STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition	
of	**Case 52**
Teamsters General Local Union No. 662	**No. 61454 INT/ARB -9703** **[Dec. No. 30549-A]**
For Final and Binding Arbitration Involving Personnel in the Employ of	**Raymond E. McAlpin Arbitrator**
New Richmond School District	

APPEARANCES

For the Union:	**Naomi Soldon, Attorney** **Dan Alexander, Business Agent** **Mark Ahles, Employee**
For the District	**Kathryn Prenn, Attorney** **Craig Hitchens, District Administrator** **Janet Stark, Director of Research** **Brian Johnston, Business Manager**

PROCEEDINGS

On March 13, 2003 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4) of the Municipal Employment Relations Act, to resolve an impasse existing between Teamsters General Local Union No. 662. hereinafter referred to as the Union, and the New Richmond School District, hereinafter referred to as the Employer.

The hearing was held on July 10, 2003 in New Richmond, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on October 17, 2003 subsequent to receiving the final reply briefs.

ISSUES

The following are the issues still in dispute between the Union and the District:

UNION'S FINAL OFFER	DISTRICT'S FINAL OFFER
Eff. 7/1/2002-increase all wage rates 2.75%	Eff. 2002-increase all wage rates 1.5%
Eff. 7/1/2003-increase all wage rates 2.75%	Eff. 2003-increase all wage rates 2.0%[1]

STATUTORY CRITERIA

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

[1]**The District's final offer tied increases to the health insurance premium increases for 2003-2004. The range of increases offered by the District was .5% - 2%. Prior to the hearing the District was notified that the family health insurance premium would increase less than 15%; therefore, the District's final offer would be 2% as noted above.**

arbitrator's or panel's decision.

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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

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

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

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

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

I. Changes in any of the foregoing circumstances during the pendency of the arbitration 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.

DISTRICT POSITION- EXTERNAL COMPARABLES

The following represents the arguments and contentions made on behalf of the District:

The District has proposed utilizing the Middle Border Conference as the sole comparable pool which is consistent with an award issued by Arbitrator William Petrie in a previous interest arbitration with the District.

The District had been a member of the Middle Border Athletic Conference for about 30 years. Approximately five years ago it was moved to the Big River Conference which is comprised of significantly larger schools. Effective with the 2002-2003 school year New Richmond was moved back to the Middle Border Conference where it remains today. The membership in the Big River Conference is only a temporary blip on the 30+ years of membership in the Middle Border Conference. Arbitrators in Wisconsin have generally found that athletic conferences are reliable indicators of comparability. Not only did Arbitrator Petrie find that the Middle Border Conference was appropriate in a 1990 interest arbitration involving the secretarial unit, but other arbitrators involved in interest arbitration among other members of the Middle Border Conference also found that to be an appropriate comparable pool.

The District submitted that athletic conference realignments are done for a reason. The WIAA determined that New Richmond is more comparable to Middle Border Conference schools than to Big River Conference schools. It would be inappropriate for the Arbitrator to ignore that change and to select a previous athletic conference to which the District only temporarily belonged. When reviewing the Middle Border Conference, there are several commonly accepted indicia of comparability which shows that New Richmond is clearly more

similar to school districts in the Middle Border Conference. Criteria such as income, equalized valuation, increase in aid per member and geographic proximity favor the Middle Border Conference. The Big Rivers Conference does not have the same geographic proximity, number of employees, enrollment and equalized value per member. The Union may argue that New Richmond is the largest school in the Middle Border Conference; however, the size disparity is significantly greater when comparing New Richmond to the Big Rivers Conference. While the use of athletic conferences is not perfect, most arbitrators have recognized that this is the best way to combine reasonable similar schools.

There is no justification for expanding the comparables beyond the Middle Border Conference. The Union is trying to include entities that were never used as comparables during the course of negotiations which most arbitrators are loathe to accept.

UNION POSITION-EXTERNAL COMPARABLES

The Employer used schools in the Middle Border Conference as external comparables while the Union proposed schools in the Big River Conference. The New Richmond District is fairly unique when compared to schools in both conferences; therefore, choosing one set over the other may not provide truly comparable communities. The fact that New Richmond will now be competing in the Middle Border Conference does not necessarily make it comparable to communities within that conference.

New Richmond is the largest school in the Middle Border Conference with the largest population. Household income and geography are similar among communities in both conferences. Therefore, the Arbitrator should consider both athletic conferences and conference affiliation should not be the primary consideration. The Union provided arbitral authority in support of this position. Likewise, the Petrie 1990 decision is not a binding precedent due to the bargaining history that occurred subsequent to that award. When the last Collective Bargaining Agreement was negotiated in 1999, New Richmond was a member of the Big Rivers Conference, and the Parties used that conference as comparable. The use of the Big Rivers Conference school can be used to balance out the fact that New Richmond has twice the enrollment of most Middle Border Conference schools.

Big Rivers Conference is equally appropriate as an external comparable. Population size indicated that the two conferences are equally valid external comparables. Full time employees of the two conferences are also equally comparable. Likewise, the income of the districts in the two conferences are also similar. Big Rivers Conference schools are not geographically more distant from the New Richmond and Middle Border Conference schools.

Based on common considerations used by interest arbitrators, the school districts of the Middle Border and Big River Conferences are similarly comparable to New Richmond. The two conferences become identically comparable when Eau Claire is excluded. Given the historical precedent of using the Big River Conference schools including Eau Claire as a

comparable, the Arbitrator should combine the two conferences into one set of primary comparables.

DISCUSSION AND OPINION-COMPARABLES

Interest arbitrators in Wisconsin have clearly shown a propensity for utilizing athletic conferences as comparables in interest arbitration even recognizing that this may not result in a "perfect" situation. The record in this case shows that the Parties have in the past utilized whatever conference the District was assigned to as comparable. Clearly, in this case it is the Middle Border Conference to which the school was assigned for the term of this contract. The facts are that the Parties have a history of using whatever conference they are in at the time of bargaining. In addition, we have the decision of Arbitrator Petrie in 1990. Therefore, any proposed change in the comparables that were determined by Arbitrator Petrie would be a deviation from the status quo. The Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted

above. This concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Such deviation is not taken lightly since the purpose of having consistent external comparables is to provide some continuity in the collective bargaining process. Collective bargaining in the public sector is difficult enough as it exists now. If the Parties would not be able to count on a list of comparables from negotiation to negotiation, this would make a difficult process even more problematic. There is nothing in the record of this case that would allow this Arbitrator to approve a deviation from the status quo. Any proponent of such change must fully justify its position and provide strong reasons and a proven need. This showing has not been made and, therefore, the comparables remain as determined by Arbitrator Petrie resulting from his 1990 decision. As long as the District remains in the Middle Border Conference, it is those comparables that should be used.

UNION POSITION-ECONOMICS

The following represents the arguments and contentions made on behalf of the Union:

Even among the District's proposed comparables, the Union's offer is more reasonable as it falls in the middle. The District may argue that the Arbitrator should look at insurance and wage increases together and not at wage increases alone. However, adequate data is not

available showing the comparable school districts' insurance contribution increases from 2001-2002 to the 2002-2003 school year. Based on the limited data available, the District's health insurance costs are not higher but, in fact, are slightly lower than comparable districts' increases. Accordingly, the insurance cost increases do not excuse or provide a quid pro quo for the District's lower wage proposal.

The New Richmond custodians are entitled to maintain their leadership position. The District suggested that, because it pays higher wager and provides better benefits than other districts in the Middle Border Conference, it is entitled to roll back benefits as long as the New Richmond custodians maintain their ranking. The New Richmond custodians leadership position was obtained through providing quality work and collective bargaining. The Union provided a number of citations in support of its member's maintaining their leadership position.

Even if the Arbitrator finds the Union should not receive the same percentage increase as other comparables because of the catchup effect, the Union is at least entitled to the same monetary raises of other districts. The Arbitrator should evaluate whether the Employer's offer erodes the New Richmond custodians' lead and whether such erosion is reasonable.

In comparing offers to external comparables, the Arbitrator should consider the total compensation received by employees. While New Richmond custodians receive a higher overall compensation package than their counterparts at other Middle Border schools, their

lead in total compensation in terms of real dollars cannot be eroded through the interest arbitration process. The data that is available shows that it is the Union's offer that is more comparable to those schools utilizing costs for wages, health and dental programs. It is the Union's offer that maintains the lead of the New Richmond custodians in terms of real dollars. This is also true of increase expressed in cents per hour as opposed to percentages.

When the Parties' offers for both years of the contract are considered, the Union's offer maintains but does not expand on the New Richmond custodians' lead in overall compensation when compared with other comparable units. Therefore, it is the Union's offer that should be selected.

Other considerations do not favor the Union's offer. The Employer failed to prove that the Union offer has a negative community impact. The offers are close enough to each other that either offer would not adversely affect the welfare of the public. Since it is the District's final offer that shrinks the lead that is now enjoyed by New Richmond custodians, it is the Union's offer that should be accepted.

Costs of living increases do not provide a basis for selecting the Employer's offer. Arbitrators have held that strict adherence to CPI measurements can easily result in an award supported by neither settlement patterns nor labor conditions. The annual double digit increases in insurance premiums are a recent phenomenon. Since school districts have suffered a disproportionate share of health insurance premium increases, strict reliance on the

CPI could distort the data in the District's favor. When removing the health insurance data, both offers are equally comparable when compared strictly to the CPI.

Internal comparables favor the Union's offer. The Employer tried to justify its proposal by referring to the wages per hour increases in internally comparable units. The Employer failed to mention the fact that teacher aides and secretaries and other internally comparable unionized units receive wages far lower than custodians. New Richmond also indicated that teachers received a 2% increase for 2002-2003 but neglected to mention that the cents per hour increase favors the Union's position in this matter since the teachers receive a far higher wage. In the absence of any evidence that any groups are over paid or under paid, the Employer should maintain the wage gaps currently in effect. In addition, in internal comparables considerations of total packages should be utilized by the Arbitrator. The Union argued that the total package offers favor the custodians in this matter.

Arbitrators have found that the interest arbitrator should place the Parties in the same position as they would have received in face to face bargaining. The District cannot attract and retain qualified employees if it substantially reduces health insurance or pension benefits. The Arbitrator should not give way to an argument that would not help the District in actual bargaining. The differences in compensation and benefits between groups is caused by the laws of supply and demand.

As the Employer recognized, internal settlements should be given great weight in the determination of an interest arbitration dispute involving wage increases. The total benefit

package increases for the internally comparable units clearly shows that the Union's proposal is more reasonable than the proposal of the District.

Ultimately, the Parties' disagreement can be characterized as a difference in philosophy. The Employer repeatedly focuses on the net benefit of the New Richmond custodians compared to other districts. The Union is focusing on how the increase to benefits in New Richmond compares to the settlement averages for internal employee groups and external comparable district. Prior arbitration awards show that in the absence of an ability to pay the employees in the lead in pay are entitled to maintain their lead through interest arbitration. At the very least, they are entitled to maintain the lead they have had in terms of real dollars. It is the Union's offer that maintains but does not extend the custodians' lead and, therefore, the Arbitrator should select the Union's offer as more reasonable.

DISTRICT POSITION-ECONOMICS

The following represents the arguments and contentions made on behalf of the District:

The District's final offer provides a reasonable wage increase which is supported by both the internal and external comparables and maintains the District's wage leadership position. The District has four separate bargaining units - teachers, secretaries, teacher aides, and custodians. The Employer Exhibit 13 compares the wage and total package increases provided to all of these internal employee groups. With the exception of a mid-year bump in

the secretary wage rates in 2002-2003, the Union's offer demands higher wage increases in each year of the contract than any other internal employee group received including teachers. The Union may argue that the wage increases for other employee groups were higher than the offer to the custodians. However, salary is only part of the story. Custodians will receive under the District's offer a considerable higher increase in total compensation than the other employee groups. The Employer would note that some groups do not receive any health, dental and vision coverage per se. The District has agreed to pay 100% of the premiums for both family health insurance, family dental insurance and family vision insurance for both years of the contract. The Board has focused on total package costs, and it is the high cost of insurance that has caused the District to shape its wage offers during the negotiations.

Arbitrators agree that internal settlements should be given great weight in the determination of an interest arbitration dispute involving wage increases. The fact that two of the District's organized support staff units accepted modest wage increases and even more modest insurance payments provides a pivotal clue as to the settlement which the Parties would likely have reached if negotiations had been successful. The District provided citations in support of this position. In addition, arbitrators have found that internal wage settlements do not have to be uniform in order to constitute a pattern.

Not only is the District's offer preferable based on internal groups, but it also finds support among external comparables. Wage increases received by custodial employees in nine other Middle Border schools favor the District's offer. Only one district custodian received

a higher percentage increase than asked by the Union. Those employees, however, have to pay 5% of their health insurance premiums as compared to the 100% payment by the New Richmond district.

For the second year of the contract only about half the conference has settled; however, the Union's offer is higher than all but two of those comparables and, again, those employees pay 5% of the health insurance premiums.

The District believes its offer fits within the pattern of percentage increases and also actual cents per hour increases received by those districts. The Union's proposal would provide cents per hour increases that are 26 cents per hour in excess of the conference average, whereas the District's offer would be approximately the same as the conference average. The District offer maintains the custodians' wage leadership ranking, while the Union's offer expands that leadership position even further without justification. Where wage rates already rank towards the top of the external comparables, there is no justification for boosting those levels even higher as long employees receive increases that are consistent with internal comparables. Again, citations were provided. During the last year of the old contract the custodians were approximately 96 cents an hour over the average for the external comparables. In the first year of the contract the District's offer maintains that spread, whereas the Union's proposal would increase that spread to $1.14. Another element that favors the District's position is that the New Richmond custodians reached a maximum wage rate in only one year, where other districts require multiple years, up to 18, before the

maximum is reached. In addition, many districts require payments towards health insurance premiums, whereas, as noted above, New Richmond does not.

In sum the District's offer is more reasonable based on internal and external comparables. It is the District's offer that maintains the custodians' standing within the comparables. The Union's offer conversely would raise the custodians' wage ranking and dollar differential to average.

On the basis of total compensation the District's final offer is more reasonable. Criterion H in the statute requires the Arbitrator to consider total compensation. The District submitted that, when considered in conjunction with many other benefits enjoyed by its custodial employees, the custodians receive a more generous total compensation package than that received by any other comparable school district. Not only does New Richmond pay the cost of health insurance premiums, but also its plan is much more generous than others in the District so that most of the comparables require employee contributions towards premiums and have higher employee deductibles. The Employer is not asking the employees to share in the skyrocketing costs of health care during the term of this contract. The District also provides two fully funded pension plans which are not available to any other custodians in the comparable group. Since all other benefits compare favorably with other school districts, the total compensation or package costs very much favor the District's offer.

The interest and welfare of the public supports the District's final offer. The District is not reaping the rewards of a booming economy. The two most recent budgets contained

significant reductions because expenses continue to increase while total state aid remains stagnant. The District would note that its equalized value per member ranks in the lower middle of comparable districts, and New Richmond is not a leader in income levels. Finally, the area has experienced higher than average unemployment during recent times.

The Arbitrator should also consider the cost of living. The District's offer over the two year period will provide a total package increase of over 11% compared to the Union's offer with an increase of almost 13%. Based on the CPI data, clearly the District's offer is reasonable when measured against the cost of living index. In response to the Union's brief, the District demonstrated that economic conditions have had a significant impact on District operations. Contrary to the Union's arguments, the District's offer to its custodians is very comparable to all other bargaining units, and in fact significantly surpasses settlements with teacher aides and secretaries.

Based on the foregoing facts, relevant case law and arbitral authority, it is the District's offer that is more reasonable and should be accepted by the Arbitrator.

DISCUSSION AND OPINION-ECONOMICS

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power

between the Parties. The Wisconsin legislature determined that it would be in the best interest of the citizens of the State of Wisconsin to substitute compulsory interest arbitration for a potential strike. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in all areas of disagreement the total last best offer of one side over the other. The Arbitrator must find for all open issues which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a

true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

After reviewing all of the statutory criteria, the Arbitrator finds that the following are determinative in this matter:

1. **the factor given greatest weight**
2. **the factor given greater weight**
3. **internal and external comparables, and**
4. **the overall compensation.**

Let us start with easier ones first.

With respect to the overall compensation - the Employer did provide some economic data for the Arbitrator's consideration in this matter. However, overall compensation, as defined in the Act, does not limit itself to wages, insurance and pension benefits. Other costs which would contribute to the total hourly cost for members of this bargaining unit are simply missing from the record. Items such as cost of vacations, holidays, and other paid time off are

simply not costed. While the Arbitrator feels that the economic data that is presented would seem to favor the Employer's position, there simply is not enough analysis to make a determination as to the overall compensation factor.

Regarding the factor given the greatest weight and the factor given greater weight - the Employer did make a great effort to outline the economic difficulties that it faces during this current economic cycle. While the presentation of this information was well done and persuasive, the facts are that this is a relatively small bargaining unit and the differences between the two final offers are such that the economic impact of either offer on the overall budget of the District would be minimal.

We are then left with comparables.

Regarding the internal comparables - much was made in both presentations of the percentage increases and the comparisons to other bargaining units in the District, this Arbitrator has consistently found that percentage comparisons, while interesting, are generally not determinative because it is the actual cents per hour pay that lends itself to appropriate analysis. As this Arbitrator has found, employees do not take their percentage increases to the grocery store. They take dollars and cents. The question before this Arbitrator is: Is a teacher, teacher assistant or secretary bargaining unit comparable to a custodial unit, particularly where there is no historical pattern of identical settlements? All in all, the Arbitrator finds that, while the settlements for the other three bargaining units should be

considered in the overall decision in this case, this comparison in and of itself would not be determinative under the same reasoning that police and firefighter units are sufficiently different than other bargaining units within a city as to make comparisons difficult at best.

We are then left external comparables. The Arbitrator already has determined that it is the Middle Border Conference schools that should be utilized for external comparables. The Union did make some effort to provide evidence for private sector employees which are considered under Criterion F under the statute. Again, the data was insufficient for the Arbitrator to make a determination based on this criterion, and school custodians are in a relatively unique position that would make private sector comparisons not as helpful as they would be for, perhaps, other bargaining units.

We come, finally, then to external comparables in the Middle Border Conference. The record shows that this bargaining unit has led the conference for a number of years with respect to wages and almost assuredly benefits at least in the pension and health and welfare areas. Under both proposals the bargaining unit would maintain its leadership position with respect to actual wages and benefits paid. Under the Union's proposal the leadership position of this bargaining unit would actually expand. The Arbitrator can find nothing in the record nor in the statutory criteria that would provide such a basis for this expansion. While the Arbitrator feels that the Employer's proposal is not exactly what the Parties should have or would have agreed to if bargaining had been successful, it is closer to the statutory criteria

than the Union's proposal and, therefore, the Employer's proposal will be found to be the most reasonable. The Arbitrator would wish the Parties to note that he is specifically not making any determination as to the Employer's proposal to tie wage increases to increases in insurance premium during the second year of the contract. That point is moot since, prior to the arbitration, the Employer was made aware that the increases would be less than 15% making the Employer's wage offer in the second 2%. The Arbitrator would want the District to understand that tying wages to insurance premiums has no support within the record of this case in either the internal or external comparables and would constitute a major deviation from the status quo and thus would put the Employer in a difficult proof position.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the District is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the agreement between the Parties.

The final offer of the District is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulation reached in bargaining, constitute the 2002-2003, 2003-2004 Agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 8th day of November, 2003.

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Raymond E. McAlpin, Arbitrator