

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of the  
Dispute Between the

**West Central Education Association**

(Altoona Bus Drivers)

and

**Altoona School District**

S))

WERC Case 46  
No. 61737  
INT/ARB9771  
Decision No. 30631-A

**Appearances:**

Mr. Fred Andrist, West Central Education Association , 105 21<sup>st</sup> St., Menomonie, WI 54751 for the Association. Mr. Christopher R. Bloom, assisted by Ms. Janet Starck, Weld, Riley, Prenn & Ricci, Attorneys at Law, 3624 Oakwood Hills Parkway, Eau Claire, WI 54702 for the Employer.

Sworn Testimony was received from:  
Kathy Dahl, Business Manager, Altoona School District

**Background**

Representatives of Altoona School District (hereinafter referred to as the "District" or the "Employer") and West Central Education Association– Altoona Bus Drivers (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 2002-04). The Union had been certified before the prior Agreement, replacing the Teamsters as the Drivers' bargaining agent. It represents all full time and regular part-time bus drivers of the Altoona School District, excluding temporary substitutes, managerial, supervisory, and confidential employees (approximately 8 employees). The Parties met on several occasions and failed to reach an agreement. On October 28, 2002 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 Steven R. Sorenson, a member of the Commission's staff, conducted an initial investigation and attempted mediation with the parties on December 9, 2002. Investigator William Houlihan, also a member of the Commission's staff conducted a further investigation and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by May 23, 2003. On June 5, 2003. the Commission certified the parties' final offers and directed

them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed July 10, 2003. He conducted a hearing on the matter on October 3, 2003 at the Altoona School District offices in Altoona, 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 Dec. 19, 2003.

**The Issue(s)**

Many issues arose in the process of negotiating this successor agreement, but were resolved in the bargaining process. Three issues remain in contention: wages, language on extracurricular routes, and meal allowances on extracurricular trips. Evidence and argument of the parties focused on the wage dispute, however.

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 districts in the Cloverbelt Conference (to which the District belongs) employing unionized drivers as well as Elmwood, Mondovi, River Falls, and Spring Valley districts where WCEA represents bus drivers. The Employer would use the unionized and non-union districts in the Cloverbelt Conference which hire bus drivers. Eight of the 15 districts contract out transportation services.

The Employer calculates the wage rate increases proposed by the parties in their final offers as follows:<sup>1</sup>

<u>District offer</u>	<u>Base</u>	<u>2002-03</u>			<u>2003-04</u>		
		<u>Rate</u>	<u>\$ )</u>	<u>% )</u>	<u>Rate</u>	<u>\$ )</u>	<u>% )</u>
Regular route	\$11.11	\$11.81	\$ .70	6.3%	\$12.17	\$.36	3.0%
Extra-curricular	8.73	9.43	.70	8.0	9.79	.36	3.8
Meetings	6.25	6.30	.05	.8	6.50	.20	3.2
Downtime	2.50	2.55	.05	2.0	2.63	.08	3.1

<u>Union offer</u>	<u>Base</u>	<u>2002-03</u>			<u>2003-04</u>		
		<u>Rate</u>	<u>\$ )</u>	<u>% )</u>	<u>Rate</u>	<u>\$ )</u>	<u>% )</u>
Regular route	\$11.11	\$11.96	\$ .85	7.7%	\$12.71	\$.75	6.3%
Extra-curricular	8.73	9.58	.85	9.7	10.33	.75	7.8
Meetings	6.25	7.10	.85	13.6	7.85	.75	10.6
Downtime	2.50	3.35	.85	34.0	4.10	.75	22.4

The Employer calculated the total increases in wages as:<sup>2</sup>

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<sup>1</sup>Employer Brief, p. 2

<sup>2</sup>Employer Exhibit 6

	<u>2002-03</u> %)	<u>2003-04</u> %)	<u>2 years</u> % )
District offer	\$6423 6.6%	\$3822 3.68%	\$10,246 10.29%
Union offer	\$7982 8.2%	\$7190 6.83%	\$15,172 15.03%

### 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 Association contends that its proposals for wages and benefits are supported by both the internal and external comparables. It would extend the external comparables beyond the Cloverleaf Athletic Conference, as argued by the District, to include other area districts which have unionized bus drivers. The District is in good financial condition *viz* other districts and can easily afford the approximate \$5000 difference in offers considering the total budget of over \$12

million. The Association's proposal calls for a package increase comparable to that given other Altoona District employees. The difference is that it proposes higher wage increases in lieu of health insurance increases which is generally not available to the drivers. While both parties have identical proposals for increases in the flex plan (to \$140/mo. In 2002-03 and \$150/mo. In 2003-04) which could be used to pay part of health insurance in some cases, the total package offered by the District –particularly for the second year– is considerably below that of other district employees and drivers in other comparable districts.

The WCEA serves 29 support staff in 22 districts in West Central Wisconsin. Four of these are bus drivers. These should be part of the group to be considered as external comparables to the Altoona bus drivers. The District prefers to only use the Cloverleaf Conference. Eight of the 15 subcontract bus services, and only 5 of the rest are unionized. This leaves a small pool for comparison. The union would include these with the other 4 so as to have a “broad perspective” on which to base a decision.<sup>3</sup> Being a first arbitration for this unit, expansion beyond the athletic conference is not without precedent, and consideration of a larger group to get a “more complete picture” is appropriate.<sup>4</sup> Non-union districts should not be included. Their terms and conditions of employment are not the result of the give and take of negotiations; rather, they are generally conditions laid down as “take it or leave it.” Citing Arbitrator Dichter, arbitrators have held that it is improper to compare the two.<sup>5</sup> And citing the often quoted late Arbitrator Kerkman, only unionized units should be used in making such comparisons, given the persuasiveness of arbitral authority.<sup>6</sup> The Union proposes that the 5 unionized district in the Cloverleaf Conference to which Altoona belongs should be included with the addition of Elmwood, Mondovi, River Falls, and Spring Valley as the external comparable pool.

The Factor Given Greatest Weight if anything favors the Union's offer. The District has increased its enrollment by 14.12% or 173 students over the past 10 years and as a consequence, has had an increasing revenue base from the state. Its total allowable revenues is the highest of the eight schools (it did not have Neillsville data). It is high in state revenues and also in property tax

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<sup>3</sup>Union Brief, p. 7.

<sup>4</sup>Union Reply Brief, p. 1.

<sup>5</sup>School District of Wittenberg-Birnamwood, Dec. No. 30185-A (May, 2002)

<sup>6</sup>Washburn School District, Dec. No., 24278-A (Sept. 1987)

revenues. Altoona is a property-rich district; even so, \$8.7 million of the district's \$15.2 million comes from the state. Its Fund 10 balance is nearly 14% of the budget. This balance has grown 21.7% in the past 9 years of revenue control. The District is no more constrained by revenue caps than any other district, nor is its revenue future any more unclear. Testimony of the Finance Director is self-serving for the District; her documents projected a small surplus of \$232,980 for 2002-03 but then she acknowledged that the surplus eventually turned out to be over \$400,000. As Arbitrator Eich noted, giving controlling weight to this factor requires that the employer can give specific and sufficient evidence of such restrictions.<sup>7</sup> Most importantly for this matter, the Altoona School District is 15<sup>th</sup> of 15 districts in transportation expenditures. If there is an argument of financial need, it is not to be solved by shorting the bus drivers since they are an infinitesimal amount of the budget, a consideration noted by Arbitrators Dichter and Stern.<sup>8</sup> Clearly the Union's offer would not be a financial hardship for the District.

The Union's offer admittedly includes a high wage increase, but it only partly makes up for the lack of a health insurance benefit; the bus drivers are the only union employees without one. They have attempted to negotiate a benefit, and instead only have the Sec. 125 plan and as yet are unable to get a group plan until enough unit employees can participate. The District has provided higher packages of benefits to other employees and are not surprisingly focusing on wage increases in this bargain. In the normal course of bargaining it is the employer who argues for comparisons of total packages, and it is here where the drivers are being treated inequitably. The District has acknowledged that the drivers lack health insurance and committed to providing compensation for it, but in its offer it is now "backing away from it."<sup>9</sup> With the increased cost of health insurance, the drivers are falling further behind in their ability to buy into the district's plan.

Altoona's bus drivers are the lowest paid of all the comparables. Moreover, all the other schools have some sort of health insurance while Altoona does not. The Union's proposal for 7.65% and 6.27% increases must be seen in this light. Both parties propose increases in the flex-time contribution of the Employer of 7.7% and 7.1%. While the Employer's calculations of the increases for meeting and downtime (\$.85 and \$.75/hr.) are 10-34% increases, these items only

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<sup>7</sup>Manitowoc School District, Dec. No. 30473-A (may, 2003).

<sup>8</sup>School District of Omro, Dec. No. 29313-A (Oct. 1998) and Northland Pines School District, Dec. NO. 30042-A (Aug. 2001).

<sup>9</sup>Union Reply Brief, p. 2.

make up about 5% of employees' pay. The increase in value of an employee's time should be the same, regardless of whether it is regular driving, meeting, or downtime. The Employer's wage offer for meeting and down time is inconsistent, from .8% to 8%, while the Union's offer is at least consistent. The wage increase is necessary to compensate for the fact that bus drivers have to provide their own insurance. The 7% increase in the flextime account will not keep up with these costs. The custodial unit and clerical unit's health care insurance costs rose 17.6% in 2001-02 and 31% in 2002-03. The District limited their wage increase to pay for health care; nevertheless, these units have consistently received higher package increases than the drivers because of these costs<sup>10</sup>.

In sum, the Union's comparables are more appropriate. Altoona bus drivers' wages lag drivers in these districts and do not receive similar health benefits. Altoona bus drivers must find their own insurance and cannot do this with below average wage increases. The drivers also have lagged other non-professionals in the District in terms of wages and benefit increases. The District is in as good or better fiscal and economic conditions viz these comparables and can afford to provide a fair settlement with the drivers.

#### The Employer

The Employer contends that the Union's offer is excessive viz the comparables and should be rejected. Its comparable pool is most appropriate, consisting of the athletic conference to which Altoona belongs. The wage increase offered by the District exceeds that of the comparables while the Union's offer far exceeds those settlements. The drivers' claim that their excessive wage increase is deserved because of the lack of health insurance lacks support among these comparables. The District's financial constraints compel acceptance of the District's offer. Finally, the District's offer, while higher than the CPI increase, is obviously supported by considerations of the cost of living factor.

The District, like the Union, did not address the minor issues of extracurricular trip assignments (bidding and meal allowances) and focused on the matter of wages. The proposals of the Union are excessive when consideration of the Sec. 7r of the Statute: comparability. The comparable pool proposed by the Union has no basis. It proposes to add 4 schools not in the conference while there are 7 conference schools which employ bus drivers. The Union erroneously contends that only 3 are unionized when in fact there are 6— WCEA just doesn't represent the others. There is

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<sup>10</sup>Union Brief p. 15 and Union exhibit 4-2.

no arbitral basis for the Union's comparisons. If any other districts are used for comparison, they certainly should not be from outside the geographical area. The District would use the non-union district of Cadott along with Augusta, Fall Creek, Neillsville, Osseo-Fairchild, and Stanley-Boyd as conference comparables. There is no basis for the exclusion of Cadott based solely on its non-union status, a conclusion based on the findings of a number of arbitrators based on their reading of the Statute.<sup>11</sup> Moreover, there is no basis for going outside the Conference to distant districts, as noted by Arbitrator Gunderman.<sup>12</sup> The four additions proposed by the Union are "far outside the geographic circle of the West Central Wisconsin's Cloverbelt Conference".<sup>13</sup> Moreover, Elmwood is considerably smaller than Altoona while Spring Valley (in the Big Rivers Conference) is much bigger. The history of interest arbitration for Altoona further demonstrates that at least 3 of the proposed district have never been considered comparable (Mondovi was considered in the "Altoona ring" by Arbitrators Yaffee and Kerkman<sup>14</sup>). The Union's pool is too convenient; it ignores unionized districts in the Conference which it doesn't represent and wants to add districts outside the conference for which it just happens to have data— and these happen to pay wages significantly more than Altoona. There is no reason to go beyond the Cloverbelt Conference; the schools are proximate and similarly sized.

Altoona bus drivers are paid well. The District pays by the hour (at \$11.11/hr. in 2001), though most others pay by the trip. If a trip takes longer than 2 hours, the driver is paid more, but not less than for 2 hours on regular trips. Generally the trips in the conference schools take about 2 hours. Extracurricular trips are paid at least for 2 hours at \$8.73, and comprise the second most common trips. Meetings are paid at \$6.25 for at least 1 hour, and "down time" at \$2.50 per hour in the infrequent case of overnight trips for essentially sleeping. The union's offer includes extremely high increases, especially for the latter trips, from nearly 11% and 14% for the former and 22% and 34% for the latter. The District's offer for these is about 1-2% and 3%. Its offer maintains or improves the District's ranking among the comparables while the Union's offer significantly

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<sup>11</sup> Arbitrators Briggs in Montello School District, Dec. No. 19955-A (June, 1983), Petrie, in Elkhorn Area School District, Dec. No. 19093-A (June, 1982), and Yaffee, in Thorpe School District (Support Staff), Dec. No. 23082-A (June, 1986).

<sup>12</sup> Niagara School District, Dec. No. 27570-A (July, 1993).

<sup>13</sup> Employer Brief, p. 8.

<sup>14</sup> Altoona School District (Teachers), Dec. No. 20875-A (February 1984) and Altoona School District (Teachers), Dec. No. 24398-A (October 1987), respectively.



improves its high rankings<sup>15</sup>.

On a “per trip” basis (agreed at the hearing to be 2 hours), Altoona’s \$22.22 wages for regular runs ranked behind Augusta (\$24.05) and Fall Creek (\$22.95) in 2000-01, and ahead of Cadott (\$20.40), Neillsville (#20.66), Osseo-Fairchild (\$21.30) and Stanley Boyd (\$21.16).<sup>16</sup> The District’s offer will result in Altoona drivers being second highest in 2002-03 and within \$ .32 of the highest wage in the Conference. The Union’s offer places Altoona drivers in second place in 2002-03 and surpassing Augusta’s drivers by \$ .76. Altoona drivers are at the wage maximum at hire, while Augusta drivers require 3 years to reach the maximum. Arbitrators have held that where wages are among the leaders, the advantage should not be extended through arbitration.<sup>17</sup> Altoona drivers were paid \$ .47 more than average in 2001-02 for regular runs and will be paid \$1.40 more in 2002-03 and \$1.85 more in 2003-04 under the District’s offer. Under the Union’s offer they would be paid \$1.70 more in 2002-03 and \$2.93 more in 2003-04. The Employer’s offer exceeded all other settlements in 2002-02 and all but one for 2003-04. On a per trip basis, the District’s offer is \$1.40 in 2002-03 or \$ .93 above average and \$ .72 or \$ .29 above average for 2003-04 for a 2 year increase of \$1.22 over the comparables. The Union’s offer is \$1.23 above average in 2002-04 and \$1.07 above in 2003-04 for a 2 year increase of \$2.30 over the comparables.

Altoona’s drivers also received the 3<sup>rd</sup> highest wages for extracurricular trips which will be maintained under the District’s offer. The Union’s offer raises them to first place. The percent increases of the District’s offer exceeds that of the other districts in 2002-03 and all but one district in 2003-04. District pay for “meeting time” is \$6.25/hour which would be raised to \$6.50 in 2003-04. Most comparables have no separate provision for meeting time, though Osseo and Stanley have some provisions (a flat payout and a “training” pay). The District proposes modest increases in the \$2.50 paid for “downtime” while the Union would increase the rate by \$1.60 in 2003-04. Altoona is only district which pays drivers for sleeping.

In sum, the Employer’s wage proposals is clearly the most reasonable viz the comparables.

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<sup>15</sup>Employer’s Brief, p. 14.

<sup>16</sup>Employer Exhibit 26.

<sup>17</sup>Arbitrators Vernon, in Douglas County (Nurses) Dec. NO. 26687-A (July, 1991) and Bellman, in Unity School District, Dec. No. 24590-A (Dec. 1987)

The drivers' claim that a high wage increase is deserved because of the lack of health insurance lacks support among the comparables. The proposed wage increases far exceed other District employees' increases. Drivers have never had parity with other employees based on "total package" comparisons. The District has provided drivers with a cash payout in lieu of health insurance from the flex benefit account beginning in 2000-01, and has increased these payments each year. The external comparables do not show a consistent pattern to support the Union's offer. The drivers have received larger wage increases than the custodians or clericals and aides since 1996, though never to the extent of the Union's offer in this bargain (in addition to the payout in lieu of health insurance). That payout was intended to give drivers access to the District's health plan. Instead of taking the payments on a tax-free basis to apply to health insurance, the drivers took the funds as a wage boost, which in 2001-02 would amount to about \$1.46/hr. Under the stipulated agreement, the \$150/mo. payment in 2003-04 will equate to about \$1.69/hr. The majority of the external comparables have no such provision. Only Augusta has a payout provision. If the Union really was so concerned about health insurance it could have pressed for it in negotiations or traded wages for greater Sec. 125 contributions instead of wages higher than any comparable.

Altoona's bus drivers are not treated differently with regard to health insurance than other drivers in the Cloverbelt Conference. Generally other drivers are included in larger units which have health insurance, but either drivers get no benefits because their hours don't qualify them, or the district's contribution is so prorated that the drivers "are essentially 'priced out' of participation."<sup>18</sup> In Augusta, the employer pays only 36% of the family premium. In Osseo, the employer's payment is only 52%. In Neillsville, the payment is either 50% for recently hired employees or 75% for those hired before 1999. Bus drivers don't qualify in Cadott or Fall Creek, and have to pay their own premiums in Stanley-Boyd. Half the comparables provide no health insurance for drivers, and the other half pay low amounts which discourages drivers' participation.

The Union argues that the custodians and clerical/aides units received greater package increases. This is because of the huge increases in health insurance premiums (for instance, from \$9,979 in 2001-02 to \$13,093 in 2002-03); they did receive lower wage increases than the District's offer to the drivers, especially when one realizes that some of the wage increase is used to move custodial or clerical/aides through an 8-step schedule. However, these employees work between 1500 and 2100 hours/year and such employees normally receive health benefits in other districts. **No** district

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<sup>18</sup>Employer Brief, p. 28.

provides fully paid benefits to bus drivers. Under the District's offer Altoona drivers will receive a greater wage increase and a benefit in lieu of health insurance few other drivers receive. The Union's argument that the Bus Drivers should get the same dollar increase in wages and benefits as other employees goes against social and economic values, as noted by Arbitrator Dichter.<sup>19</sup> It's a fact of life that some employees will be paid more than others based on education, training, and other factors. Just because the drivers are paid less than another group does not require a bigger pay increase— unless the relative differential is not found elsewhere. In the instant case, Altoona drivers are wage leaders.

The Union has not compared benefits with the one group of Altoona employees who really are similar to drivers: the cooks. They typically work 1 ½ - 3 hours/day, and are eligible for health benefits if they work more than 1128 hours/yr. Only one cook qualifies. Only 2 drivers would qualify under the cooks' "contract" which the cooks are employed under (only 1 if only "regular" hours count). The other Altoona employee group is the Teachers. They receive health benefits, but because of the high insurance cost increases, the Teachers only received a \$250 wage increase in 2002-03, considerably less than the bus drivers will get. Their package is worth 4.62% vs the 6.78% increase bus drivers will get if the Employer prevails.

The "greatest weight" factor applies to the instant case. While the Altoona School District did gain membership since 1993, it recently has lost enrollments and state supported funding as have most schools in Wisconsin. The District is taxing at the maximum revenue caps. In 2001-02 it faced a \$200,000 deficit. The District proposed a 4-year increase of \$500,000/yr. in a referendum which passed. The financial director at hearing testified that this would get the district through 2002-03, though it would just about break even in 2003-04. The deficit would return to \$267,569 in 2004-05 and \$573,605 in 2005-06. She did testify that her initial forecast proved pessimistic as the District was able to make savings and get additional grants so as to have about \$200,000 more in 2002-03, but the 2003-04 break-even forecast is now projected to be a \$158,427 deficit, including the \$500,000 referendum.<sup>20</sup> Expenditures are rising at 5% while revenues are rising at 3%. The district's state funding is among the lowest in the state.<sup>21</sup> Legislative proposals could reduce the district's 2003-04 funds even more. The District's more generous 2002-03 offer must be seen in

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<sup>19</sup>Omro School District (Aides/Cooks), Dec. No. 29313-A (October, 1998).

<sup>20</sup>Did gain Employer Exhibit 8 and Employer Brief, p. 40.

<sup>21</sup>Employer Reply Brief, p. 1.

this light. The Union's contention that the per pupil transportation costs are the lowest in the area is only because the district is geographically the smallest; it is not because bus drivers are paid too little. Altoona's other costs are placed in the middle of the Conference in spending per pupil. The Union may argue that the District has a significant Fund 10 Balance. However, the forecasted deficit budgets assume depletion of the Balance from 15.28% of budget in 2003-04 to 12.48% in 2004-05 and 7.7% in 2005-06. Arbitrators have determined that these funds should not be determinative of a district's ability to pay; districts need to be able to expend what they are able to receive, and not be in the situation of ever declining fund balances.

Finally, the District has argued that its offer compares more favorably with the Cost of Living considerations. The national CPI increase was 1.4% in 2002 and 2.4% in 2003. The Index for the North Central states was even less. The Employer's offer is 6.6% and 3.7% for 2002-03 and 2003-04 respectively. The Union's offers are for 8.2% and 6.8%. The District's offer is more than generous, and most reasonable.

In sum, the Employer's proposed comparables is the most appropriate. The District's offer is more in line with these comparables than is the offer proposed by the Union. Its offer is closer to the settlements of the more relevant internal comparable, and is more consistent with the cost of living. The "greatest weight" factor of the limited revenues for the District favors the District's offer. The Union's offer is excessive. The Union's contention that large wage increases are necessary to compensate for the lack of health benefits is unfounded; most other districts don't receive health insurance, and only one other district makes a cash pay-out of funds which Altoona makes available for employees' health insurance purchases (which they seem not to want to buy). Excessive increases in bus drivers wages and these other benefits will undoubtedly prompt the district to consider subcontracting of transportation services.<sup>22</sup> Lastly, the Fund 50 balance is not a real surplus available for such extravagance, and will decline as revenue increases are less than costs.

## **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), internal and external (e. and d.) comparisons, and cost of living (g). Each of

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<sup>22</sup>Employer Reply Brief, p. 2.

these will be considered below as the issues of this dispute have been considered by the Arbitrator. These issues include to what extent, if any, revenue caps limit acceptance of the Union's offer, 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 the "greatest weight factor". The external comparables are in dispute in this matter, and will then be discussed to determine what he considers to be the comparables. He then will compare wages and benefits of these as well as discuss internal comparisons, following a discussion of other factors.

The Employer's contention that budget uncertainties under revenue caps and state aids make the "greatest weight factor" favor its offer is not found to be compelling by the Arbitrator, given the modest difference (less than \$5000 for 2 years) between the offers. The Employer indicates that it recently has had declining enrollments, but provides no indication that it is different from other districts; indeed, it reports (EX 14) that Altoona enrollments have been relatively steady while most of the other districts it cites as comparables have had declines of about 2% in 2002-03. Moreover, Altoona enrollment and allowable revenues have grown more than most districts cited by the Union. State aid per member is 3<sup>rd</sup> of the 7 comparable districts proposed by the Employer while its mill rate is 5<sup>th</sup> of 7. The Undersigned notes that the Fund 50 balance has been in the range of 15% of expenditures, though growing in absolute terms (EX 7). The District contends that it will fall in 2004-06 both absolutely and relative to expenditures. The Arbitrator also notes that Altoona's Fund 10 balance was 3<sup>rd</sup> of the 7 comparables proposed by the Union, at nearly 14% in 2001 vs. an average of 11%. Its Fund 10 balance (and its growth) is stronger than most districts cited by the Union as well. This is not to suggest that he believes that the fund is entirely available for the Union to raid. He understands that a reasonably sized fund is required to include a buffer for cash flow irregularities, equipment replacement reserves, and other needs, but there was no evidence that there is an unusual circumstance which would prevent an award in favor of the Union.

#### 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 should be the five districts employing unionized drivers in the Cloverleaf Conference (Altoona, Augusta, Fall

Creek, Neillsville, and Osseo-Fairchild) plus other area districts employing unionized driver (Elmwood, Mondovi, River Falls, and Spring Valley). Data in the Union exhibits did not include Neillsville, Stanley-Boyd, and Osseo-Fairchild. The Union did not present any data to support comparability of its original pool (Fall Creek, Augusta, Spring Valley, Mondovi, River Falls, Elmwood) to Altoona.

The Employer includes the districts in the Cloverbelt Conference employing bus drivers which are generally the fairly close districts in the conference to Altoona (with the exception of Neillsville). These are smaller than Altoona in membership, and include Altoona, Augusta, Fall Creek, Neillsville, and Osseo-Fairchild, Stanley-Boyd, and (non-union) Cadott. The Employer also provided mill rate, state aid, valuation, and education expenditures per pupil for its comparables but did not present these for the Union's comparables. In its brief, however, it argued that River Falls is way too big, and it, along with Spring Valley and Elmwood are too distant. The table below gives some comparisons of enrollment and other data:

Table 1: School District Data (2002-03)

<u>District</u>	<u>Enrollment</u>	<u>Distance**</u>	<u>Cost/</u> <u>member</u>	<u>Aid/</u> <u>member</u>	<u>Value/</u> <u>member</u>	<u>Mill</u> <u>rate</u>
Altoona*	1416		8133	5647	259044	10.99
Augusta*	633	13 mi.	8683	5890	250455	11.73
Cadott	891	15	7335	5800	209329	7.78
Fall Creek*	881	5	8302	6402	188541	11.45
Neillsville	1217	40	7434	5644	235062	8.72
Osseo-Fairchild	981	20	8763	6112	232980	13.26
Stanley-Boyd	1016	25	7543	5512	256373	12.20
Elmwood*	409	35				
Mondovi*	1116	20				
River Falls*	2918	55				
Spring Valley*	732	40				

\* Union's comparable pool

\*\* approximate to center of district from Altoona

Given the paucity of data, it is difficult to fully compare the parties' pools of comparables. Neillsville is more similarly sized but fairly distant. It has a low mill rate but similar valuation per member. Augusta is small, but close, with similar valuation and mill rates. Fall Creek is contiguous and receives more aid for low valuation. Osseo is 2 districts distant, close in valuation and higher in aid and cost. Stanley is also 2 districts away, similar in valuation and aid, and lower in cost. Cadott is fairly close, low in valuation and cost, though similar in aid. Its bus drivers are non-union. Spring Valley, Elmwood, and River Falls are quite distant being located in another CESA (11) and, unlike Neillsville, quite different in size. Mondovi is more similar in size and is as proximate as those districts proposed by the Employer. The Arbitrator is inclined to give it some consideration (if wage and benefit data is available) as a comparable of Altoona, following Arbitrators Yaffee and Kerkman, as noted above by the Employer.

The Union wants the Arbitrator to exclude Cadott and any other districts for which the employees are non-union. The statutory criteria under Section (d) or (e) would not exclude non-union comparisons such as Cadott on a blanket basis, though the weight given such comparisons may vary, as noted by many arbitrators cited by the parties. Criteria (j.) "such other things..." may also apply in that traditionally unions and unionized employers, when surveyed, indicate that other collective bargaining settlements are cited as reference points for an eventual settlement. 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. "<sup>23</sup>

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<sup>23</sup> Dec. No. 59106, Dec. 2001.

Again there is some similarity to the instant case. Cadott drivers' per trip wages were the lowest of the 7 in 2001-02 but are the highest of the settled districts for 2003-04. It would appear that Augusta has settled and would be higher than Cadott by about \$2.66. Fall Creek drivers would have to take a \$1.28 pay cut to be paid less, and any increase for Stanley-Boyd drivers will also put them ahead of Cadott. Cadott drivers will likely be 5<sup>th</sup> of 7, or 6<sup>th</sup> of 8 including Mondovi, but they are not at the bottom and a statistical outlier.

External Comparisons

Examination of Table 2 reveals that the Altoona School District bus drivers current wages for regular trips is about 2.3% above the Employer's comparables and about average when Mondovi is

Table 2: Per trip (2 hours) regular wages (max.)<sup>1</sup>

<u>District</u>	<u>2001-02</u>	<u>2002-03</u>	<u>% )</u>	<u>2003-04</u>	<u>% )</u>	<u>2 year % )</u>
Augusta	\$24.05	\$24.30*	1 %	\$24.66*	1.5%	2.5%
Cadott	20.40	21.15	3.7	21.90	3.5	7.2
Fall Creek	22.95	23.18	1	N/S		
Neillsville	20.66	21.02	1.7	21.52	2.4	4.1
Osseo-Fairchild	21.30	21.78	2.3	21.88	.5	2.8
Stanley-Boyd	<u>21.16</u>	<u>21.90</u>	<u>3.5</u>	<u>N/S</u>		
Average	21.75	22.22	2.2	22.49	1.2	
Mondovi	<u>25.16</u>	N/S		N/S		
Average	22.24					
Altoona ER offer	22.22	23.62	6.3	24.34	3.0	9.3
Altoona Union	22.22	23.92	7.7	25.42	6.3	14.0

\* the Employer contends that Augusta was a tentative agreement and not ratified while the Union representative indicates a belief that it was; he was present for the Union's vote.

<sup>1</sup> Employer Exhibit 26, Union Exhibit 3-1

included. The 2002-03 increases averaged about 2.2%; the pattern for 2003-04 is unclear, and of the four settled, two had higher percent increases and two had lower. The increases for Cadott drivers brings them closer to the average as the Arbitrator's theory above would suggest, *ceteris paribus*. Wage leader Augusta appears to have the lowest wage increases. It is clear that under either of the parties' offers, Altoona drivers will have made substantial wage gains relative to the comparables. The Arbitrator would conclude that the external comparables somewhat favor the



District’s offer for regular trip wages.

Extra-curricular trips are the second largest component of drivers wages, according to the parties. Wages are reported by the hour. Some districts have a 2 hour minimum. Cadott pays more for the first hour than subsequent hours while Osseo pays a wage plus mileage. The Arbitrator has attempted to make comparisons among the districts as seen below. In 2001-02 Altoona drivers pay for extracurricular driving was somewhat below average, but 3<sup>rd</sup> of 7 (or 4<sup>th</sup> of 8). Under either party’s offer, they will be above average in 2002-03 and considerably above average (the wage leader) in 2003-04 under the Union’s offer.

Table 3: Hourly Extracurricular wages (max.)<sup>1</sup>

<u>District</u>	<u>2001-02</u>	<u>2002-03</u>	<u>% )</u>	<u>2003-04</u>	<u>% )</u>	<u>2 year % )</u>
Augusta	\$ 9.12	\$ 9.47*	3.8 %	\$ 9.95*	5.1%	8.9%
Cadott	10.50 / 7.80 (8.70) <sup>3</sup>	10.75/ 8.05 (8.95)	2.3	11.00/ 8.30 (9.20)	2.3	4.6 (after first hour)
Fall Creek	9.87	9.97	1	N/S		
Neillsville	8.50	8.50	0	8.50	0	0
Osseo-Fairchild <sup>2</sup>	8.58 +	8.82+	2.8	8.87+	.5	3.3 (+\$.12/mi)
Stanley-Boyd	8.58	8.88	3.4	N/S		
Average	9.16	9.37	2.3	9.53	1.7	
Mondovi	9.27	N/S		N/S		
Average	9.18					
Altoona ER offer	8.73	9.43	8	9.79	3.8	11.8
Altoona Union	8.73	9.58	9.7	10.33	7.8	17.5

\* the Employer contends that Augusta was a tentative agreement and not ratified while the Union representative indicates a belief that it was; he was present for the Union’s vote.

<sup>1</sup> Employer Exhibit 27, Union Exhibit 3-2

<sup>2</sup> The Arbitrator assumed a 40 mile round trip and 3 hours per extracurricular trip.

<sup>3</sup> The Arbitrator assumed 3 hours per extracurricular trip.

The Union has provided no evidence regarding “down time” comparisons. The Employer shows that this is unique to the District. The Arbitrator recognizes that this is a “cost” to the employee which was considered of value in the establishment of the provision and would continue to be.

Nevertheless, such comparison would favor the Employer's offer.

The Union has argued that the Employer provides no health care as is provided to other Altoona School District employees. The Employer has responded that no other district really does either, and that at least the District has recognized the need, in the past and in its offer, with a payment which can be applied to health care or in the alternative, taken in cash (but then not tax-free). The flex-benefit will be \$150/mo. in 2003-04. The Union has responded that given the high cost to the employees even with these payments, not enough drivers can or would participate to qualify the unit for the District's health insurance plan.

The Employer's contention that full health insurance coverage for bus drivers is not the norm appears to be correct (EX 31). Augusta pays most of the premiums if the employee is full time (1950 hours), and prorates this amount for part time employees. They can receive a Sec. 125 payout based on the single premium on a prorated basis (UX 5-1). Fall Creek provides insurance for full time employees (UX 5-2); the Employer contends that only one driver is eligible. Cadott is said by the Employer to provide no benefit, though documentation has not been provided. Neillsville is said by the Employer to provide benefits to drivers if their regular work is over 720 hours; it is half the premium for 720-1349 hours, and 75% for more than 1350 hours (approximately full time school year employees). Osseo-Fairchild drivers are said to receive 93% of the POS premiums prorated on 35 hours/week (or about half) though the Employer also did not provide those portions of the contracts. The Agreement for Stanley Boyd indicates that employees may participate in the District's plan if they pay the premiums. It would appear that in Altoona, the \$1680 payout in 2002-03 and \$1800 payout in 2003-04 is within the range of comparables, but more likely above the "average" though it is extremely difficult to determine what that average may be. Many or most other drivers may be ineligible if they are scheduled similar to Altoona drivers, or they may not be willing or able to pay the Employees' share of the premium. Only 3 of Altoona drivers are scheduled for more than 720 regular hours, which is the eligibility requirement in 3 of the districts. Cadott and Fall Creek have a higher requirement, while Stanley Boyd makes drivers pay their own premium anyway. Only Augusta, in addition to Altoona, makes a payout in that case. The payout is perhaps 40% -45% of the single premium.

The Union provided some contract provisions for Elmwood which indicated that the District would pay the health premium based on 2080 hours prorated. The costing sheet which it included shows, however, no health or dental payments for bus drivers, though the custodians, the secretary, bookkeeper, and some aides receive full or partial benefits. In Mondovi, the district will pay the

single premium or half the family premium for half-time (20 hours/wk., 720/yr.). There is a reopener on that contract for the 2002-03 including health insurance. As noted in Tables 2 and 3 above, there was no settlement at the close of this record. In River Falls, the District would contribute \$141/mo. to the 2000-01 premium and \$175/mo. to the 2001-02 premium for bus drivers, based on paying 45% of the cost. The information provided the arbitrator makes no mention of a cash payout in lieu of insurance. In Spring Valley, part time employees in the support unit would receive prorated benefits if they are regularly scheduled to work 20 or more hours/week. Proration is based on 1520 hours/year. Based on the Union's data, there is the possibility that Mondovi drivers may fare better than Altoona drivers if they work more than 20 hours/week. They would receive the single premium or half the family (if the employee would pay the other half- there is no payout provision). In Spring Valley some drivers may also qualify for 40-50% premium payments by the District, but payout is not indicated. While Elmwood's proration basis provision is higher, the experience there suggests that drivers in these districts in many cases may not receive a benefit. In these districts as in the districts cited by the Employer, it appears to the Arbitrator that while Altoona drivers are receiving less than "half a loaf" of health insurance premium contributions by the District, in the other districts, those employees eligible and participating by making employee contributions receive less than "half a loaf" but it is likely that most receive "no loaf at all."

#### Internal Comparisons

The Altoona School District bus drivers benefits is less than other unionized District employees. The Employer's offer of the payout in lieu of health benefits closes the gap somewhat. The evidence above indicates, however that the drivers are somewhat in the range if not better off because of the payout than drivers in other districts. The Undersigned recognizes that the drivers are more likely to be part time than are other units' members, and health insurance contributions somewhat follows the pattern established elsewhere. The Union's point is well taken that the dollar increase in the package for drivers is less than that provided the other unionized employees, though the percent increase in the flex plan payout is greater than the wage increase, which exceeds that of other Altoona units' employees. That wage increase places Altoona drivers near or at the top of the comparables. The Arbitrator grants that the flex plan payout and the wage increase is insufficient to purchase health insurance as provided to other district employees. Even the Union's offer will probably not do that.

#### Cost of living

The Employer has provided data on the Consumer Price index for three years ending in December

2003.<sup>24</sup> This data indicates increases in the CPI at an annual rate in the range of 2-3% in 2001, 1% in 2002, and 2-3% in 2003. The CPI-W for North central States CPI-W data show increases of about the same. The Union would probably 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 about a 10% wage increase over the two years (vs. the Union’s offer of about 15%) and 7 - 7 ½% increases per year in the health insurance payout.

### 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” factors does not compel an award in favor of the District. The Undersigned has found the Employer’s use of the Cloverbelt Conference for comparisons to be generally appropriate, and would give consideration to Mondovi School District as well. The proposals by the Union for regular wages are found to be less reasonable than the Employer’s offer by these comparisons. The proposals by the Union for extracurricular, meeting, and “downtime” wages are similarly found to be less reasonable by these comparisons. Consideration of the “total package” of wages and health insurance indicates that the District’s payout provisions in lieu of health is in a sense at least within the range and thus the District’s wage offer is preferred. The Union’s offer is supported by comparison with some other District employees in dollar terms because of the large increases in health premiums, but this is the norm. It would perhaps be good to be able to compare the relation of wages and this benefit between non-professional units in the comparables in order to better understand whether this is any more internally equitable. Examination of the external comparables suggests that it is not, and therefore gives preference for the Employer’s offer, as determined above.

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<sup>24</sup>Er Ex. 9,10.

## 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 2002-04 Collective Bargaining Agreement with the West Central Education Association Altoona School District Bus Drivers.

Dated this 14<sup>th</sup> day of February, 2004.

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Richard Tyson,  
Arbitrator