In the Matter of the Petition of

WHITEWATER EDUCATIONAL
SUPPORT STAFF

Case 41
No. 61677
INT/ARB - 9759
Dec. No. 30740-A

To Initiate Interest Arbitration
Between the Petitioner and

WHITEWATER SCHOOL DISTRICT

APPEARANCES:

Ms. Lys Wilson, Uniserv Director, Rock Valley United Teachers and Mr. Greg Spring, Negotiations Specialist, Wisconsin Education Association Council, appearing on behalf of the Union

Quarles & Brady, LLP, by Mr. Gary Ruesch and Renae L. Waterman, appearing on behalf of the District

ARBITRATION AWARD

The Whitewater Educational Support Staff Union, hereinafter the Union, and the Whitewater School District, hereinafter District or Employer, reached impasse in their bargaining for the 2002 - 2003 school year contract reopener.[1] They submitted their final offers to the Wisconsin Employment Relations Commission and the Commission certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on March 22, 2004 in Whitewater, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by July 12, 2004.

[1] The parties entered into a Memorandum of Agreement that provided "for a reopener in the 2002-2003 school year in the event the aggregate health insurance increases by 18% or more" , " as determined by

FINAL OFFER ISSUES IN DISPUTE:

Union

1. Revise the second sentence of Article XVIII, Section E., Paragraph (1) Health to read as follows:

   Effective July 1, 2002, the Board shall pay up to three hundred and ninety-seven dollars ($397) per month toward the single health plan, and up to eight hundred and ninety-one dollars ($891.00) per month toward the family health plan. Effective January 1, 2003, the Board shall pay up to four hundred and eighty dollars ($480) per month toward the single health plan, and up to one thousand and seventy-six dollars ($1076.00) per month toward the family plan.

2. Revise Article XVIII, Section E., Paragraph (6) B. to read as follows:

Salary Addition Election: Employees eligible for health insurance coverage and who are contracted at 80% or greater Full Time Equivalency shall be eligible to participate in the "cafeteria plan." Such plan would allow these employees to choose to be covered under the health insurance coverage described above or receive a cash payment of $328.00 per month during the 2001-2002 school year. Effective July 1, 2002, the cash payment will be increased to $367 per month. Effective January 1, 2003, the cash payment will be equal to 88.2% of the single health plan per month. (Said amounts will be prorated for less than full time employees.)

3. Addendum E – Salary Schedule

   Effective January 1, 2003, increase the 2001-02 hourly rates by fifteen cents ($0.15).

District

1. Revise Article XVIII, Section E, Paragraph 1 to read as follows:

   Health: The Board shall pay up to three hundred and forty nine dollars ($349.00) per month toward the single health plan, and up to seven hundred sixty nine dollars ($769.00) per month towards the family health plan for the 2001-2002 school year.

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determining the aggregate increase based upon the number of single and family health plans contained in the cost analysis (attached)".

The Board shall pay up to four hundred and eleven dollars ($411) per month toward the single health plan, and up to nine hundred and twenty-two dollars ($922.00) per month toward the family plan for the 2002-2003 school year. Regular part-time employees, employed twenty (20) or more hours per week, will receive this benefit in proportion to the amount of time contracted. Effective July 1, 2001, the parties agree to change the level of benefits to the Managed Health Care Plan.

2. Revise Article XVIII, Section E., Paragraph (6) B. to read as follows:
   Salary Addition Election: Employees eligible for health insurance coverage and who are contracted at 80% or greater Full Time Equivalency shall be eligible to participate in the "cafeteria plan." Such plan would allow these employees to choose to be covered under the health insurance coverage described above or receive a cash payment of $328.00 per month during the 2001-2002 school year, and a cash payment of $328.00 per month during the 2002-2003 school year. (Said amounts will be prorated for less than full time employees).
3. Addendum E (Salary Schedule) as attached.
4. All other items in 2001-2003 Agreement unchanged.

BACKGROUND:

The parties reached an agreement for their 2001-2003 collective bargaining agreement. A part of that agreement included changes in the level of premium contributions made by the District and bargaining unit employees. As part of their agreement for a successor contract to the 1999-2001agreement the parties agreed that in the first year (2001-2002) the District would pay 94% of the health insurance premium down from 97.8% in the prior contract and the employees' contribution would increase from 2.2% to 6%. They also agreed that the contract could be reopened during the 2002-2003 school year in order to bargain about wages and fringe benefits if the "aggregate health insurance increases by 18% or more". The health insurance did increase for the 2002-2003 school year by 39.97%.[2] The parties commenced bargaining under the reopener but were unable to reach a voluntary settlement.

[2] Union Exhibit 4-1, page 2.

As their impasse offers show, the parties were unable to agree for 2002-2003 upon the level of health insurance premium contributions, wages, or the amount of the Salary Addition Election (SAE) payment available to those eligible employees who choose not to take health insurance. In summary, the District proposes to freeze the bargaining unit classifications hourly rates at the rates in effect for 2001-2002 and also the salary addition election payment at the 2001-2002 level -$328.00 per month.[3] The Union has proposed to increase bargaining unit hourly rates across the board by $0.15 per hour effective January 1, 2003, six months into the 2002-2003 contract year, and provide for a salary addition election payment of $367/month effective 7/1/02 and increasing to 88.2% of the single health insurance premium on 1/1/03 which is $449.96.

The 1999-2001 contract provided that the salary addition election payment under the cafeteria plan would be 92% of the total single premium. In the first year of that contract it was stated as a dollar amount without reference to the percentage equivalent, whereas in the second year of that contract the payment amount was stated as 92% without reference to the equivalent dollar amount. That pattern was repeated in the parties' 2001-2003 collective bargaining agreement. The salary addition election payment was stated as $328.00 per month for 2001-2002. The $328.00 per month was the equivalent of 88.2% of the total single premium of $371.32 rounded to $328. In the second year of the contract (2002-2003) the salary addition election payment, like in the second year of the predecessor contract, was stated in percentage terms only. It provided the payment would be 88.2% of the total single health insurance premium, which amounts to $449.96 (88.2% of $510.16). The District's reopener final offer of freezing the payment at $328.00 per month, the 2001-2002 level, effectively reduces the percentage of the total single premium from 88.2% to 64.29% or a 23.91% reduction from the previously agreed upon 88.2 percent.

PARTIES ARGUMENTS:

District:

The District argues that "due to state-imposed revenue caps every dollar in wage and benefit increases will force the District to reduce staff, programs, and materials

[3] In 2002-2003 that is the equivalent of 64.29% of the total single health insurance premium of $510.16.

students need for their classrooms". It contends that theses consequences flow from the state-imposed revenue caps and therefore this factor is entitled to the greatest weight in the arbitrator's decision making process in determining which is the more reasonable final offer. It states that the greatest weight factor is not the same as the "traditionally disfavored 'ability to pay' factor. It cites arbitrator Vernon's Tomahawk School District, WERC Dec. No. 30024-A (2001) decision wherein he stated

> "Certainly a District in this strict sense can almost always 'afford' a raise for its employees. However, it seems more reasonable that the relevant question under the 'Greatest Weight' factor seems to be 'If the district can afford a salary increase at what cost to the educational mission will this increase come?' This Arbitrator believes the 'Greatest Weight' factor as related to revenue limitations was meant to have the Arbitrator, in individual cases and in appropriate circumstances, take into account the financial and budgetary influence, impact, and pressures that come to bear under legislative revenue limitations."

The District believes this means the arbitrator considers, as Vernon did, whether a district's enrollment is declining, whether it is taxing at the maximum allowable rate, is it making budget cuts and would the district would be forced to run down its fund balance. In this case it argues the answers to each of those questions is "yes". It contends selection of the Union's final offer would have a substantial adverse effect on its operations and educational mission. It claims it has already been forced to reduce its 2003-2004 and 2004-2005 budgets by over $100,000 each year and the Union's offer would add more than $160,000 to that burden.

The District argues that its enrollment has declined in 2002-2003, 2003-2004 and projects a decline for 2004-2005. It contends that it will loose nearly $2666 for every student. It also has levied the maximum amount of property taxes possible in 2001-2002, 2002-2003, and 2003-2004. Nevertheless the District was not able to increase revenue more than 3.6% in 2002-2003 and 3.1% in 2003-2004, and it projects a $152,845 deficit in 2004-2005. It concludes therefore that the Union's final offer is excessive given the state-imposed budgetary limits.

The District also notes that it will continue to cut its budget, reducing programs, services, textbooks, instructional materials and while staffing the students needs. It also

contends that its cost per pupil is $62 above the average per pupil expenditure. And that despite levying the maximum tax possible revenue increases fall short of the $8,971 per student cost and thus its budget remains strained. The District argues that its staff reductions, textbook cancellations, and supply reductions have significantly jeopardized its ability to achieve its educational mission. It argues these are things that are needed in the classroom. It contends that while this is going on the Union's offer shifts a 16.3% increase in wages and benefits to the 2003-2004 and 2004 –2005 school years.

Its final argument in support of its contention that the "greatest weight" factor favors selection of its final offer over that of the Union is that if the Union's offer is selected it "would require the District to deplete its fund balance". It claims that it would be irresponsible to pay for the additional $161,178 in the Union's final offer by depleting the fund balance because it carries this operating reserve to meet cash-flow needs and minimize the need for short term borrowing. It states the fund "also safeguards against unanticipated expenses the District may incur during the year and substitute for any unexpected revenue shortfall". Finally it asserts that "it demonstrates fiscal responsibility and stability required to secure a high credit rating, which reduces the District's borrowing costs". The District's policy is that it strive to maintain a fund balance of not less than 12% of the anticipated General Fund 10 expenditures for the next year. The District claims that its current balance represents only 9.5% of its current budget, and that it has decreased 2.55% since the 1999-2000 school year and has not grown proportionately to its budget. For these reasons the District has chosen not to use the fund balance to retain necessary staff, purchase essential text books and materials, continue programs, and cover necessary equipment purchases or maintenance costs.

It also insists the statutory "greater weight" factor regarding economic conditions in the Whitewater area favor the District's offer. Under this criteria the arbitrator is required to give "greater weight" to this factor than any factor other than the "greatest weight" factor. The District argues that it extends its offer despite troubled economic conditions in its jurisdiction. It contends that the median household income is nearly $10,000 below the average income in comparable districts, and that the county's per capita income is below the average in neighboring counties. While at the same time the District's mill rate is $1.24 above the average of comparable school districts.

The District also contends that the other factors such as the public interest, other comparable settlements, cost of living, and overall compensation favor its offer over that of the Union. It argues that in light of its low income and high tax rates its offer supports the public interest. It contends that the public interest and welfare of the public do not require the District to pay the lowest possible wages, but rather that the level of wages and benefits allow the District to attract and retain high quality employees. It points to its employee turnover statistics and the reasons given by employees who have left the District as proof that its wages and benefits will continue to operate in the public's interest.

The District also argues that its final offer is comparable to the settlements it has reached with its teacher bargaining unit and its non-union staff. It notes that the teachers did not receive a pay increase in 2002-2003 and received a package increase of 4.6%. That bargaining unit used the available funds to offset the increased costs of the health insurance. The Union's offer here provides for wage and benefit increases that far exceed those provided to other internal comparables. In 2002-2003 the teachers received a 4.7% total package, administrators received a 3.8% package, and administrative assistants received a 4.2% package.

The District asserts that when comparing the final offers, total package costs of those offers is now more significant. It quotes arbitrator Tyson who said "as health care costs have rapidly risen, the 'package' cost is increasingly taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining".[4] The District argues that its offer results in a $4.7% package cost whereas the Union's offer has a 7.7% package cost. It also points to the fact that when the end cost of the Union's January 1, 2003 increases are realized the package cost is 16.3% although the impact is spread over two school years. The District arrived at that cost figure by assuming that the end rate is implemented for the entire year as it becomes the *status quo* going forward for the 2003-2004 school year. It insists that the budgetary impact must be evaluated over both school years. It concludes that the 2002-2003 package cost difference between it and the Union's final offers for 2002-2003 is $52,401 and $108,777 in 2003-2004.

[4] Sturgeon Bay School District, Dec. No. 30095-A (2001)

Also according to the District the external comparables further support selection of the District's final offer. The District believes the arbitrator should not focus exclusively on the wages in comparable districts, but rather should look at total compensation those employees receive. When that is done it is clear that District employees total compensation is "far higher" than their comparables. Selection of the District's final offer would retain Whitewater at a leadership level in terms of wages and fringe benefits whereas selection of the Union's final offer would far extend that level by which Whitewater's wages and fringe benefits exceed the comparables.

Further, the District argues that the cost of living increased by only 2.0% during the 2003-2003 school year, and its offer results in a total package increase of 4.7%. That amount also far exceeds the rate of inflation and supports selection of its final offer.

Last, the District contends that the level of overall employee compensation supports selection of its final offer. Its employees, under its offer, would continue to receive above average health and dental, and SAE benefits as compared with similar employees in comparable school districts. It argues that the overall compensation provided by its offer is more reasonable than that which results if the Union's offer is selected.

In conclusion the District states that the budgetary reality of Whitewater is bleak and the arbitrator must balance the unlimited desires tearing at the District's limited resources. The Union's offer ignores the economic reality of the District's finances, and the statutory criteria do not favor selection of the Union's offer. The weighted criteria clearly militate for selection of the District's offer that recognizes the District's budgetary needs while retaining the District's wage and benefit leadership position among the comparables. Also, the District offer exceeds the wage and benefit package increases of all the internal comparables. And just as other arbitrators have drawn the line and rejected Union demands for excessive package increases so should this arbitrator.

Union:

The Union notes that this is the parties' first interest arbitration in this bargaining unit, and therefore there is not an established set of external comparables. Both parties propose using the districts within the Southern Lakes Athletic Conference (SLAC), but

the District also proposes the inclusion of the Palmyra-Eagle Area School District based upon its proximity to Whitewater. The Union argues that the arbitrator should not include it among the comparable districts just as the WIAA did not include it in the athletic conference because despite its proximity to Whitewater its enrollment is only 56% of the average SALC school. The Union also contends that non-union school districts should not be included among the comparables as arbitrator Kerkman and many before him so concluded. In this case, that would mean that the Milton School District should not be included among the districts comparable to Whitewater.

The Union also believes that the "greatest weight" factor is not determinative of this case. It argues that it has provided ample evidence that the District has the financial ability to implement the Union's offer if it is selected. It states the district's membership, a key factor in determining revenue, has grown at a rate of 8.72% since 1993-94 which is greater than the state average of 8.36%. Also, during the same time the District's allowable revenue has increased by over 46%. It also argues that it has shown that the District received revenue per member in 2003-2004 similar to the other districts in the comparable group. Also, the District's Fund 10 Balance was second only to Fort Atkinson in terms of percent of budget and increased by over $500,000 from 2000-2001 to 2001-2002. Yet the other Districts did not freeze wages or slash health insurance contributions.

The Union asserts that the "greater weight' statutory factor is also not determinative of which offer to select. The Union contends that it has provided substantial evidence that the District's taxpayers have not been over burdened. From 2001-2002 to 2002- 2003 the District experienced a larger cut in its mill rate than any of the comparable districts, and its mill rate has been cut in half since 1992-1993. Finally, it insists that the evidence shows that District taxpayers are paying less to support their schools system than they were in 1993-94.

The Union argues that the issue before the arbitrator is which offer provides the more reasonable wage increase and Employer health insurance premium contribution for the 2002-2003 school year. The Union has proposed a modest 15 cents per hour wage increase and a two step increase in the District's contribution to the employees' health insurance premiums to bring it up to the previous 2001-2002 94% level. The District's

proposal, on the other hand, reduces the employer contribution level from 94% to 80.5% and freezes wages at 2001-2001 levels.

The Union insists the figures show that adoption of the District's offer would "brutally hurt" support staff employees. Even under the Union's offer the employees' will incur an increased cost for their health insurance of $1348.80 for 2002-2003. Even after the Union's proposed $0.15 per hour wage increase amounting to $156.00 annually for the full-time employee the increased insurance cost to the employee for his/her health insurance is $1192.80. But, it states that the employees are willing to absorb that loss in order to restore the *status quo* on January 1, 2003. The Union says the District's proposal would raise the employees cost to $2673.36 while not increasing wages or providing a *quid pro quo*. The Union concludes that the District's offer is unreasonable.

The Union also insists an examination of the external comparables shows that the District's final offer on health insurance is unwarranted. The figures show that the District's health insurance premiums were below the average of the comparables until 2002-2003, whereas East Troy, Elkhorn, and Fort Atkinson were above the average from 1999-2000 through 2002-2003. Also, the numbers show that the District's percentage of employer contribution to health insurance premiums are in line with the conference average unless its 2002-2003 final offer is selected. In 2000-2001 the conference average was 95.7% and Whitewater was at 97.8%, in 2001-2002 the conference average was 95.0% and the District was at 94.0%, and in 2002-2003 the conference average among the comparables was 94.4% and the Union offer would have the District at 77.8% for the first six months of 2002-2003 and 94.0% for the last six months. However, if the District's offer is selected the District's percentage contribution would fall to 80.5%. It also points out that despite the increases in health insurance costs none of the unionized comparables has made a change in the percentage it pays toward employee health insurance. Milton, the one nonunion comparable, would be paying considerably more in terms of both dollars and percentage if the District's offer is selected. The Union concludes that these figures show that the District is trying to cut the benefits of its lowest paid employees who are least able to afford to have their paychecks reduced further.

Regarding the internal comparable, the Union argues that there is only one other represented group in the District and that is the teacher bargaining unit. It notes that it

has already argued that unrepresented employees either internally or externally are not considered comparable. When comparing the District's two bargaining units the Union contends that it is clear that the employees in this bargaining unit are being treated unfairly compared with the other represented employees. It says that the figures show that there have been no changes made to the percentage employer contribution to the professional employees' health insurance premiums since 1998-1999. And the Union asserts that the arbitrator should not accept the Employer's proposed percentage change in contribution to health insurance premiums in this unit.

Regarding its wage proposal, the Union argues that its offer is supported by the comparables. It insists that none of the comparable districts have denied their employees a raise, and none are giving their employees as little as the Union's offer in this bargaining unit. The insurance numbers and wage figures show that while the other districts have seen their insurance costs rise the employees in those districts have still seen their wages increase.

The Union also contends that *status quo* and *quid pro quo* are crucial elements in this case. The District is proposing a "harsh and severe drop" in its premium contribution to 80.5% after its employees already conceded to drop the percentage contribution in 2001-2002 from 97.8% to 94.0%. The Union argues that it cannot ask its members to make further concessions in the amount of the District's insurance premium contribution without getting something in exchange. The Union contends that this shows that the District's proposal is "both radical and unsupported". The Union insists that the District has not met its burden that the *status quo* on the health insurance should be changed. It says that that the District has not shown by clear and convincing evidence that there is a need for the change because it is in good financial condition and the comparables support maintaining the *status quo*. And, it contends that even if the District can show a need for the change it has proposed a five-fold increase in the employee's share of the premiums without offering a *quid pro quo* is unreasonable.

DISCUSSION:

This is the first time that there has been a need for an interest arbitration decision in this bargaining unit since arbitration was made available 25 years ago. That speaks volumes about the parties' ability to voluntarily resolve their disputes at the bargaining

table. I also believe that history underlines the most difficult situation in which they find themselves for the 2002-2003 contract year. Obviously, over all those years they have encountered difficult issues, but have been able to find a voluntary solution. Because they have never gotten to this point in past negotiations there has never been an arbitral determination of the appropriate external comparable group. They both agree that Delevan-Darien, East Troy, Elkhorn, Fort Atkinson, and Jefferson school districts of the Southern Lakes Athletic Conference (SLAC) should be included in the comparable group. While the Union's initial brief indicates the District has included Palmyra-Eagle and Milton School Districts in the comparable group, the District's initial brief at page 14 indicates that "For purposes of comparison the District has excluded from consideration the nonunion school districts of Palmyra-Eagle and Milton". In as much as the District indicates that it is not considering those two districts in the comparable group they are in agreement as to the comparable pool, and therefore there is no need to discuss that matter.

The parties final offers can be summarized as follow:

Union:

Wages	$0.15/hour ATB	Effective 1/1/02
Health Insurance	Employer Contribution	
	Single $397/mo	Effective 7/1/02
	Family $891/mo	Effective 7/1/02
	Single $480/mo	Effective 1/1/03
	Family $1076/mo	Effective 1/1/03
Salary Addition Election	$367/mo	Effective 7/1/02
	88.2% of Single Health Premium	Effective 1/1/03

District:

Wages	Maintain the 2001-2002 wage schedule for 2002-2003	
Health Insurance	Employer Contribution	
	Single $411/mo	Effective 7/1/02
	Family $922/mo	Effective 7/1/02

Salary Addition Election	Maintain 2001-2002 $328/mo level for 2002-2003 and remove the contractual reference to 88.2% of the single plan

The District's health insurance contribution levels for 2001-2002 were $349 for single and $769 for family coverage. Those dollar contribution levels equated to 94% of the total premium. In the case of the Salary Addition Election, keeping the dollar amount at $328/mo for 2002-2003 equates to 64.3% of the $510.16/mo single premium.

As can be seen in the above figures, the effect of the District's final offer is to significantly reduce the percentage amount of its health insurance premium contribution and salary addition election dollar amount from the levels existing in the prior contract year. The Union argues this amounts to a change in the *status quo* for which the District offers no *quid pro quo*. The District, on the other hand, argues that the Union's argument is misplaced and that the package drives the *status quo* and not the other way around. In other words, the *status quo* is agreeing upon a percentage package increase amount and then agreeing upon a distribution of the dollars generated among wages and fringe benefits. It also argues that the parties have consistently used dollar amounts in the contract to express the District's health insurance contribution levels. It further contends that the 2002-2003 economic settlement was based upon a 4.2% total package increase. Additionally, it insists that even if the District offer changes the *status quo* by decreasing its insurance contribution in percentage terms and offering nothing in return, no *quid pro quo* is required. It argues arbitrators have concluded that it is proper to consider the impact of increasing health insurance costs on the traditional *status quo* and *quid pro quo* analysis. It cites arbitrator Knudson's Mondovi School District, WERC Dec. No. 30633-A (2004) decision where he wrote "[T]he district's rapidly rising health insurance premiums provide a sufficient basis to justify a change in the *status quo* without the traditional *quid pro quo*". And last, the District contends that its package offer increase is 4.7%, whereas in the initial 2002-2003 agreement the parties had agreed to a 4.2% package increase, and this increase in the value of the package amounts to a *quid pro quo*.[5]

[5] A discussion of *status quo* and *quid pro quo* fall under the criteria "such other factors, . . . , which are normally taken into consideration . . ." 111.70(4)(cm 7r.(j) Wis. Stats.

I found in reviewing more than 20 arbitration awards where changes to the health insurance premium contribution levels was an issue, that in those cases where no *quid pro quo* was offered the employer's proposed increase in insurance premium contributions was never selected. And, in some cases where a *quid pro quo* was offered arbitrators found it inadequate and did not select the employer offer. Although some arbitrators have commented that a *quid pro quo* may not be necessary when the health insurance premiums are rising at a rapid rate or under unique circumstances, that notwithstanding, as already noted, I found no decisions where the employer's proposed reduction in the insurance premium contribution level was selected when it was not accompanied by a *quid pro quo*. Their conclusions are clearly based upon the unique facts of each case and thus no general rule regarding what constitutes a sufficient quid quo pro has emerged. Thus, the analysis in this case will necessarily be driven by the unique circumstances surrounding this bargain.

In this case, the District, in the undersigned's opinion, has not offered a *quid pro quo*. Rather, as a part of its reopener final offer it has agreed to increase its total package offer from the previously agreed to 4.2% for 2002-2003 to 4.7%. This increase in the total package percentage resulted from its agreement to contribute more toward insurance premiums than it had initially agreed to do before the premium went up by more than 39%. It has also proposed a wage freeze in 2002-2003, so any wage schedule movement and resultant roll-ups were already costed and included in its 4.2% package offer. Thus, the increase from 4.2% to 4.7% cannot be considered a *quid pro quo*. Arbitrator Torosian discussed the question of what constitutes a sufficient *quid pro quo* in Oconto Unified School District, Dec. No. 30295-A (10/02),

> ... There is no set answer as to what constitutes a sufficient *quid pro quo*. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the *quid pro quo* need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the *quid pro quo*.

However, while there may be a need to reduce the District's health insurance costs the District is attempting to achieve this reduction through cost shifting, not reducing the cost of the insurance itself. Thus, while I do agree, as others have said, that there may be

circumstances when a *quid pro quo* is not required or it would only be minimal, as can be seen from the following discussion, the facts of this case do not, in the undersigned's opinion, present such a circumstance.

Here the Union already agreed in the first year of the contract to accept a District dollar contribution toward premium that reflected a decrease in terms of percentage from the previous 97.8% to 94%. This put the District's contribution level in the middle of its comparables and 3.8% less that it was contributing for represented teachers and non-represented employees. Now it is asking that its percentage contribution level be reduced to less than 81%, a decrease of more than 13%, in addition to the first year reduction. There is no dispute this proposed reduction is driven by the more than 39% increase in total premium for 2002-2003. However, other comparable districts also experienced large increases in their 2002-2003 health insurance premiums. Delevan-Darien's increased by 21.74%, East Troy 28.60%, Elkhorn 23.43%, and Jefferson by 30.00%, but their percentage contribution levels were unchanged from the prior year.

This more than 13% drop in contribution level the District is proposing also means that employees will be paying $199/mo[6] in 2002-2003 instead of the $22/mo[7] they paid in 2001-2002 for single coverage, and $222.78/mo[8] in 2002-2003 compared with $44.88/mo[9] in 2001-2002 for family coverage. That is a difference of $177/mo for single coverage and $177.90/mo for family coverage. Those dollars represent percentage increases of staggering proportions, approximately 800% for single and 350% for family. That compares with an increase of $62/mo ($411 - $349 = $62) in the single premium and $153/mo ($922 - $769 = $153) in the family premium that the District will pay over what it paid in 2001-2002. Those represent percentage increases of 17.76% for single and 19.89% for family.

It is also significant and needs to be said that in the face of these staggering numbers the parties were unable to agree on any plan design changes and neither party proposed any changes to benefits that could have ameliorated the premium increases. They need only look to one of the comparables to see the potential impact a change in the

[6] ($510 - $411 = $199)
[7] ($371 –$349 = $22)
[8] ($1144.78 - $922.00 = $222.78)
[9] ($817.88 -$769.00 = $48.88)

prescription drug benefit can have. Fort Atkinson's plan does not appear that much different from the other comparables plans except in one respect – the three tiered drug co-pays. Yet in the 2001-2002 and 2002-2003 years their premiums only increased by 9.51% and 9.08% respectively. Had a similar plan in this unit generated similar savings that would have meant a 20% smaller increase in premiums. Here the parties focused their final offers on maintaining the same plan design while fighting over premium contribution levels. Neither proposal addresses the obvious need to reduce the cost of health insurance for both parties. Rather the proposals are nothing more than cost shifting proposals. There is no demonstrable evidence in this record that shifting more of the cost from the District to its employees will have any impact on the continually escalating cost of health insurance, either in terms of reducing the rate of premium increase or reducing the total premium cost. In the undersigned's opinion those things can only come about from plan design changes. Fort Atkinson is an example of that.

In summary, the District has not offered a *quid pro quo* for it proposed reduction in its level of premium contribution from the 94% percent level in 2001-2002 to less than 81% in 2002-2003. Furthermore, the Union had already agreed to reduce the District's required contribution level from 97.8% in the prior contract to 94% in the first year of this agreement. Also, while the Union's offer after six months into the contract returns the District's contribution level back to 94% it is not without sacrifice on the employees' part. Because during the first six months of the contract the Employer's required contribution is only 77.8% of the total premium. For the contract year that translates to an average employee percentage contribution of 14.1%, and an average District contribution of 85.9%. Further, I am mindful of the "catch 22" for the District in terms of the notion of imposing a monetary *quid pro quo* requirement under circumstances such as these when any increases in wages and fringe benefits place a significant strain on the District's budget. Nonetheless, where, as here, an employer proposes a change in the *status quo* coupled with a significant diminution of the insurance premium contribution benefit of the magnitude present in this case and does not offer any quid pro, it cannot be seen as the more reasonable proposal when compared to an offer that also increases the cost to employees during the contract year, but to a lesser extent, and in the end maintains

the *status quo* from which to start at the problem again. Therefore, I have concluded the Union's offer is the more reasonable.

As with its wage offer, the District also proposes to freeze its salary addition election (SAE) contribution for those employees who elect not to take health insurance. It also proposes to remove the language in the contract requiring that the SAE contribution be the equivalent of 88.2% of the single health insurance premium. The District's offer is to contribute $328/mo or 64.3% of the single-family premium. The Union's proposal of $367 for the first six months of the contract is the equivalent of 71.9% of the $510.16 single premium and then goes back to 88.2% ($449.96) for the remaining six months of the contract. Again the District is proposing a change in the *status quo*. In the past the SAE contribution has been stated in dollar terms in the first year of the contract and in terms of a percentage of the single-family premium in the second year of the contract. This was the case both in the 1999-2000 contract and the 2001 –2003 contract. It is also the case that like as it did with the insurance premiums the Union agreed to a reduction in the SAE contribution level in the first year of the contract from 92% in the 1999-2001contract to 88.2%. It then proposes to continue the *status quo* of 88.2% by stating the required Employer SAE contribution in the second year of the contract as a percentage at the 88.2% level. Again, for the reasons discussed above, the undersigned believes the District has offered no *quid pro quo* for the proposed reduction in its SAE contribution.

As was the case with the health insurance contribution levels, the Union's offer returns the District's contribution level to the *status quo* six months into the contract after dropping to 71.9% for the first six months. The District's total SAE contribution for the year would amount to $3937.92 whereas the under the Union's proposal it would be $4901.76, a difference of $963.84 less under the District's offer. Again, in the case of the SAE the Union agreed to reduce the required Employer contribution form 92% in the prior agreement to 88.2% in the first year of this agreement. Yet, the District is seeking a further reduction to 64.3% as well as removing the percentage tie-in to the single health insurance premium amount. Again, as I concluded regarding the health insurance premium contributions, in this context the Union's offer regarding SAE is the more reasonable.

The statutory framework governing this proceeding requires the arbitrator to apply the following specific criteria that have been established for the evaluation of the parties final offers in deciding which offer to select.

> 7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal Employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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. [10]

The District, in its brief and reply brief, has spent considerable effort setting forth the factual basis for why it believes the "greatest weight" factor quoted above is outcome determinative of this dispute. In short, it concludes that the existing legislated revenue caps have so adversely impacted its fiscal situation that adoption of the Union's final offer would further unduly strain its budget and jeopardize its educational mission. According to the District, its deteriorating fiscal situation brought on by the state-imposed revenue caps, without the almost 40% increase in its employees' health insurance premiums for 2002-2003, has caused and will continue to cause the District to reduce staff, programs, and materials students need for their classrooms. It argues that every additional dollar going toward employee wages and fringe benefit increases will result in further strain on its budget, additional reductions and further jeopardize its educational mission.

The Union does not believe the "greatest weight" factor is outcome determinative in this case. It points to the District's allowable revenue growth of 46% since 1993-1994 and its membership growth of 8.72% during the same period. It also argues that the District's Fund 10 Balance was second among the comparable school districts and increased by over $500,000 from 2000-2001 to 2001-2002.

I agree with arbitrator Vernon's[11] conclusion regarding the "greatest weight" factor when he said that "it was meant to have Arbitrators, in individual cases and in appropriate circumstances, take into account the financial and budgetary influence, impact and pressures that come to bear under legislative revenue limitations". In the undersigned's opinion this is an appropriate circumstance in which to take those pressures into account. The statistics presented by both parties regarding the District's fiscal plight are numbing. There is no end of data from which both parties can argue the merits of their assertions that the State imposed revenue caps and resultant budgetary constraints support selection of their final offer. When pouring over the seemingly endless financial measuring sticks of the District's financial health one can easily

[10] Section 111.70(4)(cm) Wis. Stats.
[11] Tomahawk School District, WERC Dec.No.30024-A (2001)

understand the frustration that parents, students, taxpayers, employees, and board members must experience in attempting to sort it all out when trying to decide what is the right course to take regarding any particular issue that impacts the District financially.

I also agree with arbitrator Vernon that inclusion of this factor was meant to take into account more than whether the District has the financial ability to implement a particular final offer. But, I also believe that an employer's final offer does not automatically carry the day if it can be shown that adoption of the union's offer would exacerbate an already difficult fiscal and budgetary situation brought on by the State imposed expenditure limitations and revenue controls. It is but only one factor to be considered among the many legislatively established criteria to be utilized by arbitrators when deciding which final offer to select. As can be seen in the statutory criteria quoted above there are many other factors that also have to be weighed by the arbitrator even though none of them, standing alone, can be given the "greatest weight". Consequently, while the State imposed limitations on expenditures and revenue caps are to receive the "greatest weight" among the criteria considered that does not mean "controlling weight" or that it is the controlling factor. That seems clear from the legislative directive to arbitrators that they must give an accounting of his/her/their consideration of this factor in coming to a decision as to which party's final offer to select.

School Boards and Union's are caught in the jaws of a vise - the outrageously rapidly rising health insurance costs and the State imposed revenue caps. But, it is not only Wisconsin that is experiencing this continuing escalation of health insurance premiums, it is a national phenomenon. As one who regularly reads portions of several large daily newspapers from around the country, I note a week has not gone by in the past year without a story about a company discontinuing health insurance coverage for its employees and/or retirees, thereby adding to the already staggering millions of Americans without health insurance coverage. Many of the articles written about the escalating costs of health insurance attribute almost half of the cost to paying for prescription medicines. These events are forcing individuals in Wisconsin and around the country to reduce their standard of living in order to pay these ever rapidly rising premium costs and/or go without medical insurance. This crisis of rising health insurance costs cannot be solved at the bargaining table. The most that can be achieved in

bargaining is the parties can strive to find balanced and reasonable strategies to cope with the crisis and soften its impact on them.

In Wisconsin, the situation is exacerbated by the outmoded means of financing public education that pits homeowners and their frustration with continual escalating property taxes against school districts struggling to provide a quality education for their students under the burden of an ever increasing number of legislative initiatives requiring that they do more with less. In the undersigned's opinion, the imposition of revenue caps is testament to the fact that the school district financing system in this state is broken. The wages and fringe benefits of the secretaries, cooks, custodians and clerical assistants in school districts throughout Wisconsin have not brought on this financing crisis. And, I am not optimistic that the crisis will be resolved short of the near collapse of our state's public education system. In the mean time, local school boards and employee Unions are pitted against each other in ever more difficult times. One trying to continue to provide a quality education to its students with evermore shrinking resources and increasing mandates, and the other striving to prevent the erosion of their members wages and benefits and ultimately their standard of living. And, there are individuals like the undersigned increasingly thrust into the unenviable task of being arbiter of which is the most reasonable of unreasonable choices. While arbitrators may have become adept wordsmiths in applying the statutory criteria to explain a particular outcome, it can at times, nonetheless, be a daunting and overwhelming task. The task is no less daunting for the parties.

Arbitrator Vernon[12] articulated that when considering whether to grant a Union proposal for employee wage increases, in the face of revenue caps and the current school financing crisis, the question must be asked at what price to the district's educational mission. In this instance, the District has advanced its case that granting the Union's final offer will worsen its already strained budgetary situation. The Union, on the other hand, points to the District's revenue growth since 1993-1994 that has grown slightly faster than the statewide average growth rate. It also emphasizes that the District's Fund 10 Balance is second highest among its comparables. The Union, utilizing the District's costing that places the Union's 2002-2003 offer at $52,401 more that its own offer,

[12] Tomahawk, s*upra.*

argues that this increase amounts to only 2% of the District's existing Fund 10 Balance and only 0.3% of the District's total expenditures. It also argues that the District arrived at its cost figure for the Union's offer by utilizing the statutory QEO costing methodology employed in teacher bargains, and contends it utilization in this setting is inappropriate.

Regardless of the costing method employed to value the Union's final offer, the fact is that the Union's offer costs more than the District's. And the District's reliance on the "greatest weight" factor to support selection of its final offer hinges on its assertion that any additional monies spent on wages and fringe benefits will unduly strain its already strained budget and jeopardize its ability to fulfill its educational mission. I do agree with the Union that one can question whether utilization of the QEO cast forward method of costing is inappropriately employed as a costing methodology in this support staff bargaining unit. But, the more significant matter presented by the Union's arguments concerning the District's current financial situation is whether the District has appropriately, or unnecessarily and/or unwisely chosen not to tap its Fund 10 Balance to cover some on-going operating expenses in the current fiscal climate of rapidly rising operational costs and revenue constraints and instead made cuts to its operating budget which even it argues have come at a cost to its educational mission.

District Administrator Negley in his May 30, 2001 budget presentation (Board Exhibit 31) stated the District has "limited options given the current funding formula for public education, given declining school enrollment, and given the accelerating costs of utilities that are far out pacing inflation. " He went on to comment that "health insurance premiums for 2001-2002 will be increasing 22.6%, with double digit increases projected as far as the eye can see". Then he said

> " others have suggested that the school board simply borrow from its fund balance, its reserve fund, its savings account . . . This board and past boards have been very deliberate in the use of this fund in never allowing its uses for on-going operational expenditures except in cases of 'emergency'. Other school districts that have chosen the route of spending down their fund balances have eventually faced 'the day of reckoning'.

He then said the Board would be deciding that evening on a

> "policy regarding what it wants the fund balance to accomplish as a part of its financial philosophy. This will tell the community a lot about where the Board plans to go with the fund in the future."

The Board did make a decision about its fund balance and that policy is set out in Board Exhibit 55. Two significant aspects of that policy are that it "shall not be considered available to meet recurring operational expenses", and that the Board "shall strive to maintain a fund balance of not less than 12% of the anticipated General Fund 10 expenditure budget for the subsequent year."

The Union argues that the cost of its offer would reduce the fund balance by 2% and take it from 16.9% to 14.9%. The District argues that the unreserved portion of the fund balance is only 9.5% of the District's current budget which is below the 12% goal. I would also note that the Board policy would not permit its use in any event because it prohibits its use for "recurring operational expenses". I believe employee health insurance costs fall into that category.

The District so far has obviously chosen to adhere to what it considers a responsible fiscal management policy, but clearly at a price in terms of its educational mission as even it acknowledges. There is no question it could have chosen to amend its policy and reduce its Fund 10 Balance by the additional monies attributable to the Union's final offer cost. And, it could reduce the percentage of its General Fund 10 expenditure budget to be set aside as its fund balance, and/or permit utilization of the Fund 10 Balance for recurring operational expenditures. It could go to referendum to obtain additional funds to cover operating expenditures. But, these are policy decisions that are left to the District and not this arbitrator.

Clearly, the parties' arguments pertaining to the Fund 10 Balance and its appropriate utilization emphasizes the fact that the District is facing severe financial and budgetary strains brought on in part by the legislated revenue caps. That being the case, the "greatest weight" factor necessarily favors adoption of the District's final offer. However, as I stated earlier herein, that conclusion does not resolve the question of which offer to select. While the arbitrator is required to give the "greatest weight" to the current revenue caps, he/she must also give consideration to and weigh the other factors.

Arbitrators are also required to give "greater weight" to "economic conditions" in the Whitewater Schools jurisdiction than any of the remaining factors set out in section 7r of Section 111.70(4)(cm) Wis. Stats. The District has argued that the "greater weight" factor of economic conditions in the Whitewater area also supports adoption of its final offer. It points to the median household income as being nearly $10,000 less that in the comparable school districts, and that the county's per capita income is below the average of neighboring counties while its mill rate is $1.24 above the average of the comparable districts. The Union counters that Whitewater in 2002-2003 had the largest mill rate decrease of the comparables and now has a mill rate that is in the middle of the comparables.

The empirical data supplied to the arbitrator in this case shows that the District in 2001-2002 had the second highest property value per member of the comparable districts.[13] It also was 4th highest among the comparables in total revenue, and ranked 3rd in revenue per student. After examining the data, I am persuaded that the evidence presented is insufficient and inconclusive as to whether the economic conditions in the jurisdiction favor adoption of one offer over the other.

"The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement" is another of the statutory factors to be considered. In this case, as has been discussed earlier, the District has the money to fund the Union's final, and thus ability to pay is not a consideration in this case. But there remains the question of whether it is in the interest and welfare of the public to require that it do so. The District contends that in light of the areas low income and high tax rates the public interest supports selection of its final offer. It also points to the lack of turnover in this bargaining unit as evidence that the wage and benefit levels in this unit are competitive and attractive to current and prospective employees. The District argues that given the limits on its ability to raise revenue the interests of the public demand that rather than paying the lowest wage possible it must maintain a level of wages and benefits that will attract and retain high quality employees. The Union argues that the District's reliance on turnover statistics is misplaced when talking about the interest and welfare of the public.

[13] Board Exhibit 43.

Clearly, maintaining a skilled and trained work force engaged in supporting the educational mission of the District is important. The District argues that its current wages and benefits protect that interest. The question is what impact will adoption of its final offer have on the existing level of benefits, its ability to attract and retain high quality employees and thus serve the interests of the public. I am persuaded that it is not in the public interest for the District to so significantly reduce its contribution levels for health insurance and so drastically increase the employees' cost to maintain the protection. It will have created a two tiered benefit structure where the more highly paid professional and administrative employees will continue to enjoy the insurance protection at substantially less cost to themselves than will be the case in this bargaining unit. There is no question that will undoubtedly lower morale and productivity. Is that in the public's interest and welfare? Current trained employees might choose to take their skills to one of the comparable districts where they will pay significantly less for the health insurance protection. It is the case that the District's per household income is low but its property values high in comparison to the comparables. But, it is also the case that the turnover statistics cited by the District were for the period when it health insurance contribution levels were at the high end of the comparables. If its offer is selected that will no longer be the case, and in fact it will be substantially below the comparables. Then will it be able to retain and attract well qualified employees. As we all know, health insurance represents a significant portion of the total compensation of the support staff employees eligible to receive the insurance. For these reasons I am persuaded that it cannot be said with any degree of confidence that the interests and welfare of the public supports the selection of either offer.

Another of the factors requires "comparison of wages, hours and conditions of employment of municipal employees involved in the arbitration proceeding with the wages hours and conditions of employment of other employees providing similar services". In looking at the other comparable Districts, one can see that the percentage of the employee health insurance premiums paid by the districts in 2002-2003 range form 100% percent in Delevan-Darien and Elkhorn to 90% in Fort Atkinson and Jefferson. In East Troy the district contributes 94% as Whitewater did in 2001-2002. The total premium costs for 2002-2003 in those districts ranges from a high of $524.88 single and

$1182.70 family in East Troy to a low of $351.14 single and $965.63 family in Fort Atkinson. Whitewater ranks as having the 3rd highest total premiums in 2002-2003 at $51.16 single and 1144.78 family. That compares with the Whitewater employees receiving the third highest contribution levels for both single and family in 2001-2002 among the comparables. The percentage increase in the total premium cost among the comparables in 2001-2002 ranges from a 22.61% in Delevan-Darien to no increase in Jefferson. Whitewaters percentage increase in total premium cost in 2001-2002 was 17.27%. The other districts' percentage increases were 17.30% in East Troy, 13.79% in Elkhorn and 9.51% in Fort Atkinson. In 2002-2003 the comparables incurred the following percentage increase in total health insurance premiums: Delevan-Darien 21.74%, East Troy 28.60%, Elkhorn 23.43%, Fort Atkinson 9.08%, Jefferson 30.00%, and Whitewater 37.39%. In every case except Whitewater despite these increases in total premiums the employees continued to receive the same percentage contribution toward the premiums from the employer as before the increases. In Whitewater in 2001-2002, the first year of the contract, the employees agreed to a reduction in the District's contribution to premium from 97.8% to 94%.

A close look at the numbers reveals that in Fort Atkinson where they have agreed to a three tiered prescription drug co-pay system they experienced total premium increases of less than 10 % in each year. Whereas, the other comparables, none of whom had such a system in place, all experienced significant double digit percentage increases in their total premiums.

After reviewing the parties' arguments and the data relating to the employees' health insurance benefit in the comparable districts the arbitrator is persuaded that this factor supports selection of the Union's final offer.

The District also has proposed a wage freeze in 2002-2003. The Union proposes a $0.15/hour increase to all classification rates starting on 1/1/03. In looking at the other comparable wage settlements for 2002-2003, it can be seen that none proposed freezing wages across the board, even though as has been previously pointed out all but Fort Atkinson experienced very large percentage increases in their total insurance premium costs, albeit not as large as in this bargaining unit. Nonetheless, they were substantial increases. Depending on the classification, the 2002-2003 wage increases among the

comparables ranged from $0.19/hr (2.02%) to $0.48/hr (3.67%) for clerical/secretaries, $-0.62/hr (-5.12%) to $0.71/hr (4.6%) for custodians, 0.00/hr (0.0%) to 0.45/hr (4.95%) for food service, $0.21/hr (1.51%) to $0.58/hr (4.02%) for maintenance, and $0.13/hr (1.47%) to $0.44/hr (4.42%) for paraprofessionals. Except in Jefferson, where there was a reduction in the Custodian II's starting and maximum rates and in Delevan-Darien where it did not increase the starting rate for Cooks, all of the other comparable support staff classifications wage rates were increased. Clearly, the external comparables to not support the District's wage freeze proposal.

The District also argues that its offer to this bargaining unit is comparable to the settlement it reached with the represented teacher bargaining unit as well as its unrepresented employees. First, the District did not include the unrepresented support staffs in the districts of Milton and Palmyra-Eagle for comparison purposes. Furthermore, I agree with the majority of arbitrators that have concluded only organized districts should be included in the pool of comparable districts. Then applying the same logic used in reaching that conclusion so only should represented employees of the District be included in the pool of internal comparables. That then leaves the teacher bargaining unit as the lone internal comparable. In that bargaining unit the package increase was 4.6% for 2002-2003. It was slightly less that the District's offer to this bargaining unit, and also the teachers did not receive a pay or step increase and elected to use the available funds to offset the increase in health insurance costs.

However, it is because the teachers receive significantly higher pay than employees in this bargaining unit that by agreeing to a salary freeze that they were able to still maintain the District's health insurance premium contribution levels at 97.8%. Even with a wage freeze in this bargaining unit as the District is proposing, its health insurance premium contribution level drops from 94% to 80.5%. And, the Union's $0.15 per hour proposed wage increase for 2002-2003 only generates $26 per month to a full time (2080 hour) employee. Furthermore, many employees in this bargaining unit are not full time. Board Exhibit #50 shows that of the 55 employees listed only 10 worked 2096 hours, 7 worked 1572 or 1592 hours, and 3 worked 1672 or 1632 hours. The $.015 per hour wage increase the Union proposes for those 55 employees, with their average wage being $11.22 per hour, is the equivalent to 1.33% increase or lift to the existing wage rates, and

for all but 10 employees less that $26/month. Also, because the Union's proposed $0.15/hour wage increase dose not start until 6 months into the contract year it only generates $13/month on an annualized basis. Thus, freezing support staff employee wages, as the District's offer proposes to do, doesn't generate anywhere near the kind of dollars to be applied to health insurance premiums that a salary freeze in the teacher bargaining unit does. A starting Whitewater teacher's salary is $29,411/year whereas the starting cook/cashier/clerical wage is 9.57/hour which for a full time employee (2080 hours) is $19,905.60/year. That is a $7505.60/year difference. The top step for the Maintenance classification is $13.79/ hour or $28,683.20/year for a full time employee whereas the schedule maximum for a teacher is $52,324/year. That is a difference of $23,640/year. Clearly, there is substantially more money generated by freezing teacher salaries than by freezing support staff salaries. Yet, the total health insurance premium increases were the same for all employees – teachers and support staff. Accepting those differences explains the majority of the higher package cost of the Union's offer as measured against the District offer. For that reason the undersigned is not persuaded that the internal comparable teacher salary freeze and resultant 4.6% total package percentage increase supports the District's final offer on wages, health insurance premiums, and SAE contribution, and the resultant 4.7% total package offer in this unit.

Another factor to be considered that was argued in this case is the consumer price index (cost of living). The District contends that this factor favors adoption of its final offer. It points to the U. S. Department of Labor CPI data that showed an increase of 2.0% in 2002-2003, and argues that the Union's 7.4% package increase far exceeds the rate of inflation in terms of the increased cost of living. The Union, on the other hand, cites Arbitrator Eich's decision in Manitowoc School District, WERC Dec. No. 30470-A (5/03) arguing that it makes little sense to compare the increased cost of fringe benefits to measures of changes in the cost of living. In that decision Eich said

> "cost of living should be compared to the percentage wage increase and not to the cost of the package; and this is so because '[i]t is the wage increase [not the cost to the employer] that insulates employees against erosion of the dollar caused by inflation."

The Union argues that therefore using its proposed wage increase rather than the cost of the total package shows that the Union offer is preferable to the District's.

The Consumer Price Index (CPI) is based upon a sampling of the prices of food, clothing, shelter, fuel, transportation, medical services and other goods and services purchased by consumers for day to day living. It describes shifts in the purchasing power of the consumer's dollar.[14] Therefore, I concur with the Union and arbitrator Eich and find that the District's argument that the Union final offer package cost far exceeds the rate of inflation and conclusion that the District's offer is preferred is misplaced.

Neither party spent any time discussing the wage increase proposal vis-a-vis the CPI. Rather the Districts focus was on the package cost vis-a-vis the CPI. Clearly, the Union's $0.15 an hour across the board wage increase is more in line with the increase in the CPI than the District's proposed wage freeze which is not. That is true whether one considers the cost to the District, which is less than the lift because the rate is only in effect for the second half of the contract year, or the lift to the average wage rate of 1.33%. Thus, the CPI favors adoption of the Union's wage proposal.

The only factor, of those argued by the parties, that favors adoption of the District's offer is the "greatest weight" factor. Clearly, selection of the Union's final offer will place additional strain upon the District's budget at a time of fiscal crisis, but as the District argued, any wage and fringe benefit increase will strain its budget. As discussed above, merely because the revenue caps are to receive the "greatest weight" of any of the identified factors that does not necessarily mean that if the "greatest weight" factor supports selection of the employer's offer that it is that offer that must be selected. Rather, it is only one of many factors, and when they are taken together it may very well turn out that the sum of the other factors outweighs the "greatest weight" factor and dictates the selection of the union's offer. In the undersigned's opinion that is the situation in this case. The external comparable factor supports selection of both the Union's wage and health insurance premium/SAE proposals over those of the District, notwithstanding the difference in total package costs of the offers. The CPI favors adoption of the Union's wage proposal, not the District's. The substantial change in the *status quo* on District health insurance premium contribution levels, and the SAE

[14] Roberts Dictionary of Industrial Relations, 4th Ed.

contribution level and contract language without any *quid pro quo* favors adoption of the Union's offer. Thus, the undersigned believes the "greatest weight" factor is outweighed by the other factors that support selection of the Union's final offer, and that overall the factors support selection of the Union's offer.

Based upon the evidence, testimony, arguments presented, and application of the statutory criteria contained in Section 111.70 (4) (cm) that are to be utilized in determining which offer to select, the undersigned enters the following

AWARD

The Union's final offer is selected and shall be incorporated into the parties' 2002-2003 collective bargaining agreement.

Entered this 10th day of September, 2004.

Thomas L. Yaeger
Arbitrator