>	<u>%change</u>	<u>2001-02</u>	<u>%change</u>
Wages	\$ 462,614	\$ 476,500	3.0%	\$ 490,812	3.0%
health	46,859	55,814		65,723	
WRS	51,813	50,509		50,554	
SS	35,390	36,452		37,547	
add'l holiday	– 235	– 242		8,181	
Total Comp.	596,440	619,034	3.7	652,817	5.5
Difference	\$ 74	\$ 312		\$ 6,616	

²Er Ex 8, 10

The Statutory Criteria

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

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.
7. g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors under subd. 7r.
7. r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give weight to the following factors:
 - a. The lawful authority of the employer.
 - b. Stipulations of the parties.
 - c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any settlement.
 - d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
 - e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

- f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken 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.

Arguments of the Parties

The Union

The Union contends that its proposal for the holiday benefit is in line with the external and internal comparables. The school districts in the Union's set of external comparables are more similar to Stevens Point than are those used by the Employer. The Union's proposal for the Employer's contribution to the family health insurance premium makes gradual progress towards internal parity of food service employees with other employees of the District. While these proposals depart somewhat from the *status quo*, they are appropriate to approach parity with other units which is important for a first contract. As such, they require no *quid pro quo*. The offer of the Union adheres more closely to the statutory criteria and is to be preferred.

The Union proposes to use all but two of the Wisconsin Valley Athletic Conference schools for

reference a similar employers. Besides Stevens Point, the Conference includes Antigo, Marshfield, Merrill, Rhineland, Wisconsin Rapids, Wausau, and D.C. Everest. The Union would exclude the latter two districts because food service employees in those districts are not represented. The Union's choice of the Wisconsin Valley Athletic Conference schools as comparables is based on Arbitrator Krinsky's decision in 1984.³ In that decision the District argued for the Conference while the Union used Wausau and Wisconsin Rapids. Arbitrator Vernon used the same set of comparables in 1989 for the same unit employees (professionals). The employer proposes to use much smaller schools, including non-represented employees in Auburndale and Tomorrow River.

³Stevens Point Area Public School District, Dec. No. 20952-A, May, 1984.

The Union cites a number of decisions wherein arbitrators excluded non-represented employees from comparison. Arbitrator Kerkman reviewed numerous decisions and concluded that the weight of arbitrator authority supported such exclusion.⁴ Arbitrator Weisberger concluded that non-represented units should be excluded from primary comparison since their terms and conditions of employment do not derive from the same process of bargaining.⁵ Arbitrator Rice also found that comparisons between organized units was more equitable than making comparisons where wages and other terms of employment were unilaterally determined.⁶ Arbitrator Malamud found comparisons involving non-represented employees inappropriate because there generally is no complete, published terms of employment for comparison and because such terms, if found, are not the result of the “pull and tug at the bargaining table.”⁷ Arbitrator R.U. Miller also opined that the dynamics of bargained wages are much different than administratively set wages and therefore such employers cannot be reasonably equivalent.⁸ Other arbitrators were cited with similar conclusions. The Union contends that there are sufficient numbers of unionized employers in the conference for adequate comparisons to be made, rather than to include units wherein wages and other terms are unilaterally determined. Moreover, comparisons can be better made when labor agreements can be easily accessed and terms readily compared.

The Employer has based its set of comparables solely on proximity, but the athletic conference is more appropriate in that these schools are not only proximate, but they are also similar in other respects. In arguing for the inclusion of unorganized employers, the District generally quotes from arbitrators who used the athletic conferences for comparables which is what the Union, not the Employer, is using in the instant case.⁹ In its citation of Arbitrator Kessler’s award regarding proximity, the Employer conveniently neglected to include his discussion of why communities

⁴Washburn School District, Dec. No. 24278-A, September, 1987.

⁵Plymouth School District, Dec. No. 26838-A, Nov.1991 and Marathon County, Dec. No. 27714-A, March, 1994.

⁶Nekoosa School District, Dec. No. 26636-A, May, 1991 and DeSoto School District, Dec.No. 16814-A, Aug. 1970.

⁷West Allis-West Milwaukee School District, Dec. No. 21700-A, Jan., 1985.

⁸Dane County, Dec.No. 18181-A, Aug., 1981.

⁹Union Reply Brief, pp. 5-7.

different in size and character should not be considered comparables. That decision dealt with county employees; school districts are grouped in athletic conferences because of their similarity already in terms of size and proximity. The Employer contends that the union's comparables are dissimilar in various economic aspects but has provided no data to that effect; instead it cites in its Brief an inaccessible web-site to bolster its case. Regarding the contention that non-professional units's comparables may differ from that of professionals, the Union noted Arbitrator Imes' logic that the arbitral criteria for each is the same.¹⁰

The Union argues that the school term food service employees should have seven holidays just as the educational assistants have since they work a similar schedule. There are only two calendar year food service employees. The other calendar year employees— clerical, transit, and custodial/maintenance employees— have ten holidays, so the internal pattern clearly favors the Union's offer. Similarly, the external pattern gives support to the Union's offer. The Employer has submitted data for the Wausau and D.C. Everest school districts which were not presented at the hearing or submitted in the agreed on period for submission of post hearing documents and therefore should not be considered; nevertheless, food service employees in those districts receive six or more days which supports the Union's offer.¹¹

¹⁰Greendale School District, Voluntary Impasse Procedure, May, 1983.

¹¹Union Reply Brief, p. 4.

The Union's proposal for health insurance is supported by the external comparables. Again, the Wausau and D.C. Everest school districts data was improperly submitted by the Employer, but in those districts, the employer contributes 85% as opposed to the 60% family contribution proposed by the District. Only Wisconsin Rapids pays less than Stevens Point. In fact, all of the Employer's comparables pay more for the family plan than does Stevens Point and Wisconsin Rapids.¹² The Employer contends that Food service employees are mixed in with other employees in other districts and are not provided the same benefits claimed by the Union but has not provided any evidence to that effect. The Union's proposal for health insurance moves unit employees toward parity with other District employees as well. While the Educational Assistants only receive the same benefit (60% employer contribution towards the family premium), other non-professionals receive 92%. The Clerical and Maintenance employees are not unlike full time food service employees and have a pro rated benefit; under the Union's proposal, food service employees would move slightly toward being treated similarly. Employees who are full-time vs. part-time, school year vs. full-year should be treated similarly. The common standard is a 92% contribution for the family plan. The Clerical, Driver, and Custodial/ Maintenance employees also receive dental insurance. Clericals also receive long term care insurance. The discrepancy is unjustified. A 40% employee payment for the family plan is prohibitive for many of the Food Service employees whose wages are low. In 1999 there were only four employees having the family health plan. In 2002, only two, or 4% of the unit, were listed. Such a small increase in premiums for 4% of the unit's employees cannot be said to be exorbitant.

The District may claim that it cannot afford the Union's offer, but has provided generalities and no specifics on its ability to pay for the Union's offer; its suggestion that food service may have to be funded with general funds is hypothetical and without foundation. The Employer has already cut positions in response to declining enrollment, so it has an ability to control its costs. Its Fund 50 (Food Service) balance has gone from \$259,259 in 1998-99 to \$545,157 in 2001-02. Its Fund 10 balance has gone from \$9,066,583 to \$11, 370,865. Food service funding is separate from state and real estate tax funding so the "greatest weight factor" is irrelevant.¹³ The Union's proposal will

¹²Union Reply Brief, p. 13.

¹³Union Reply Brief, p. 9.

cost the District an additional \$23.50 per month in 1999 and \$55.48 in 2001. Clearly this is no unreasonable burden, and it clearly is no “cadillac agreement” referred to in the Employer’s “Rome wasn’t built in a day” argument. In the award by Arbitrator Vernon which the Employer was referring about such an award, the arbitrator said to look for what internal units receive and then whether this comports with the externals. Furthermore, the proposals are modest and incremental.

The Employer has provided no specific evidence regarding economic conditions as to why its offer is to be preferred; however, it gave the bus drivers between 3.4% and 3.7% during 1999-2002. Its offer to this unit is in the middle of its settlements with other units which implies that local economic conditions support the Union’s offer which itself differs little from the Employer’s offer.

Similarly, consideration of the cost of living is indicated by other settlements.

The Employer may claim that it is receiving no *quid pro quo* for improvements in Food Service employee benefits. The Union cites arbitrators who have opined that such is not required when there is substantial acceptance of an item by other employers and unions and that employees are simply being “brought into the comparable mainstream” by a *status quo* change.¹⁴ This is a first contract, and the unit’s employees are simply trying to catch up with its comparables. No status quo exists, so comparisons with other employees are the more relevant considerations, according to Arbitrator Engman.¹⁵ The bargaining history suggesting that units employees should expect to bargain up to other employees’ benefits is irrelevant in an initial contract; furthermore, there are no original documentary evidence to support the Employer’s contention of such history.

In sum, the Union’s comparables are more appropriate, and follows prior awards. Its offer for holidays is more consistent with these as well as with other non-professionals in the District. This

¹⁴Arbitrators Weisberger in Bristol School District No. 1, Dec. No. 27580-A, Oct. 1993, McAlspin, in Germantown School District, Dec.No. 27892-A, August, 1994, and Yaffe, in Delevan-Darien School District, Dec.No. 27152-A, August, 1992.

¹⁵Town of Lisbon, Dec. No. 30123-B, April, 2002.

is a first contract which attempt to achieve parity with other employees. Its offer for health insurance contributions by the Employer makes moderate progress towards parity with internal units and is supported by the external comparables.

The Employer

The Employer contends that the Union is seeking to expand several fringe benefit areas and in doing so, is overreaching. Its own offer is more reasonable under the statutory criteria. The Employer's comparable pool is the most appropriate, incorporating districts which are more proximate. These comparables support the District's offer. The Union's pool is not only more distant, but it selectively excludes employers whose food service employees are non-union. The "greatest weight" and the "greater weight" factors support the District's offer. Its offer is more in line with the cost of living changes. Lastly, the benefit increases sought by the Union are made with no *quid pro quo* offer.

Since this is a new collective bargaining unit, no comparable employers have been established. Citing Arbitrator Kessler, the Employer argues that of the commonly used criteria of proximity and similarity of size and character, contiguity of areas reflect similarity of both labor and shopping markets and may be more important, particularly for less skilled or entry level positions.¹⁶ The Stevens Point food service employees are part time and school year employees and are hired from the immediate area.

The Employer has selected proximate districts with similar economic characteristics, employee base, tax rates, and expenditures per pupil. These are Almond-Bancroft, Auburndale, Mosinee, Rosholt, Tomorrow River, and Wisconsin Rapids. The districts which the Employer has selected are in Portage, Wood, and Marathon counties which have similar incomes and economic and employee bases. Per pupil expenditures and tax rates of Stevens Point are in the middle of the group of comparables selected by the Employer. The Union's comparables, on the other hand are not proximate. These are the schools selected by Arbitrator Krinsky and include the Wisconsin Valley Athletic Conference. While appropriate for teachers units, the food service employees are tied to their local area. Arbitrator Krinsky appears to concur in his Milwaukee School District

¹⁶Grant County (Courthouse), Dec. No. 29200-A, June, 1998 and Clark County (Courthouse), Dec. No. 29116-A, Jan., 1998. The employer attributes the latter to both Arbitrators Kessler and Mueller (Mueller is the Arbitrator).

(Food Service) decision where he used adjacent communities rather than the nine largest school districts in the state.¹⁷ The Union's own exhibit (#7) shows that unit employees come from the local area. Moreover, the Union's comparables lie in four counties which are dissimilar to Portage County in terms of industry and income. Finally, the Union's exclusion of Wausau and D.C. Everest school districts from the Union's set of comparables because of the non-union status is contrary to many arbitrators' decisions. The Employer cites Arbitrators Petrie and Gunderman who suggests that exclusion of non-union employers which are otherwise comparable modifies

¹⁷Dec. No. 27847-A, July, 1984.

Sec. 111.70(4)(cm)(7)d.¹⁸

The “greatest weight” factor applies to the instant case. Stevens Point School District is losing enrollments and state supported funding as are most schools in Wisconsin. Since 1998 it has lost 587 students, a trend which will continue since during the past year there were about 10% more eighteen year olds than five year olds. The Union’s offer has limited short term impact, but in the long term, will have a significant impact because of the rising health care costs and higher employer contribution rates, in addition to the increased holiday pay. Food service may have to be funded out of general revenues which are increasingly squeezed by other rising costs, declining state aid, and revenue limits. Educational institutions are in a “economic crisis” for which this factor applies.¹⁹

Local economic conditions, the “greater weight” factor, also favors the Employer’s offer. The county, city, and school district have all been experiencing economic turmoil.²⁰ The district has struggled with a deficit for two years and is reviewing program cuts. There have been numerous layoffs and business closings; the unemployment rate in Nov., 2002 stood at 5.2%. Bad economic conditions continue to linger in the area. The district’s offer continues and modestly improves wages and benefits when many other businesses are suffering.

¹⁸Schiocton School District (Support Staff), Dec. No. 27635-A, Dec. 1993 and Cameron School District (Support Staff), Dec. No. 27562-A, August, 1993.

¹⁹Employer Brief, p. 16.

²⁰Employer Brief, p. 16.

The internal comparables support the District's offer. These should control unless the result would be an unreasonable relationship of wages and benefits viz external comparables, according to Arbitrator Vernon (the Employer cites Schiavoni in text).²¹ The most similar unit to Food Service workers is the Educational Assistants in that the former unit has only 2 full year employees and the latter has none. The Custodial and Clerical units have a large number of full time employees. The wage settlement for Food Service employees is in line with other units. All units offer 100% employer contribution to the single health premium. Clerical and Custodial units have 92% of the family premium paid, as do five of the Bus Drivers (the rest receive no contribution). The Educational Assistants receive 60% of the family premium as do the Food Service workers.

The holiday pay offered to Food Service workers similarly follows the internal pattern. Full year employees in the Custodial, Clerical, and Driver units receive 10 paid holidays. School year employees in other units receive from six to nine paid holidays. The Employer would pay for an increase holidays to eight (from seven) for full time employees and an increase of one (to five) holiday for school year employees while the Union proposes to cut two holidays from full time employees for two years before increasing them to ten, and to increase school year employees to seven. The other units bargained for several years before achieving their current levels; the Union's offer propels them to the same level in the first bargain. The unit has mostly part time school year employees; the District's offer provides modest increases in benefits for unit employees towards those of similar district employees.

The Union should not expect to receive improvements in benefits to the level attained by other bargaining units over long periods of time through the "give and take" of the bargaining process, particularly when its offer provides no "give". The Employer cites Arbitrators Vernon and Briggs who opine on the theme that as "Rome wasn't built in one day" so should new units not expect parity in one bargain.²² The Employer traces the history of the various units and how they arrived at the respective numbers of holidays and employer health care contribution percentages. The current 60% employer contribution for the family plan is the status quo and requires some "give"

²¹Waukesha County, Dec. No. 29622-A

²²City of Shell Lake (DPW), Dec. No. 28746-A, Feb., 1996 and Holman School District (Custodians), Dec. No. 49948, April, 1993; Butternut School District (Support Staff), Dec. No. 27313-A, March, 1993.

to take it to 66%. Arbitrators have recognized that there is a starting point for new units as well.²³

Changes require demonstration of need, efficacy of the remedy, a *quid pro quo*, and support among the comparables. If there were a need for changes in benefits, such change would have to come incrementally.

The District's external comparables provide food service employees with similar holidays to what Stevens Point employees receive. Full year employees receive from six to eleven holidays, with a mean of 8.8; school year employees receive from one to eight days, with a mean of five. The Employer's offer is for five and eight days, respectively while the Union's offer is for seven and ten. The Employer currently pays the full single premium while three of the comparables have employee contributions. Employer contributions for family plans provided food service employees vary; these employees are often mixed in with other school employees who are more likely to be full time. In Wisconsin Rapids, food service employees simply receive the single premium so those who are on the family plan pay more than the 40% paid by similar Stevens Point employees.

The Union's external comparables also provide food service employees with similar holidays to what Stevens Point employees receive which is generally four or five for school year employees. Wisconsin Rapids appears to provide seven, but they do not have the two personal days. Ostensibly full time employees in the Union's comparables receive more holidays, but these are often prorated for employees working less than forty hours per week which is often the case with food service employees. With regard to the employer's contributions for health insurance, looks are also often deceiving. Antigo pays 90% of single and family premiums but only for full year full time employees; the rest receive prorated premiums. The same applies to Marshfield food service employees. Merrill employees working less than half time receive nothing. Rhinelander employees who work full year full time may receive 100% employer contributions, but those

²³ Arbitrator McAlpin in CESA #12 (Support Staff), Dec. No. 27601-A, Oct. 1993 and Rice in Outagamie County (Professionals) Dec. No. 28777-A, Jan. 1997.

working 30-40 hours receive only 75% while those working less pay their own. Some of the comparables may pay more, but only as the result of years of bargaining.

The Union neglected to provide data for two conference schools: Wausau and D.C. Everest. They are non-union. Wausau employees receive 6.5 paid holidays while D.C. Everest employees receive 6 days, regardless of school year or full year status. Wausau pays recently hired employees 85% of the health premium if they work 8 hours per day, 75% if they work 7-8 hours, and 65% if they work 6-7 hours. Employees at D.C. Everest hired since 1985 receive employer contributions ranging from 45% for 3.5 hours to 85% for 7.5 hours. At Stevens Point, employees working 4 or more hours receive 100% of the single premium. While these two districts' food service workers are non-union, they should be considered by the Arbitrator as reflecting labor market conditions.

The Union would have the Arbitrator believe that the Food Service's Fund 50 is a large pile of money potentially for substantial employee benefits. It is instead a reserve in part to pay for the wage and benefit increases (and back pay) in this bargain as well as for designated capital purchases, possibly including a cooler, freezer, check out, and other kitchen equipment. Ovens and computers were replaced in recent years from savings in this fund.

The final offer of the District is consistent with the cost of living factor. The North Central States CPI rose at a rate of 2.4%, well below its offer which costs 3.7% and 4% for the 2000-01 and 2001-02 years. The Union's offer is .1% higher both years.

In sum, the Employer's proposed comparables is the most appropriate. The Districts's offer is more in line with these as well as with those comparables proposed by the Union. Its offer parallels the more relevant internal comparable, the Educational Assistants, and is more consistent with the cost of living. The "greatest weight" factor of the limited revenues for the District as well as the "greater weight" factor of faltering economic conditions favor the District's offer. The Union's offer reaches too far, too fast. The Fund 50 balance is not a real surplus available for such extravagance.

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award.

The criteria cited by the Parties as pertinent to this decision are the “greatest weight” factor of statutory limits (7), the “greater weights factor”(7 g), as well as internal and external (e. and d.) comparisons, cost of living (g), and other factors--*status quo* change (j). Each of these will be considered below as the issues of this dispute have been considered by the Arbitrator. These issues include whether the Union’s status quo changes are warranted (and if the criteria for such a change is a relevant issue in this agreement), how the parties’ offers compare with external and internal comparables, and what constitutes the external comparables which in part establish that pattern. First, the Arbitrator will address the matter of the Employer’s submitted material received after the close of the record. The “greatest weight factor” and “greater weight factor” are then discussed. The external comparability factors are then addressed to determine what constitutes the comparables. He then will comment on the question of the *status quo*, as outlined above, and related matters, including internal comparisons, following a discussion of comparisons of holiday pay and health insurance contributions and other factors.

The parties and the Arbitrator left the record open for a period after the hearing for submission of certain, specified documents related to the Fund 50 balance which were then submitted by the Employer. It was also agreed that the Employer reserved the right to submit full contracts of its comparables were the Union to challenge the portions submitted. In its brief, the Employer submitted portions of the policies for D.C. Everest and Wausau School District food service employees related to holiday and insurance benefits. These non-union districts were not included in the list of the Employer’s comparables, but are members of the athletic conference employed by the Union as comparable, but were not used by the Union. In its Reply Brief, the Union requested that this new evidence be excluded from the record as it was closed. The Union went on, however, to argue that these would support its offer. Generally such a motion is granted by the Undersigned and other arbitrators because there is no opportunity to cross-examine or rebut the evidence and because there will always be additional data which might have bearing on a case, but there must be some finality. The Employer argued in its brief that the Union had neglected to include these in its data submitted for the Wisconsin Valley Conference even though at hearing it proposed using the Conference for its external comparables following Arbitrator Krinsky’s award. The Union in its Reply Brief contends that the Employer just wasn’t listening, and that it proposed their exclusion because of non-union status. The Arbitrator will give consideration to the Employer’s submission if it can be useful to him because: it does not really expand the issues in the case; the data is a public document for which examination or critique by the Union can follow that of other, similar data on non-union food service employees already submitted by the Employer; the Union was able to comment on it in its Reply Brief; and there is some chance that the Employer made an honest

mistake and would have asked to include the data were it to have been “listening” and recognized that the Union hadn’t included the data with the rest of the Conference.

The Employer’s contention that educational institutions are in “economic crisis” such that the “greatest weight factor” favors its offer is not found to be compelling, given the modest difference between the offers, both now and the near future. The Employer indicates that it has declining enrollments, but provides no indication that Stevens Point is different from other districts, or that personnel cannot be adjusted to fit the enrollment. The Employer suggests that food service may need to tap into general funds which are otherwise being squeezed but has provided no reasonable evidence that this is needed or permitted. The Union’s point that the revenue caps do not apply, that Fund 10 and Fund 50 are separate, and that the latter has grown substantially is well taken. The Undersigned notes that the Employer’s letter of March 11, 2003 clarifying the Fund 50 balance shows a near doubling of the balance in five years to the \$400,000-500,000 range. This is not to suggest that he believes the fund to be a honey pot for the Union to raid. He understands that a reasonably sized fund is required to include accumulated depreciation/ equipment replacement reserves as testified to by Ms. Wald in addition to compensation reserves and as a cash flow buffer, but there was no evidence that there is an unusual need for the former use which would prevent an award in favor of the Union.

The Employer’s contention that due to the state of the Stevens Point economy the “greater weight factor” favors its offer is also not found to be compelling. While it is accepted that the District has struggled with budget cuts, that there have been layoffs in the area so that the unemployment rate had risen to 5.2% in November, and that the economy isn’t good, there is no evidence that Stevens Point is significantly different from other area districts. For the nation and state the Undersigned notes that the unemployment rate in November was 5.9% and 5.6% respectively, while the annual average for 2002 was 5.8% and 5.5%.

External comparables

The parties have cited numerous interest arbitration awards indicating the basis for comparisons in order to judge which parties’ offer to accept. Similarity of size and character and proximity are generally employed in that determination. What weight to accord these varies among arbitrators and circumstances. Established use of comparables by the parties or findings of prior arbitrators carries great weight. The Union maintains that the appropriate comparable counties are members of the Wisconsin Valley Athletic Conference excluding non-union D.C. Everest and Wausau; the Conference was used by Arbitrator Krinsky in 1984. The Employer includes the adjacent districts

which in most cases are significantly smaller than Stevens Point. The Employer provided mill rate and education expenditures per pupil for its comparables but did not indicate the data sources, nor did it present these for the Union's comparables. Table 1 below indicates the mill rates by district. As it turns out, the mill rates for the Union's comparables deviate from Stevens Point by less on average than the Employer's comparables (\$.791 vs. .855). Table 2 shows the 2001-02 Current Education Costs per Student and the Total Education Costs per Student (transportation and building costs are the difference). The Current Education Costs of the Union's comparables again deviate from Stevens Point by less than the Employer's comparables (\$379 vs. 491). Stevens Point also appears to have revenue limits more similar to the Union's comparables. What is evident from Table 1 is that there is an enormous size difference between Stevens Point and the Employer's comparables viz the Union's comparables but modest differences in distance, with the exception of Rhinelander. Rhinelander also differs substantially from other listed districts in valuation per member. Rosholt, Almond, Bancroft, and Auburndale were difficult to locate in the Wisconsin Gazeteer but appear to have a handful of streets while Tomorrow River is only marked with a hunter icon. Mosinee (106th largest district in the state) is the only district in the ballpark of the comparables found by Arbitrator Krinsky.

The Undersigned has opined previously on the issue of using small peripheral communities for comparison with a larger city (Sheboygan) which he believes follows arbitral practice:

“Comparability based on geographic proximity would seem to favor the Employer's selection of an appropriate reference group. However, it is less obvious than the Employer suggests for several reasons. First, Manitowoc School District is specifically excluded by the Employer even though it is about the same distance from Sheboygan as is the Kiel, New Holstein, and parts of the Elkhart Lake, Plymouth, and Random Lake School Districts. By the Employer's logic, these and Howards Grove School District are part of the Manitowoc labor market. Secondly, the Employer's citations of various arbitrator's opinions deal with establishing comparability of similar, geographically proximate workers where comparisons should not be ignored because of non-union status or affiliation with different athletic conferences. The Arbitrator notes the size of the employer and comparison employer in these cited cases, and finds them to be generally "small," similarly sized, and otherwise comparable in contrast to this case. The argument is accepted that the labor markets in the smaller communities surrounding larger cities will be "influenced" by those cities--whether they surround Sheboygan, Manitowoc, or Green Bay--or elsewhere. But contending that those communities' labor

markets will exert the same influence pari passu on the larger cities is questionable. And would this influence, if any, be greater for Sheboygan than for Manitowoc and Green Bay? There is no evidence presented to suggest such is the case. Finally, the Undersigned takes particular note of the lack of arbitral precedent establishing symmetry of labor market "influence" between large cities and smaller peripheral communities. Arbitrators indeed have found in many of the cases cited by the Employer and others that "dogs wag tails." But the Undersigned is reluctant to find that "tails wag dogs." The Arbitrator notes that employers of smaller school district support staff typically object to comparisons with their larger, proximate counterparts. Not surprisingly, the unions prefer to emphasize proximity in such cases. He especially notes that while a set of comparables for Sheboygan School District Custodial-Maintenance Employees has not been established, a set of comparables for the Employer's comparables has been established which excludes Sheboygan. Can Plymouth be a "comparable" of Sheboygan without Sheboygan being a comparable of Plymouth?"²⁴

The circumstances were similar to the instant case. Merrill, Marshfield, Antigo, and Wausau/D.C.Everest have their smaller adjoining communities which may have some impact on wages and benefits of those districts just as Stevens Point has; in some cases these will be the same. The Undersigned would continue to use those districts used by Arbitrator Krinsky for comparison, recognizing that the dispute involved teachers who were unionized. He would, however, exclude Rhinelander because of its substantial distance in this case involving non-professionals. He would include Mosinee because of its proximity lying in the middle of the Wisconsin River corridor and labor market, and its other relatively similar characteristics to Stevens Point and other comparables.

The Undersigned would also give some consideration to the four small, adjacent districts advanced as comparables by the District, recognizing the incompleteness of data and the differing processes by which those wages and benefits have been determined.

²⁴Sheboygan Area School District, Dec. No. 45074,

The statutory criteria under Section (d) or (e) would to not exclude non-union comparisons such as with D.C. Everest and Wausau on a blanket basis, though the weight given such comparisons may vary, as noted by many arbitrators as cited by the parties. The Undersigned has opined in Sturgeon Bay School District (Non-professionals) that:

“Section (j) indicates the legislative intent that consideration is to be given to the factors listed and other factors which are “normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...” Non-union wages and benefits more or less normally impact collective bargaining outcomes. The Undersigned would also give consideration to those districts because teachers in those districts are unionized. He has noted in other decisions that in such cases comparisons may be useful in that were wages, benefits, and other conditions to be “out of line,” those employees may become organized (“threat effect”), or the employer may have difficulty attracting qualified employees (“roll out effect”). His hypothesis is somewhat confirmed by Employer Exhibits (I - K) which show Kewaunee and Luxemburg-Casco wages to be above PAC averages.”²⁵

Again there is much similarity to the instant case. Wausau and D.C. Everest food service wages are similar to Stevens Point though all three seem to be somewhat lower than the other Conference school districts. The same is true for school year holiday provisions.

External Comparisons

Examination of Table 3 reveals that the Stevens Point School District Food Service employees current holiday benefits is less than the comparables. However, the Employer’s offer of 5 holidays for school year employees is slightly closer to the average of 5.8 days than is the Union’s offer of 7 days. All but two of this unit’s members are school year employees. The 9.1 average (or more—the language for D.C. Everest is unclear) for school year employees appears slightly closer to the

²⁵ Dec. No. 59106, Dec. 2001.

Union's offer of 10 holidays than the District's offer of 8. The Employer has argued that in Marshfield employees who are not 40 hours/wk, 12 month employees ("Category B or C employees") receive 4, not 10.5 holidays; this would apply to all of the Stevens Point food service employees. The Arbitrator notes that this would reduce the average to 8.2 holidays. The Employer further notes that Stevens Point employees may take up to 2 personal days from accumulated sick days; the Undersigned has found that this is generally not the case for other comparables. Discounting non-union Wausau and D.C. Everest would not significantly change these findings nor would inclusion of Rhinelander. He would conclude that the external comparables somewhat favor the District's offer for Holidays.

Examination of Table 3 reveals that the Stevens Point School District Food Service employees current health benefit for employees choosing the Single plan is better than most of the comparables. Few provide 100%. Eligibility is within the range or somewhat more favorable. Proration is within the range. Most employees taking the health plan are on the Single plan. Only two Food service employees (working 5.5 and 6.5 hours/day) receive the family health benefit while 11 who work 7 or more hours receive the single benefit. The District pays 47% and 56% of the premium for the two on the family plan. The Arbitrator estimates that employees working 6 hours per day in the comparables would receive on average about 63.5% of the family plan premium. They would receive 55% on average in the four small adjacent districts used by the District (more in 3, none in 1). For those on the family plan, the data appears to show that Stevens Point pays less than the comparables which would be somewhat rectified by the Union's offer. Exclusion of Wausau and D.C. Everest and inclusion of Rhinelander reinforces the finding that unit employees on the single plan are better off while the two on the family plan are worse off. Therefore a mixed conclusion is drawn as regards the comparison of health insurance benefits among the external comparables.

Internal Comparisons

Examination of Table 4 reveals that the Stevens Point School District Food Service employees current holiday benefits is less than other District employees for both school year and full year employees. The Employer's offer of 5 holidays for school year employees closes the gap somewhat. The Union's offer will result in one more holiday for Food Service employees than for Clerical and Bus Drivers, the same number as Education Assistants (who in their new agreement may have bought the extra holidays with lower pay increases than other units) and two less than Custodial Maintenance. It does provide the same 10 holidays for the 2 full year employees received by other employees. The Undersigned recognizes that the Food Service employees are

more likely to be part time than are other units' members; however, the holiday pay in both offers is the "normal daily pay" and is in a sense a proration suggesting that the Union's offer is not unreasonable. The Union's offer for holidays on its face is somewhat closer though it represents a significant change in the relationship among internal units. Clearly 6 holidays for Food Service school year employees would be in line with other units which have a considerable number of part time employees; however, the final offers are for 5 or 7 days.

Examination of Table 3 reveals that the Stevens Point School District Food Service employees' current insurance benefit is less than most other employees, though it is the same as the Assistants who are also school year and largely part time employees. Only a few mechanics and no drivers receive health benefits.²⁶ For the two Food service employees (working 5.5 and 6.5 hours/day) who receive the family health benefit, the District currently pays 47% and 56% of their premium. The Union's offer costs approximately \$1080 in the final year according to the Employer. Whether 5% greater payment by the District would prompt many other employees to take the family plan is a matter for speculation. Other than Cooks, very few employees are eligible (working ≥ 20 hours/wk). More than half the Cooks receive the benefit already. Again, the Union's offer is not unreasonable, on its face though it represents a change in the relationship among internal units.

Cost of living

²⁶Er Ex. 20.

The Employer has provided data on the Consumer Price index for six years ending in 2002.²⁷ By the Arbitrator's calculation the CPI-W for Northcentral States Class D Non-Metro Areas rose approximately 2.1% per year in 2000-02. National CPI-U and CPI-W data show increases of about 2.4 and 2.3 respectively. The Union would argue that the consideration of cost of living is "embedded" in internal and external bargains. The Undersigned has generally given weight to this factor inversely proportional to the time which has lapsed and the number of other settlements. On its face, the cost of living factor favors the District's offer which provides for 3% wage increases and even greater benefits increases, though the Union's offer is marginally higher.

Other factors: Status quo change

When a party proposes a significant change in the *status quo*, arbitral authority and practice would indicate that it must present a compelling case for the proposal, that its proposal is a remedy or has intrinsic merit, and that it generally would need to offer an adequate *quid pro quo*, unless its offer has clear support such as among the comparables.²⁸ What is significant, how much *quid pro quo*, how much and how clear support, the nature of the remedy or merit, and how compelling the case will vary. In this case another variant of this issue arises, which is whether there is a *status quo* for a new unit. The Undersigned has reviewed both the view that a new unit is a clean slate and the view that there is always a starting point as presented by the parties. While not a definitive conclusion, the Arbitrator is somewhat inclined to the latter view. He notes that in the U.S. private

²⁷Er Ex. 83,84.

²⁸see for instance Vernon in Elkhart Lake and Bloomer School District (Dec. No. 43193-A and 24342-A), Nielson in Manitowoc Public Schools, (Dec. No. 26263-A) and Petrie, in New Richmond School District.

sector an alarming percentage of new contracts are not made (*viz* other developed nations) perhaps due to the nature of labor law or its administration. In this case though the Union's proposal is for changes which are reasonable, support for them is not necessarily clear.

Conclusion

The Undersigned has considered the issues, evidence, and arguments with reference to the parties' offers in light of the statutory criteria. The "greatest weight" and "greater weight" factors do not compel an award in favor of the District. The Undersigned has found the Union's use of the Wisconsin Valley Conference for comparisons to be generally appropriate, with modifications. The proposals by the Union for extra holidays for the two full year employees is supported by comparison with some other District employees; the changes for most of the unit who are school year employees receive some support but would put them ahead of employees in two other units. It would be good to be able to compare the relation of this benefit between non-professional units in the comparables in order to better understand whether the substantial variation of holidays in the District is internally equitable or not. Examination of the external comparables gives slight preference for the Employer's offer, as determined above. While the Union's proposal for health care benefits for the two unit employees on the family plan has merit when consideration is made of the internal "pattern," the Food Service unit is not the only "outlier" to be brought into the mainstream. It is reasonable and not a "blockbuster" proposal, and moves two unit employees toward the benefit enjoyed by a majority of the non-professionals, but support for the proposal is not unanimous. The external comparables do not substantially assist the Arbitrator to resolve this issue. The District's offer continues to provide health insurance benefits to qualified Food Service employees taking the single plan which is clearly better than the comparables though the benefit for the family plan (which is in dispute) is not as good. The former comprise most of those qualifying under both parties' offers. The Arbitrator would give some slight preference to the District's offer for holidays and perhaps some slight preference for the Union's effort to move those on the family health plan towards what is received by a majority of other District non-professionals. The holiday provision as costed by the Employer is the greater issue in this dispute.

Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the District is to be incorporated into the 1999-2002 Collective Bargaining Agreement with the Stevens Point Area School District Employees .

Dated this 22nd day of July, 2003.

Richard Tyson,
Arbitrator

Table 1: Comparative District Data

District (Union/Non-)	Students	State Rank	Distance	Value /member	Mill rate	Rev. limit/mem	Municipal size
Antigo U	2898	71	48 mi.	217 K	10.08	7502	8276
D.C. Everest N	5145	25	27	238	9.52	6873	6000+
Marshfield U	4060	40	32	235	7.99	7094	19291
Merrill U	3352	54	48	229	10.56	6948	9860
Mosinee U	2024	106	20	261	12.62	7404	3820
Wausau N	8949	12	31	272	11.28	7560	37060
Wi. Rapids U	5787	22	15	245	9.71	7125	18245
Stevens Point U	7681	14		274	9.19	7203	23006
Almond- Bancroft U	545	330	18	222	12.53	6542	455+?
Auburdale N	885	235	26	169	9.07	6630	665
Rosholt U	753	266	16	243	11.78	7040	512
Tom. River N	865	245	?	247	9.07	6706	?
Rhineland U	3227	57	80	357	9.90	7407	7427

Source: Wisconsin DPI, Official WI Highway Map

Table 2: Comparative Cost Data

District (Union/Non-)	Students	current Cost/member	Total cost/ member	
Antigo U	2898	8767	9665	
D.C. Everest N	5145	7291	8153	
Marshfield U	4060	7540	8246	
Merrill U	3352	8049	9464	
Mosinee U	2024	8414	9988	
Wausau N	8949	8656	9753	
Wi. Rapids U	5787	8410	9218	
Stevens Point U	7681	8107	8977	
Almond-Bancroft U	545	7513	9118	
Auburdale N	885	7329	8401	
Rosholt U	753	7283	8731	
Tom. River N	865	8244	9173	
Rhineland U	3227	8415	9399	

Source: Wisconsin DPI (http://www.dpi.state.wi.us/dpi/dfm/sfms/pdf/bf_sectd.pdf)

Table 3: Comparative Benefit Data of Externals

District	<u>Holidays</u>		<u>Health</u>		Eligible	Proration
	School	Full year	Single	Family		
Antigo U	4	10.5	90%	90%	≥ 20 hours	1820 hours (= 7 hrs/day full year
D.C. Everest N	6 < 12 mo,	6 ?	45-85% (3½ --	45-85% (7½ hrs.)	3½ hrs	
Marshfield U	4 (<40)	10.5 (40/12)	100%	95%		on 40 hrs/wk
Merrill U	5	12	90%	90%	>600 hrs >½ time (new)	6.25 hrs/day?
Mosinee U	8	11	99%	99%	≥ 20 hours	2080 ?
Wausau N	6.5	6.5	65,75,85 % (6,7,8)	65,75,85 % (6,7,8)	6 hrs/day	
Wi. Rapids U	7	7	100% 47%	single 16%fam	≥ 4 hours < 4 hours	
Stevens Point U	4	7	100%	60%	≥ 20 hours	7 hrs/day
Union Employer	7	10	100%	62-66%	≥ 20 hours	7 hrs/day
	5	8	100%	60%	≥ 20 hours	7 hrs/day
Almond-Bancroft U	4.5	8	100% WEA	100% WEA	728 hrs min	7 hrs/day
Auburdale N	4	10	95% 12 90 %	mo 9-11 mo	32.5 hrs/wk	new - 80% first 5; 85 % next 5 yrs
Rosholt U	6	9	100%	90%	≥ 20 hours	7 hrs/day
Tom. River N	1	6	47 to 95% (4 - 8 hrs	47-95% / day)	≥ 20 hours	during months worked
Rhineland U	4	9	100/75%	100/75%	30 hrs/wk	75% for 30-40 hrs

Source: Er Ex 85-96, Un Ex 29-37

Table 4: Comparative Benefit Data of Internals

Employee unit	<u>Holidays</u>		<u>Health</u>		Eligible	Proration
	School	Full year	Single	Family		
Food Service U	4	7	100%	60%	≥ 20 hours	7 hrs/day
Union Employer	7	10	100%	62-66%	≥ 20 hours	7 hrs/day
	5	8	100%	60%	≥ 20 hours	7 hrs/day
Custodial/ maintenance	9	10	100%	93%		
Clerical	6	10	100%	92%		
Drivers/ Mechanics	6	10	100%	92%		
Educational Assistants	7	N/A	100%	60%	≥ 20 hours	7 hrs/day

Source: Un Ex 21-28

SEP 19 2002

FINAL OFFER
OF
STEVENS POINT AREA PUBLIC SCHOOL DISTRICT
TO
STEVENS POINT FOOD SERVICE EMPLOYEES UNION LOCAL 309, AFSCME, AFL-CIO
Case 71 No. 58367 INT/ARB-8893

1. Incorporate all tentative agreements between the parties as part of the initial contract between the parties. (See attached.)
2. Create Article 9 - Holidays, Paragraph A to read as follows:
 - A. School Term Employees shall be paid his/her normal daily rate (including longevity and other applicable wage premiums) for the following holidays: Labor Day, Thanksgiving Day, the day following Thanksgiving Day, Memorial Day and Christmas Day (effective July 1, 2001). In addition to these holidays, Calendar Year Employees shall be paid on the same basis for Christmas Day, New Year's Day, the Fourth of July, and Christmas Eve Day (effective July 1, 2001). In addition any other Employees who are scheduled to work during the work week of the Fourth of July shall receive that day as a paid holiday.

3. Create Article 11 - Health Insurance, Paragraph C to read as follows:

Employees scheduled to work at least 20 hours per week may elect to be covered by a group health insurance plan. The District shall pay the full single premium and sixty percent (60%) of the family premium for regular full-time employees. A regular part-time employee is eligible to receive a prorated share of the District's monthly contribution toward the insurance; the proration shall be based on the employee's normal schedule of hours divided by seven (7) hours.

Dated this 18th day of September, 2002.

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School District

By: 

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