

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)	
)	
Between)	
)	
MIDSTATE TECHNICAL COLLEGE)	Decision No. 30800-A
(Faculty))	Case 82 No. 62796 INT/ARB 10008
)	
And)	
)	
MIDSTATE TECHNICAL COLLEGE)	
FACULTY ASSOCIATION)	
_____)	

Impartial Arbitrator

William W. Petrie
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Hearing Held

Wisconsin Rapids, WI
June 22, 2004 & July 20, 2004

Appearances

For the District

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Mid-State Technical College and the Mid-State Technical College Faculty Association, with the matter in dispute the salary schedule to be applicable to the faculty members in the bargaining unit during the 2003-2004 school year. The underlying collective bargaining agreement covering the faculty bargaining unit, which was in effect from August 24, 2001 through August 23, 2004, contains a seventeen step and nine lane salary structure, with agreed upon salaries covering the 2001-2002 and the 2002-2003 school years, and provides for the "2003-2004 salary schedule to be negotiated."¹ After their negotiations pursuant to the contractually provided *salary reopener* had failed to result in agreement, the Association, on October 6, 2003, filed a petition with the Wisconsin Employment Relations Commission alleging the existence of an impasse and seeking final and binding arbitration of the matter. Following an investigation by a member of its staff the Commission, on February 12, 2004, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration, and on March 22, 2004, it appointed the undersigned to hear and decide the matter.

A hearing took place in Wisconsin Rapids, Wisconsin on June 20 and July 22, 2004, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and both thereafter closed with the submission of briefs and reply briefs, after the receipt and distribution of which the record was closed by the undersigned.

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference into this decision, the parties propose as follows:

- (1) On January 23, 2004, the Employer published a "**Tentative Final Offer of Mid-State Technical College**," proposing "No increase to the 2002-2003 Faculty Salary Schedule contained in Appendix B of the 2001-2004 Master Contract Agreement." On February 2, 2004, it confirmed in writing to the WERC Investigator that it "...does not intend to change its final offer dated January 23, 2004.
- (2) On January 19, 2004, the Association published a "**Final Offer of**

¹ See the contents of Joint Exhibit 1, at Article VIII, Section B(1), at page 32.

the Mid-State Technical College Faculty Association," proposing to increase the 2003-2004 Faculty Salary School in Appendix B "...by three percent (3%) per cell."

THE ARBITRAL CRITERIA

Section 111.70(4)(cm) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"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 legislature to 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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 hearing.
- 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."

POSITION OF THE ASSOCIATION

In support of the contention that its final offer is the more appropriate of the two offers before the arbitrator in these proceedings, the Association emphasized the following principal considerations and arguments.

- (1) By way of introduction it characterized its position in this matter as follows.
 - (a) The matter in dispute is the result of a contractual wage reopener for faculty members employed by the District for 2003-2004: the Association has proposed a 3% increase per cell to the 2002-2003 salary schedule; and the District has proposed a zero increase.
 - (b) The District's strategy has been to put everything possible into evidence, in an attempt to bury the relevant facts in the case.
 - (c) No amount of irrelevant evidence can, however, overcome four critical facts: first, the District is financially healthy and can afford the cost of the Union's offer; second, the internal and external comparables overwhelmingly show the reasonableness of the Union's final offer; third, the Union's offer more closely follows what the parties would have agreed to at the bargaining table; and, fourth, the cost-of-living criterion supports selection of the Union's rather than the District's final offer.
- (2) The economic conditions of the District and Wood County clearly establish that they have the ability to meet the Union proposed wage settlement.
 - (a) The District is in solid financial condition.
 - (i) It has not identified any state-imposed expenditure or revenue restriction which would trigger the *greatest weight criterion*, and thus prohibit it from meeting the Union's final offer.
 - (ii) The District, as a technical college, is not covered by Section 111.70(4)(cm)(5) of the Wisconsin Statutes, regarding *qualified economic offers*.²

² Citing the *decision of Arbitrator Krinsky in Chippewa Valley Technical College*, Dec. No. 28698-A (9/96).

- (iii) Its solid financial condition and ability to pay are recognized in its June 30, 2003, financial statement which indicates that the District has "continued to maintain a strong financial position", that it has a "proportionately high level of reserves" and will continue to be financially healthy in the future because its "strong enrollments provide relatively good economic security and business continuance."³
- (iv) As of June 2002, it had a General Fund Balance of \$5,939,349, an amount in excess of 14% of its budget.⁴
- (v) Section 38.16 of the Wisconsin Statutes provides a maximum mill rate for technical colleges of 1.5 mills; for at least the past ten years, however, the District's mill rate has been much lower than 1.5 mills.⁵
- (vi) Despite its claim of financial hardship, the District increased the wages of various other employees: it increase the wages of *all* other employees in 2003-2004; it increased administrator salaries by 2.5% in January 2004, and by an additional 2.5% in July 2004; the custodial unit received a 3.25% wage increase for 2003-2004; and the support staff unit, which restructured its salary schedule, also received raises of .64% to 1.56% for 2003-2004.⁶
- (vii) The District cannot show an *inability to pay* the additional cost associated with the Union's final offer, and instead shows an *unwillingness to pay*, which cannot be assigned determinative weight in the final offer selection process.⁷

In accordance with the above, therefore, the District is clearly able to meet any "limitations on expenditures that may be made or revenues that may be collected by a municipal employer."⁸

- (b) The local economy supports the Union's offer, and arbitrators are to "give greater weight to economic conditions in the jurisdiction of the municipal employer."⁹

³ Citing the contents of Association Exhibit 6(14-15).

⁴ Citing the contents of Employer Exhibit 14(10).

⁵ Citing the contents of Association Exhibits 7(44) & 8.

⁶ Citing the contents of Association Exhibits 10, 11(2) & 25.

⁷ Citing the *decision of the undersigned* in Shiocton School District, Dec. No. 27635 (12/93), and that of Arbitrator Baron in Sheboygan County Institutions, Dec. No. 28422-A (1/96).

⁸ Citing Section 111.70(4)(cm)(7) of Wisconsin Statutes.

⁹ Citing Section 111.70 of Wisconsin Statutes.

- (i) The economic conditions in Wood County have continued to improve: it has a healthy and growing tax base; property values have continued to increase annually since at least 1998; projected population growth from 2000 to 2020 could reach 8.9%; total personal income for residents increased 4.4% in 2002; per capita personal income increased 4.6% in 2002, a gain greater than those in the majority of Wisconsin's State's counties; the Wisconsin Rapids-Marshfield area had the 7th largest increase in per capita income in Wisconsin between 2000 and 2002; and the unemployment rate in Wood County is considerably lower than in neighboring counties.¹⁰
- (ii) Wage increases for other Wood County employees demonstrate its financial viability; average annual wage increases for all industries in 2002 was 3.7%, a higher average than received by the faculty in 2002, and higher than the Union's current offer of 3%.¹¹
- (iii) The only evidence advanced by the Employer in this area is *cherry picked* newspaper articles and pictures of store fronts in Wisconsin Rapids which, unlike the above referenced data, is unreliable, and should be afforded little weight in these proceedings.¹²
- (iv) The crux of the District's arguments at the hearing was not that it couldn't afford the Union's offer, but that it would not be popular due to the financial straits of the paper industry and the number of worker dislocations.¹³ In point of fact, however, no other represented group in Wood County or Wisconsin Rapids suffered a wage freeze; to the contrary, most received 3% or more in wage increases in 2003-2004.¹⁴

In accordance with the above, therefore, the economic conditions in Wood County do not support a wage freeze in this case.¹⁵

- (3) The appropriate comparables are those proposed by the Union.

¹⁰ Citing the contents of Association Exhibits 5, 12(1-2), 13(3), 14, 15 & 16(2).

¹¹ Citing the contents of Association Exhibit 12(8).

¹² Citing the contents of Employer Exhibits 44-75.

¹³ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 116-117 and 131-133.

¹⁴ Citing the contents of Association Exhibit 22.

¹⁵ Citing the *decision of the undersigned* in Door County, Dec. No. 25429-A (1/89).

- (a) The parties agree that the faculty units at Blackhawk, Chippewa Valley, Lakeshore, Moraine Park, Nicolet, Northcentral, Southwest, Western and Wisconsin Indianhead are in the primary comparables,¹⁶ but the Union also proposes and the District disagrees with inclusion of Fox Valley and Northeast, based upon a previous arbitration between the parties.¹⁷
- (b) The Employer opposes the inclusion of Fox Valley and Northeast based upon their size and equalized value to support the educational programs.¹⁸ In their previous arbitration, however, the Employer urged the inclusion of these two colleges, and their sizes and equalized value differentials have not changed since that time.¹⁹ No basis has been established for failing to follow the previously established comparables in these proceedings.²⁰

In accordance with the above, the Arbitrator should adopt the Union proposed primary comparables pool.

- (4) The Union proposed wage increase is more reasonable than the District's offer of nothing.
 - (a) The Union proposal is more in line with wage increases at other Technical Colleges.
 - (i) The Union proposed wage increase of 3% per cell is consistent with the negotiated increases at the comparable technical colleges.²¹
 - (ii) All but one of the fifteen comparable's faculty units received wage increases, except for Western, a technical college in a very different financial situation than Mid-State.²²
 - (iii) Thirteen of the fifteen technical colleges and all of the proposed primary comparables except for Western, settled for wage increases equal to or higher's than the Union's offer when 2002-03 and 2003-04 are combined.²³

¹⁶ Citing the contents of Association Exhibit 6, Employer Exhibit 86, and the *testimony of Mr. Beckstrom* at Hearing Transcript, page 324(22-25).

¹⁷ Citing the contents of Association Exhibit 3, and the decision of *Arbitrator Imes*, in Mid-State VTAE -and- Mid-State Faculty, Dec. No. 28269-A (11/95).

¹⁸ Citing the *testimony of Mr. Beckstrom* at Hearing Transcript, pages 325(23)-326(4).

¹⁹ Citing the contents of Association Exhibit 6(3).

²⁰ Citing the *decision of the undersigned* in Random Lake School District, Dec. No. 30545-A (10/03).

²¹ Citing the contents of Association Exhibit 17.

²² Citing the contents of Association Exhibit 7(44-45), showing *Western* at the 1.5 mill rate for 2002-2003 and 2003-2004, while *Mid-State* has been below the 1.5 mill rate since 1994.

²³ Citing the contents of Association Exhibit 17.

- (b) That comparisons in general are the most important arbitral criteria, and intraindustry comparisons in particular are normally the most important types of comparisons.
- (i) Citing a decision of the undersigned and distinguishing the award, wherein a school district was found to face "serious, disproportional and continuing financial difficulties due to its *substantial ongoing decline in enrollment* and its *revenue limit situation*, which have thus properly triggered application of the greatest weight factor in the case at hand" and because the District's proposed wage increases were "both balanced and reasonable."²⁴
- (ii) In contrast with the above described case, the Employer is not a K-12 district, is thus not subject to the ECO, is not at the 1.5 mill revenue limit, and has not been at the mill rate limit for at least ten years; its enrollment is not declining, but has continued to increase over at least seven years; and, despite its financial situation, the district referenced above had been offering 1% and 2% increases plus supplemental .10¢ and .20¢ per hour increases, while in the case at hand the District is offering **nothing**, which is neither balanced nor reasonable.
- (iii) The District has offered nothing to suggest that its faculty members do not deserve a wage increase in line with the comparables, but rather offered considerable evidence of the *financial straits of the paper industry, dislocation of workers in the County, declining amounts of state financial aid, the possibility of TABOR, new GASB requirements, and public pressure to keep taxes down*. Each of the District's witnesses, however, conceded that none of the cited concerns were specific to the District, but applied to all technical colleges statewide.²⁵ Even though all other technical colleges faced the same concerns, all in the same financial condition as Mid-State settled with increases for their faculties, most at 3% or more per cell.
- (iv) The District was in a better position to offer the wage increase to the faculty than it originally expected, because its concern over alleged "acute public awareness" did not prompt any members of the public to attend its budget presentation, health insurance costs rose to only approximately one-half of what was expected, Governor Doyle vetoed the property tax freeze, and TABOR, not even an issue at the time of the bargain, eventually failed in the legislature. The District, however, persisted in its efforts to inflict a wage freeze upon the faculty.²⁶

²⁴ Citing the *decision of the undersigned in Random Lake School District*, Dec. No. 30545-A (10/03).

²⁵ Citing the *testimony of various County witnesses, at Hearing Transcript*, pages 154(4-7), 173(12-15), 174(14-15, 24-25), 175 (1-2) and 249(3-5).

²⁶ Citing the *testimony of Mr. Clark and Mr. Dahl at Hearing Transcript*, pages 168(4-9), 197(18)-198(18), 242(1-12), 244(1-3), 244(23)-245(1), 246(13-

- (b) The Union's wage offer will maintain the District's faculty salary benchmark rankings from 2001-02 and 2002-03, while the District's offer would cause the rankings to drop drastically.²⁷
- (i) Maintaining the existing faculty rankings is in the interest and welfare of the public because these considerations are best served through the recruitment and retention of qualified employees.
- (ii) The importance of the above considerations were emphasized by the testimony of the District's President, who emphasized that recruiting the best individuals were the stock and trade that the College had to sell, that it recruited long and hard and at great expense, to recruit the very best in all categories of employee groups.²⁸
- (iii) That employees are best recruited by offering competitive wages and fringe benefits.²⁹ A wage freeze will not assist the District in retaining the best employees which it worked so hard to recruit; only the Union's offer serves as an incentive for such faculty members to remain with the District.
- (c) The Union proposed wage offer is more reasonable, in light of wage increases for other union represented employees in the District.
- (i) Two other represented groups work in the District, the custodians and the educational support staff. It settled with the custodians for a 3.25% wage increase for 2003-04 and the support staff agreed to a .64% - 1.56% raise, because they had restructured their salary schedule for 2003-2004.³⁰
- (ii) The District can provide no justification for inflicting a wage freeze upon faculty members when no other group in the District was forced to bear the same burden.
- (5) The bargaining history of the parties supports a wage increase.
- (a) Interest arbitrators "...operate as extensions of the contract negotiations process, and their normal goal is to attempt, as closely as possible, to put the parties into the same position they would have occupied had they been able to reach full agreement at the bargaining table."³¹

²⁷ Citing the contents of Association Exhibits 20 & 21.

²⁸ Citing the *testimony of Mr. Clark* at Hearing Transcript, page 180(2-8 & 24-25); citing also the *decision of Arbitrator Flaten*, in Vernon County (Courthouse), Dec. No. 28022-A (1/95), wherein he emphasized the value of having experienced employees in virtually all jobs.

²⁹ Citing the testimony of Ms. Kiesling at Hearing Transcript, page 148(1-6).

³⁰ Citing the contents of Association Exhibit 25.

³¹ Citing the *decision of the undersigned* in Random Lake School District, Dec. No. 30545-A (10/03), and *Arbitrator Weisberger* in City of Cudahy, Dec. No. 14361-A (6/76).

- (b) The most recent bargaining history of the parties evidences that the faculty never would have accepted a wage freeze in the third year of the agreement.³²
 - (c) At least as far back as 1979, that there has never been a wage freeze.³³
 - (d) The parties agreed to a 3% wage increase in two of the three contract years.
 - (e) The record indicates that the Union's proposed 3% wage increase is closer to the agreement the parties would have reached at the bargaining table than a wage freeze.
- (6) The Union's final offer is more reasonable in light of increases in the cost-of-living.
- (a) That the CPI for all urban consumers increased 2.1% between July 2002 and July 2003.³⁴
 - (b) Arbitral history in applying this criterion supports, including the principle that it should be applied to wages rather than to total package costs, favors selection of the final offer of the Union.³⁵

In conclusion it urges that the Union's final offer should be selected by the undersigned on the following summarized bases:

- (1) The "greatest weight" factor favors the Union because the relevant state regulations which place limitations on expenditures and/or revenues (levy limits) have not in any way impeded the District from raising sufficient revenues to fund the Union's final offer; to the contrary, the District is in excellent financial condition and can well afford the Union's final offer.
- (2) The "greater weight" criterion is supportive of the Union's proposed wage increase because the local economic conditions are well above the average of other counties and the State of Wisconsin as a whole.
- (3) The Union's offer is consistent with wage increases at other Wisconsin technical colleges.
- (4) The bargaining history of the parties and the applicable increase in cost-of-living support the Union's offer over the District proposed wage freeze.

³² Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 66(14)-67(9), 64(12-65(8), 67(19-25), 68(12-20) and 68(25)-69(5); see also the contents of Association Exhibit 26, page 5.

³³ Citing the *testimony of Mr. Dahl* at Hearing Transcript, page 249(11-25).

³⁴ Citing the following Department of Labor website:
<ftp://ftp.bls.gov/pub/news.release/History/cpi.0815203.news>.

³⁵ Citing the following arbitral decisions: *the undersigned in Germantown School District*, Dec. No. 28520-A (7/96); *Arbitrator Eich in Manitowoc Schools (custodians)*, Dec. No. 30473-A (5/03); *Arbitrator Grenig in North Central Technical College Educational Support Personnel*, Dec. No. 30765-A (8/04).

In its *reply brief* the Union emphasized or reemphasized the following considerations and arguments.

- (1) That the College's financial health and the local economic conditions support selection of the Union proposed wage increase.
- (2) That either set of comparables overwhelmingly support the Union's final offer.
- (3) That this arbitration is a salary reopener only, and it does not and should not involve health insurance.
- (4) That the District has the ability to pay the Union's final offer, and its portrait of local economic conditions is neither accurate nor unique.
- (5) That the parties would never have agreed at the bargaining table to a 0% wage increase in the third year of the contract, and the District's final offer is far from reasonable.

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two offers before the arbitrator in these proceedings, the College emphasized the following principal considerations and arguments.

- (1) That the following introductory considerations are material and relevant in these proceedings.
 - (a) The State faced and has continued to face a substantial budget deficit since negotiations for the wage reopener commenced in March, 2003: state aid to local government units was frozen or reduced; state lawmakers, sensitive to the growing unrest among taxpayers and concerned that cuts in state aids would merely be passed on to local taxpayers through property tax increases, legislated a plan to limit property tax increases, which failed a veto override by a single vote in July, 2003; the Taxpayers' Bill of Rights (TABOR) has been advanced to control increases in property tax rates.
 - (b) Serious economic difficulties face the businesses, communities and taxpayers within the service area for the Mid-State Technical College, primarily Wood, Portage and Adams Counties.
 - (i) Substantial and permanent job cuts from local business and industry, business closures and the ripple effect on the retail and service sectors have taken their toll on the local economy.
 - (ii) Since the area is heavily reliant on the paper industry, the economic downturn arrived later and the recovery will be extended beyond other areas of the State.
 - (iii) As a result of the significant and above average worker dislocation in its service area, the College faces higher demands for its services to assess and train displaced workers, at the same time that reductions in state and federal aid place a heavy

burden on the property tax base to fund its operations. As evidenced by growing tax payment delinquencies, local taxpayers are struggling to meet the burden of their property tax payments.

- (c) The College is in the third year of a three-year plan to implement an associate degree in nursing (ADN), and to expand other health care programs.
 - (i) In the last two years it has engaged in the planned and programmed use of \$867,369 from its reserves, in large part to fund the development of the ADN program.
 - (ii) The College budget for FY 2004 projects an additional draw down of the fund balances of \$472,283 for program development.
- (d) College faculty are highly paid professionals, their wages and benefits are higher, in some cases significantly higher, than their peers are comparable colleges, and the health insurance costs exceed those of other colleges, local business and industry, and local K-12 school districts.
- (e) The College determined that a substantial property tax increase for 2003-2004 would be untenable for local taxpayers and would serve to fuel the drive for property tax limits at the State level, and no increase in the salary schedules was budgeted for either faculty or administrative employees for FY 2004.
- (f) The College's wage reopener offer is consistent with the economic conditions of its service area, the financial position of the College and the wage and benefit programs of other College professionals.
- (g) The decision in this case will turn on the application of the statutory criteria which accord greater weight to local economic conditions.
 - (i) In changing the statutes to mandate greater reliance on local economic conditions, the Legislature created a new framework for interest arbitration where comparability, both external and internal, which heretofore almost exclusively governed the outcome of most arbitration awards, was no longer to be the determining factor.
 - (ii) Where, as here, the local economic conditions and resulting taxpayer distress force local government officials to make difficult budget or resource allocation decisions, arbitrators were given new statutory authority to reorganize those local decisions.
- (2) While the issue before the Arbitrator involves the Association proposed 3% across-the-board increase in the salary schedule for the 2003-04 contract year and the College proposed total package includes no such salary schedule increase, its offer is *not a wage freeze for the bargaining unit as a whole*.
 - (a) The faculty salary schedule affords annual wage increases based on years of service and additional educational achievement.³⁶

³⁶ Citing the contents of Appendix B to Joint Exhibit #1

- (b) The 59 faculty members who have not reached the maximum service step on the schedule will receive, on average, increases of \$1,242 or 2.43% for 2003-04; these step increases will cost the College \$73,288 in additional wages alone.³⁷
- (c) The total package cost increase for FY 04 under the College's final offer exceeds \$230,000, and the average faculty member's total compensation is \$79,330.³⁸
- (3) The statutory factor given *greater weight* supports the College's final offer.
- (a) The statute clearly requires greater weight to "economic conditions in the jurisdiction of the municipal employer than any of the factors specified in subd. 7r."³⁹ This factor, standing alone, therefore overshadows any other factors set forth in the statute.
- (i) A careful review of local economic conditions mandates adoption of the College's offer.
- (ii) Arbitral application of the *greater weight* factor over *other factors* in similar circumstances support the position of the College.
- Relevant local economic conditions include such factors as *high municipal tax rates, loss of jobs* (particularly manufacturing jobs), *unemployment rates, depressed income* of local residents, *per capita income below the Wisconsin average, loss of state revenue sharing, and population decline*.⁴⁰
 - The necessity to reduce county costs and the property tax based on the *general economic conditions within the County*, including such factors as *unemployment rate, loss of manufacturing jobs, average county wage and average per capita income*.⁴¹

³⁷ Citing the contents of Employer Exhibit 4.

³⁸ Using figures derived from Employer Exhibits 5-8.

³⁹ Citing Section 111.70(4)(cm)(7g) of the Wisconsin Statutes.

⁴⁰ Citing the decision of Arbitrator Weisberger in City of Princeton, Dec. No. 30700-A (2004).

⁴¹ Citing the decision of Arbitrator Zeidler in Manitowoc County (Health Care Center), Dec. No. 30514-A (2003).

- Because an employer has the apparent ability to pay a salary increase does not mean that it has the right or obligation to fund unreasonably high salary increases under the greatest and greater weight criteria, respectively.⁴²
- The critical needs of local businesses and industry and the large numbers of displaced workers militate against larger tax increases or layoffs as ways to fund the wages demanded by a union.⁴³
- When there is a significant part of a local population having difficulty meeting the property tax burden at its current level, some fiscal restraint is prudent.⁴⁴

(iii) The College has stated that it will not, as a matter of sound public policy, utilize reserves to pay for operating expenses and, therefore, the current near term choices facing it are *either* to increase taxes or to reduce service, thereby occasioning faculty layoffs.

(b) There have been *significant job losses* within the service area of the College.

(i) The three-county service area for the College is heavily dependent upon the paper industry and the high paying jobs it provides, including such companies as Stora Enso of North America, St. Laurent Paperboard and Domtar AW Corp.⁴⁵

(ii) *Business reversals at Stora Enso* have been heavily documented: job cuts are projected to reach 1,050; unions were asked in early 2004 to renegotiate an existing agreement or face shutdown of the Wisconsin Rapids operation; because of national and global recession, workers were asked to make wage concessions and to contribute more toward health insurance; many management employees have been displaced with the drop in corporate profits in 2003, and the remaining salaried employees received no 2004 wage increases; and the lost jobs will not return to the Wisconsin Rapids area.⁴⁶

⁴² Citing the decision of the undersigned in Rusk County (Highway Department), Dec. No. 29258-A (1998).

⁴³ Citing the decision of *Arbitrator Vernon* in Tomahawk School District, Dec. No. 30024-A (2001).

⁴⁴ Citing the decision of *Arbitrator Michelstetter* in Eau Claire County Sheriff's Department, Dec. No. 30152-8 (2002).

⁴⁵ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 128-130, and the contents of Employer Exhibits 43 and 44.

⁴⁶ Citing the contents of Employer Exhibits 46-54, 57, 58 and 62, and the *testimony of Mr. Beckstrom* at Hearing Transcript, pages 282 and 291.

- (iii) Lacking the stabilizing influence of the high paying paper related jobs, the local economy has been hard hit in the area retail and food service sectors as well as other business sectors: small businesses have been affected; manufacturing, retail and other service industry facilities stand vacant; for the period from July 1, 2000 through June 30, 2004, over 3,600 jobs were lost, two-thirds of which were in high paying manufacturing positions.⁴⁷
 - (iv) Until recently, the area has not pursued an economic development plan to create a diverse employment base: unemployment rates in Adams, Portage and Wood Counties were at all-time four year highs in the first quarter of 2004 and have consistently remained above the state average; and Wood County is projected to be among the slowest growing areas of the state over the next several decades.⁴⁸
- (c) Economic conditions in the three county area have created an *adverse impact on tax collections*.
- (i) In 2002, the latest such data available, taxpayers in each of the three county area reported adjusted gross income levels lower than the year before, average per capita personal income for the three county area has been below the State average since 1999, which divergence grew to over 16% in 2001, and 7.7% of the College's service area live in poverty.⁴⁹
 - (ii) Taxpayers are finding it increasingly difficult to meet the tax burdens imposed by local taxing authorities, and increasing the tax burden, as the Union's offer would do, would further exacerbate the problems with recovery of the local economy.
 - (iii) The 2003 increases in delinquent taxes in the cities and counties served by the College were as follows:
Adams County - \$390,000 to \$877,000 -- up 125%;
Portage County - \$490,000 to \$1,097,000 -- up 124%;
City of Stevens Point - \$644,649 to \$841,570 -- up 34.5%; and City of Wisconsin Rapids - \$187,571 to \$233,957 -- up 24.7%.⁵⁰
- (d) Other units of local government within the College's service area have retrenched because of the stark realities of the local economy.

⁴⁷ Citing the *testimony of Ms. Kiesling and Mr. Beckstrom* at Hearing Transcript, pages 122, 128-130, 282 and 291, and the contents of Employer Exhibits 16, 50, 51, 53, 56, 57, 62B, 68 and 75.

⁴⁸ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 138 and 143, and the contents of Employer Exhibits 17 and 55.

⁴⁹ Citing the contents of Employer Exhibits 93, 94 and 96, and the *testimony of Mr. Clark* at Hearing Transcript page 157.

⁵⁰ Citing the contents of Employer Exhibit 96D.

- (i) The City of Wisconsin Rapids has reduced service levels and permanently reduced 18 positions since 1990; Wood County eliminated 9.1 positions in 2004; and the School District of Wisconsin Rapids has eliminated 26.8 positions.⁵¹
 - (ii) Despite loss of state revenues, local units of government have moderated their tax levy increases and some have even reduced their 2004 property tax levy.
 - (iii) With a FY tax levy increase of 4.35%, the College has the second highest levy increase of the local taxing units in the service area.⁵²
 - (iv) Unlike cities and counties, staff or program cuts at the College would have long-term, deleterious consequences; accordingly, it has to strike an appropriate balance in the use of its limited resources, which balance would be impossible if the Union's wage offer were awarded.
- (e) Displaced workers have limited options.
- (i) Without a diverse economy and with a shrinking employment base, the ability of displaced workers to utilize their current skills and receive equivalent wages is extremely limited: some will retrain for other employment, and thereafter compete for the limited number of jobs at comparable pay levels; some will take lower paying jobs, thereby continuing a downward economic spiral; and some will relocate out of the area, the most devastating option to the local economy due to loss of population and critical skills.⁵³
 - (ii) Enrollment in each of the area K-12 school districts has already locked into a pattern of decline.⁵⁴
 - (iii) The Workforce Dislocation Unit which operates under the Workforce Investment Act, has served an increasing number of employees over the past several years in the College's service area. Once workers are dislocated, the Workforce Dislocation Counselors assist them in the mandatory skills assessments, career testing, development of job seeking skills, and providing funds for training programs.⁵⁵
- (f) The College plays an ongoing and critical role in economic development.

⁵¹ Citing the contents of Employer Exhibit 96A.

⁵² Citing the contents of Employer Exhibits 96B & C.

⁵³ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 113, 136-138 and 144-145.

⁵⁴ Citing the contents of Employer Exhibit 76.

⁵⁵ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 117-118 and 122-123, and the contents of Employer Exhibit 16.

- (i) It offers two year programs in the areas of agri-business, technical and industrial fields, service and health, as well as adult basic and general education courses; it serves a population of approximately 165,000 and between 14,500 and 15,000 individual students per year.⁵⁶
 - (ii) It is the "go to" place for both assessment and for needed addition training: it has trained staff to assess worker skills and objectives; it has room to offer large groups of displaced workers the initial presentations by the Displaced Worker Staff on available options; it offers both short and long term training programs, thus expediting returns to work; its campuses are close, within 30 to 35 miles of most workers; its tuition places it within the budget of educational funds the Act provides, typically \$8,800 per displaced worker.⁵⁷
 - (iii) Starting with worker assessment, the College is able to assist dislocated workers in determining career or job choices which would allow them to find employment after training; and it plays a critical role in ensuring that skilled workers do not leave the area, but rather complete retraining which enables them to become employed at comparable wage levels.⁵⁸
- (g) The College's FY 2004 budget contains various challenges.
- (i) In order to fulfill its mission, it constantly realigns programming to provide students with actual job opportunities and to ensure that local employers have trained workforces.⁵⁹
 - (ii) It has recently experienced significant growth: in the last two years it has experienced substantial growth in the enrollment of full-time student equivalency; between 1969 and 1990, it was one of the fastest growing colleges in the State; enrollment data confirm its central role in the economic development of its service area; student demand in the last two years has made it second in overall growth in Wisconsin's technical college system and fifth on the list of the 50 fastest growing colleges in this area.⁶⁰

⁵⁶ Citing the *testimony of Mr. Clark* at Hearing Transcript, pages 158, and the contents of Employer Exhibit 11.

⁵⁷ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 111 and 119.

⁵⁸ Citing the *testimony of Ms. Kiesling* at Hearing Transcript, pages 113, 115 and 117-118.

⁵⁹ Citing the *testimony of Mr. Clark* at Hearing Transcript, page 160.

⁶⁰ Citing the *testimony of Mr. Clark* at Hearing Transcript, pages 160 and 163, and the contents of Employer Exhibit 11B.

(iii) In 2003-04 paper industry and other apprenticeships, and customized business and industry training and technical assistance contracts have declined, but substantial enrollment growth has occurred in the past three years in the ADN program which was expanded to ensure a supply of trained workers to the health care industry. The College has committed resources for capital improvements and eight new instructional positions in the ADN program, which at 160 full-time equivalency students, is one of the largest programs in the State for schools of comparable size.⁶¹

- The ADN program drew on reserves over a three year period to get the program up and running: in 2002-03 \$430,773 of reserves were used by the College; this use of reserves was planned and not for ongoing operating expenses.⁶²
- The ADN program is an attractive option for many students because of the good pay and benefits accorded its graduates. It is, however, expensive for the College to operate, as program costs exceed tuition and fees; the jobs filled by the program, however, contribute vitally to the local economy.⁶³

(iv) The budget challenges facing the College for FY 2004 were both unprecedented and substantial, and entailed dealing with multiple funding concerns and uncertainties combined with the pressure to meet increasing student enrollment demands.⁶⁴

- In specific terms it was in the third and final year of the ADN program with an enrollment growth of 43%, it had hired eight additional faculty members over the three year period, including four in the past year; and other program enrollments were to increase 28%.⁶⁵
- Personnel costs represent 85% of the operational budget and health insurance costs were projected with further double digit increases.⁶⁶

⁶¹ Citing the *testimony of Mr. Clark* at Hearing Transcript, pages 158-161 and 170-180.

⁶² Citing the contents of Employer Exhibit 22.

⁶³ Citing the *testimony of Mr. Clark* at Hearing Transcript, pages 171-172.

⁶⁴ Citing the *testimony of Mr. Clark and Mr. Dahl* at Hearing Transcript, pages 167, 175, 191 and 195.

⁶⁵ Citing the *testimony of Mr. Clark and Mr. Dahl* at Hearing Transcript, pages 179, 208 and 210.

⁶⁶ Citing the *testimony of Mr. Dahl* at Hearing Transcript, pages 196-197.

- Due to the state of the economy and the needs of affected workers, program reductions and layoffs at the College were not an option; revenue sources other than the property tax were declining, state funding was anticipated to be reduced, and federal and state grants had declined in recent years. The College had relied heavily on substantial increases in the property tax levy of over 25% between 2001 and 2003.⁶⁷
- State leaders and the Governor, fearing lost State revenues would result in increases to local property taxes, placed additional pressure on local government units to limit the property tax levy. Legislation which would have limited levy increases by local technical colleges at 2.6% was passed, was vetoed by the Governor, and an override failed by a single vote.⁶⁸ After failing to advance property tax levy limits, the Legislature moved promptly to consider TABOR, a real threat to the District's ability to levy local property taxes at necessary levels.⁶⁹
- At 43.8% of operational costs, property taxes are the single largest revenue source for the college: over the past five years these taxes have increased substantially while the other major revenue sources have declined or leveled off; state and federal aid in FY 04 was anticipated to decline over \$250,000; over the last four years property taxes have far outstripped increases from any other external funding sources of federal grants, state aids, tuition and fees, and institutional revenue; the only two sources of increased revenue over the last four years, property taxes and student tuition and fees, have already adversely impacted local residents.⁷⁰
- The College joined the other 15 technical colleges in a commitment to hold the overall tax levy increases to an absolute minimum: it was voluntarily established to demonstrate that they, as a group, could exercise self-restraint on local tax increases and avoid levy limit legislation; the goal was compatible with the College's own perceived need to substantially restrain the level of property tax increase for

⁶⁷ Citing the *testimony of Mr. Clark and Mr. Dahl* at Hearing Transcript, pages 181, 183 and 192-193.

⁶⁸ Citing the *testimony of Mr. Clark* at Hearing Transcript, page 186. and the contents of Employer Exhibit 14.

⁶⁹ Citing the contents of Employer Exhibits 12 and 13. [The TABOR acronym refers to a proposed *taxpayers' bill of rights amendment* to the Wisconsin Constitution, which failed for lack of votes in the State Senate in July 2004.]

⁷⁰ Citing the *testimony of Mr. Dahl* at Hearing Transcript, pages 194 and 218-219, and the contents of Employer Exhibits 18, 19, 20 and 21.

FY 04; at 4.35%, the College's levy was still second highest among the local taxing units in the service area.⁷¹

⁷¹ Citing the *testimony of Mr. Clark* at Hearing Transcript, pages 173-174, and the contents of Employer Exhibits 18 and 96B.

- The College's governing board approved an operational plan to utilize the College fund reserves for health care expansion, which drew down the reserved balance 21.2% through 2002-03, when it went from having the largest general fund balance in the technical college system (expressed as a percent of general fund budgeted revenues) to tenth at the end of FY 03. This dramatic drop in College reserves was recognized by Moody's, the national rating service which rates bonds for local governments and influences interest rates, which in June 2003, for the first time in its history, warned that the "...continued fund balance draw downs may hamper the financial strength of the District."⁷²
- Acceptance of the Union's final offer would involve a FY 04 draw down of the Fund balance of an additional \$180,000.⁷³
- Within a three year period following the expiration of the CBA, the District faces the need to account for and to begin funding its - post-employment benefit liability (OPEB) under the GASB requirements. An actuarial report has identified current overall OPEB liability to the College of 8.1 million dollars, with a current unfunded liability of 5.3 million dollars, which, if fully funded, would virtually wipe out the College's fund balance. When the College begins to amortize the cost of these benefits over a twenty year period, as required by GASB, it will have to increase from about \$300,000 per year to \$767,885 per year to meet these costs.⁷⁴

⁷² Citing the *testimony of Mr. Dahl* at Hearing Transcript, page 229, and the contents of Employer Exhibits 26 and 30.

⁷³ Citing the *testimony of Mr. Dahl* at Hearing Transcript, page 230.

⁷⁴ Citing the *testimony of Mr. Dahl* at Hearing Transcript, pages 236, 238, 240 and 253, and the contents of Employer Exhibits 31, 32 and 39.

- The FY 04 budget preparation was the most difficult in the College's history because of the existing pressures: restriction of expenditures, particularly personnel costs which consume most available budget dollars, was necessary; 9,500 square feet of floor space was added with no increase in the size of the custodial staff; eleven staff positions were left vacant, only five of which were faculty positions; campus buildings were closed when not in use; classes were held in consolidated locations with maximum student enrollments; printing and production costs were reduced and professional development funds were not used; and ways to reduce rising health care costs were aggressively sought and implemented, starting with the administrative group. The College, by its own initiative, thus reduced overall operating expenses by \$110,000 or 5%.⁷⁵
- In the above actions the College did everything it could to avoid reducing instructional opportunities and programs or imposing faculty layoffs, actions which would cut into program offerings needed by displaced and new workers; turning away individuals at a point when they had the highest need for the services of the College was not an option.⁷⁶
- At the same time as the above actions, the College made the difficult decision to freeze the wages of the administrative staff for FY 04; since they, unlike the faculty, have no step increases, this was clearly a non-increase proposition. With the cooperation of the administrative staff, the College obtained a different insurance plan with virtually the same benefits but with lower costs than the WEAIT plan; following its implementation in January 2004, the non-represented staff at the College received a modest 2.5% pay increase in mid-year, which was paid for exclusively from health insurance plan savings; the Union was offered but rejected similar changes.⁷⁷

(v) The Union offer mandates the use of College reserves.

- given the dire economic conditions within the service area, the College cannot merely continue to raise taxes: its tax climate within the 50 states is poor, ranking 28th in detrimental impact upon business; it has the sixth highest state and local tax burden; it has the eleventh

⁷⁵ Citing the *testimony of Mr. Dahl* at Hearing Transcript, page 196, and the contents of Employer Exhibits 18 and 35-36.

⁷⁶ Citing the *testimony of Mr. Clark* at Hearing Transcript, page 175. and the contents of Employer Exhibits 35-36.

⁷⁷ Citing the *testimony of Mr. Dahl and Mr. Beckstrom* at Hearing Transcript, pages 197, 252, 268 and 272, and the contents of Employer Exhibit 36.

highest overall tax burden; its property taxes are 25% above the national average; and it had state and local tax increases in the last decade of over 81%.⁷⁸

- Local businesses and industry, fighting the competitive pressures of a global economy and displaced workers who are struggling to find other employment cannot be asked to pay higher property taxes. Having reached a critical juncture and recognizing the increasing reliance on property taxes, the College knew in FY 04 that relief from rapidly growing wage and benefit costs had to be sought.
 - The college found itself facing a unique confluence of factors: a rapidly declining local economic base heavily reliant on the sagging paper industry to provide high paying jobs; it was the main provider of assessments and retraining programs for displaced workers, thus preventing retrenchment or reductions in those services; its primary source of income, the local property tax, was constrained by pressures exerted from state level leadership and local businesses and unemployed workers; and targeted program expansions to meet critical employer and student needs had to be maintained.
 - The College was thus faced with *the perfect storm*, a statutorily contemplated circumstance in which the "*greater weight*" is to be given to local economic circumstances, thus overriding arbitral criteria. It has thus met its burden of demonstrating that local economic conditions do not support the Union's final offer and do support the College's more reasonable final offer.
- (4) In the College's selection of comparable employers, it uses a *combination of public and private comparables* as well as *internal comparables*, to show an overall favorable wage and benefit position of the faculty without a 3% salary increase for FY 2004.

⁷⁸ Citing the *testimony of Mr. Beckstrom* at Hearing Transcript, pages 287-288, and the contents of Employer Exhibits 38, 39, 40 and 41.

- (a) The College's selection of technical college comparables are those with an overall enrollment range of 1,275 to 3,938 FTE students, and consist of: Blackhawk, Chippewa Valley, Lakeshore, Moraine Park, Nicolet, Northcentral, Southwest, Western and Wisconsin Indianhead.⁷⁹
- (i) The group midpoint of approximately 2,600 students is above the projected 03-04 Midstate student enrollment of 2,250 FTEs, which ranks sixth of the ten proposed comparables; the College's enrollment growth over the past two years exceeded that of the comparables by 5%.⁸⁰
- (ii) The *equalized value* within the group ranged from \$5.2B at Nicolet to \$23.7B at Indianhead: the College is well below the midpoint and the average of this range, at \$9.1B in equalized valuation; in every year since 1998-99, bar one, the increase in the College's service area property values has been below the average of the comparables; in 2001-2002, the College exceeded the average of the comparables by only .07%.⁸¹

⁷⁹ Citing the contents of Employer Exhibits 85-86A.

⁸⁰ Citing the contents of Employer Exhibit 87.

⁸¹ Citing the contents of Employer Exhibit 89.

(iii) Since 1999-2000, the College's *operational tax levy* increases have, in the aggregate, exceeded the average of the comparables: the other comparables' average increase in operational tax levy during this period was 25.5%, while those of the College exceeded 29%; the College's overall *total* levy increases during the period was on a par with the rest of the comparables.⁸²

(iv) The Union proposes to include additional colleges in the comparable grouping, seeking Fox Valley and Northeast as *primary comparables* and Gateway, Madison, Milwaukee and Waukesha as *secondary comparables*: it apparently relies upon *Arbitrator Imes'* 1995 interest arbitration award, in which she included both Northeast and Fox Valley *only* because both parties had then agreed that they were comparable, but observed also that her review of the demographic and economic background data revealed that all of the districts were not similar.⁸³

- Based upon size, neither Northeast nor Fox Valley are comparable: both have FTE enrollments in excess of 5,000 students, over double the size of the College; both have equalized value to support educational programs in excess of \$25B, nearly triple that of the College; adjusted gross income in the Fox Valley and Northeast District, particularly in Outagamie, Winnebago and Brown counties, where the main campuses for the two colleges are located, far exceed those in Wood and Portage counties where the College's main campuses are located; because Fox Valley and Northeast are larger and more wealthy, they should be excluded from the comparable pool.⁸⁴
- The Union proposed secondary comparable pool is also improper: Milwaukee, Madison, Gateway and Waukesha are situated in large urban areas, with reported adjusted gross income levels far in excess of those within the College's service area.⁸⁵ Without a well-reasoned basis to begin to include these colleges as comparables, the Arbitrator should reject them.

(b) The College uses *K-12 school districts within its service area* for the purpose of demonstrating the value of the monthly health insurance and the amount of employee contribution to these plans.⁸⁶

⁸² Citing the contents of Employer Exhibits 91 and 92.

⁸³ Citing the contents of Association Exhibit 3.

⁸⁴ Citing the contents of Employer Exhibit 86A.

⁸⁵ Citing the contents of Employer Exhibits 85 and 95.

⁸⁶ Citing the contents of Employer Exhibit 77.

- (c) The College uses *external private sector comparables* regarding health insurance costs and the employee/employee contributions in the purchase of such insurance.⁸⁷
- (d) In connection with *internal comparables*, the College has also presented wage and benefit information regarding its three other employee groups, i.e., administrative, custodial and clerical/technical support staff. It urges that in many prior arbitration awards, internal comparability has been of greater value than external comparables.⁸⁸
- (5) *The comparable wages and benefits, both internal and external, support the college's final offer.* Examination of these comparisons is relevant *only* to establish that the faculty of the College is not reduced below market wage and benefit levels if the College's offer were awarded. No arbitrator in Wisconsin has based an award solely on the comparability criterion where the primary consideration had to be given to the local economic conditions.
- (a) *Internal comparisons support the Colleges' offer*, in that it has demonstrated that of all of its employee groups, the faculty has been fairly compensated at the highest rates over a period of years.
- (i) It has received wage increases over 4% ahead of the next highest organized group and 2% ahead of the administrative group, which information was prepared at the request of the Union and distributed to it at a mediation session on January 14, 2004.⁸⁹
- (ii) Testimony at the hearing established that the administrative group initially received a 0% wage increase for 2004, and that an increase was granted only after the College was able to obtain a less expensive Blue Cross/Blue Shield health insurance plan, pursuant to which family plan premiums declined from \$1,184.82 to \$1,079.30 per month, a decrease of over 9%. Administrative employees continue to pay 6% of that premium, and as a direct result of the changes, the College was able to implement a 2½% increase effective January 1, 2003, with no retroactivity and an annualized cost of 1.25%.⁹⁰

⁸⁷ Citing the contents of Employer Exhibit 77.

⁸⁸ Citing the following decisions: Arbitrator Kessler in Columbia County, Dec. No. 28960-A (1997); Arbitrator Kerkman in Village of Shorewood, Dec. No. 26625-A (1991); Arbitrator Baron in Marathon County, Dec. No. 55908 (1999); Arbitrator Bilder in Walworth County, Dec. No. 30435-A (2003); and Arbitrator Vernon in City of Appleton (Police), Dec. No. 25636-A (1989).

⁸⁹ Citing the contents of Employer Exhibits 78, 79 and 114.

⁹⁰ Citing the *testimony of Mr. Dahl and Mr. Beckstrom* at Hearing Transcript, pages 197 and 268, and the contents of Employer Exhibit 82.

- (iii) Health insurance costs were a major issue throughout bargaining for the agreement, where the parties discussed design changes through the WEAIT, but the Union had no interest in changing plan design; when the discussion turned to the possibility of changing carriers to control costs, the Union also resisted any changes. Thereafter, family plan premiums increased in FY 02 by 22.6%, and in FY 03 by 25%, to the second highest level among the technical colleges.⁹¹
- (iv) The faculty actually benefited through a change from the prior contract in the formula used to determine who pays what health insurance premium costs. The parties agreed to reduce the employee contribution levels to 5% for 2002-03 and 6% in 2003-04, which change was not a concession by the Union but rather one by the College in an effort to obtain a voluntary settlement.⁹²
- (v) Continuing funding uncertainty and uncertainty regarding the growth in health insurance costs mandated the FY 04 wage reopener, and the College continued to meet with the Union to address different ways to reduce health insurance costs but to no avail; health insurance premiums increased 48% during the two year period preceding the wage reopener.⁹³
- (vi) While the Custodians received a 3.25% wage increase in 2003-04, they are paying a full 3% more for family plan coverage than the faculty.
- (vii) Successive contracts negotiated to cover a five year period for Clerical/Support Staff, were predicated upon 4% total package increases; as a result of skyrocketing health premiums, these employees received two years of 0% wage increase in 2001-02 and 2002-03, and only a modest increase of .23% in 2003-04.
- (viii) The College went to great lengths to explain its financial and economic problems to the Union, to put it on notice that it needed a limited period of time during 2003-04 to reduce its reliance on property tax increases and to avoid layoffs, and to inform it that wage increases could be considered if savings in the cost of health insurance could be achieved. The Union, however, rejected any discussion of health insurance as a way to free up money to pay for a wage increase, the College urged a total package approach for the reopener negotiations, but the Union answered by petitioning for arbitration.

⁹¹ Citing the *testimony of Mr. Beckstrom* at Hearing Transcript, pages 258-261 and 314-316, and the contents of Employer Exhibits 82A, 82B and 108.

⁹² Citing the *testimony of Mr. Beckstrom* at Hearing Transcript, page 262, and the contents of Employer Exhibits 82A.

⁹³ Citing the *testimony of Ms. Jonen* at Hearing Transcript, page 16, and the contents of Employer Exhibit 82.

- (ix) In mediation on January 13, 2004, the College explained that the lack of claims experience information from the WEAIT had prevented it from obtaining anything other than "book or standard rate" premium quotes from other carriers. Efforts to get its claims experience from WEAIT, however, have been unsuccessful.⁹⁴
 - (x) In a last attempt to settle short of arbitration, the College offered to extend the 2.5% increase afforded administrators to the faculty members if they would simply fill out the subscriber medical information form and return it to the carrier rather than to the College Human Resources officer, which was rejected by the Union on the basis of "lack of confidentiality."⁹⁵
 - (xi) The College had sought the health background information solely to allow the prospective carrier(s) to provide rate quotes based on the actual health and medical experience of the faculty group. All it wanted was to be prepared to bargain health insurance design, costs and carriers in a successor agreement.
- (b) Three sets of *external comparisons support the final offer of the College*: 1) local business and industry; 2) local K-12 school districts; and 3) other comparable technical colleges.
- (i) *Local Business and industry comparisons support the final offer of the College.*

Major employers in the Wisconsin Rapids and Stevens Point area include Domtar Industries, Stora Enso, Renaissance Learning, Riverview Hospital, the Regional Health Care Clinic and Sentry Insurance: the College has the second highest family and single health premiums in the above group; and the College's faculty members contributed the lowest amount toward single and family coverage within the group.⁹⁶
 - (ii) *K-12 School District comparisons support the final offer of the College.*

When compared to Wisconsin Rapids, Stevens Point, Marshfield and Adams Friendship school district, the College's faculty pay the second lowest family health insurance premium contribution and they received benefits substantially more advantageous than the comparable school districts.⁹⁷
 - (iii) *Comparable Technical college comparisons support the final offer of the College.*

⁹⁴ Citing the *testimony of Mr. Beckstrom* at Hearing Transcript, pages 271-274.

⁹⁵ Citing the *testimony of Mr. Beckstrom* at Hearing Transcript, page 275, and the contents of Employer Exhibits 114-115.

⁹⁶ Citing the contents of Employer Exhibit 77.

⁹⁷ Citing the contents of Employer Exhibit 77.

- The 2002-2003 *wages only* and *total package* settlements were above the average of the comparables; there is precedent for a 0% salary schedule increase at Western Wisconsin Technical College in 2003-04.⁹⁸
- Consideration of rank order of salary benchmarks for 2003-04 indicates that College faculty salaries will remain competitive under the College's final offer.⁹⁹
- During the past four years, despite lower than average growth in the property tax base, the College's total and package cost settlements have been consistently above average, as compared with the nine other colleges. The College's faculty is not, therefore, in a catch-up situation.¹⁰⁰
- The competitive position of wages and benefits for College faculty translates to very low turnover and excellent recruitment opportunities.¹⁰¹
- The highly competitive wage and fringe benefit package of the faculty, when compared to other comparable technical colleges, local businesses and industry, and local K-12 school districts, indicates that a single year with no increase on the salary schedule, in view of local economic conditions, is both reasonable and necessary.

(6) *The college's wages only and total package offer exceeds the consumer price index increase:* the appropriate interval for application of cost-of-living factor is the one year period ending in July of 2003, during which time the CPI increased 1.10%; the College's wages only offer of 1.36% and its total package cost increase of 3.07%, both exceed the increase in the CPI; faculty wage and benefits increases, in the aggregate, during the nine contract years preceding the wage reopener, were 15% to over 18%; and College Faculty have thus not lost and, under the College's final offer, will not lose earning power when viewed in light of the cost-of-living.¹⁰²

In summary and conclusion it submits that the record evidence in this proceeding fits squarely within the statutory framework which gives greater weight to local economic conditions, and thus mandates selection of the final offer of the College.

⁹⁸ Citing the contents of Employer Exhibits 98-104.

⁹⁹ Citing the contents of Employer Exhibits 98-104.

¹⁰⁰ Citing the contents of Employer Exhibits 86 and 106.

¹⁰¹ Citing the contents of Employer Exhibits 83, 83A, 108, 109, 112 and 113.

¹⁰² Citing the contents of Employer Exhibit 84.

- (1) The referenced economic conditions include the following: the permanent loss of highly paid jobs in its service area; related reductions in retail and service sector business activity; the lack of tolerance for increases in local property taxes; the unprecedented pressure and restrictions on its revenue stream; and the high needs and expectations of dislocated workers, students, businesses and industry for its programs.
- (2) In the past three years the College has invested in the development and expansion of carefully selected new programs, has cut costs and expenditures anywhere it could without affecting program offerings.
- (3) Shrinking financial reserves have been dedicated, in substantial part, to fund the start up costs of urgently needed new programs, and should not be used for day-to-day operating expenses, as proposed by the Union.
- (4) The College's offer does not ask the faculty, some of the highest paid employees in the service area, to experience anything that it has not demanded of other employee groups. It was, for example, offered, but rejected, the same option for a revenue neutral wage increase as was offered in the administrative group.

In view of all of the pending circumstances, it submits that the college's wage offer is more reasonable than that of the Union, and should be accepted and ordered implemented by the parties.

In *its reply brief* the Employer emphasized or reemphasized the following summarized considerations and arguments.

- (1) That the statutory criteria mandate giving *greater weight to local economic conditions*, changed the controlling criteria by which interest arbitration awards are determined on or after July 28, 1995.
 - (a) That it thus rendered arbitral decisions rendered prior to its effective date, which had balanced the interest and welfare of the public and/or the "inability" or "unwillingness" of local jurisdiction to pay with the overall comparability criteria, no longer relevant or useful.
 - (b) That the seminal treatise by Irving Bernstein cited by the Association and published in 1954, is inconsistent with current statutory mandates.
- (2) That "local economic conditions" within the College's service area mandate adoption of its final offer.
- (3) That the longevity increases are a cost to the College and a benefit to the faculty members.
 - (a) That the College's offer is thus not a *wage freeze*.
 - (b) That the College's final offer exceeds the cost-of-living increase for the relevant time period.
- (4) That the Association has incorrectly and inaccurately characterized the settlements of other employee groups.
 - (a) Internal comparisons should include the following

considerations: the wage increase in January 2004 for the *administrative group* was revenue neutral, and was agreed upon only after substantially reduced health insurance premiums had been implemented; the *custodial staff* had assumed significantly increased insurance payments in 2001, thus reducing the overall "take home pay" associated with their across-the-board raises; and the *clerical employees* had experienced a virtual wage freeze from 2001 through 2004.

- (b) Area K-12 settlements are lower than the 3% 2003-04 wage increase sought by the Association.
 - (c) Under the College's proposal, MSTC faculty would not be the only public sector employees to receive only longevity increases for 2003-04.
 - (d) Local government settlements which include across-the-board increases are also readily distinguishable, in that their hourly rate schedules do not include longevity step increases.
 - (e) The Stora Enso 2003-04 increases must be viewed in light of the fact that they were part of a five year agreement negotiated in 1991 and ending in 2005, within which period it suffered nearly 1,050 layoffs, and the parties thereafter negotiated a 2004 wage freeze.
- (5) That the final offer cost difference of approximately \$200,000 for FY 2004, is substantial, if awarded it would have to be paid out of reserves, it would add \$1M to local property taxes over the next five years and over \$2.2M over the next 10 years, and it would be highly detrimental to the College's future operations.
 - (6) The College reviewed the combined level of wages and benefits of the faculty, determined that a one-time limit on advancing the salary scheduled was preferable to all of the available alternatives, in order to fulfill its statutory mandate to students, to service area communities, and to taxpayers.

FINDINGS AND CONCLUSIONS

In the case at hand the parties differ *only* on whether their contractual wage reopener in the final year of their three year labor agreement should have resulted in a 3% *across-the-board* wage increase as urged by the Association, or in a 0% wage increase as urged by the College. Despite the apparent limited scope of the proceedings, two days of hearing, a large number of exhibits, and comprehensive briefs and reply briefs, reflect significant differences between the parties in the application of some well established and widely recognized principles normally governing the interest arbitration process, including the following: the *general nature of the Wisconsin interest arbitration process*; the *composition of the primary intraindustry comparables* in these proceedings; the *normal application and importance of the comparison criteria*, including its application in *impaired ability to pay*

contexts; the *application of the greater weight criterion* in these proceedings; the *significance of the faculty's preexisting, overall level of compensation, including their health insurance*; the *applicable base periods used in conjunction with wage reopeners and/or in the application of the cost-of-living criterion*; and the *application of the bargaining history criterion*.¹⁰³ Prior to applying the statutory arbitral criteria and selecting the more appropriate of the two final offers, the undersigned will preliminarily address and clarify the significance of each of these considerations.

The General Nature of the Wisconsin Interest Arbitration Process

As emphasized by the undersigned in other proceedings, an interest arbitrator is really part of the contract negotiations process, and his/her normal role in applying the statutory arbitral criteria is to attempt to put the parties into the same position they would have reached at the bargaining table, had they been able to do so. Wisconsin's interest arbitration process, which requires arbitral selection of *the final offer of either party in toto*, is designed to encourage the parties to get as close as possible to one another in their certified final offers; when they have remained significantly apart in such final offers, however, an arbitrator may be required to select a final offer which significantly departs from what they might have agreed upon at the bargaining table, because such offer is closer to the ideal settlement than the second offer then before such arbitrator.

The Composition of the Primary Intraindustry Comparables in these Proceedings

Since, as noted above, interest arbitrators operate as an extension of the contract negotiations process, they carefully consider various aspects of the parties' *bargaining history* in the final offer selection process, and they are very reluctant to modify *intraindustry comparisons* previously recognized and utilized by the parties in their past negotiations and/or arbitrations. These considerations are described in the following additional excerpt from

¹⁰³ While the *bargaining history* of the parties is not one of the specific arbitral criteria identified in the statute, it falls well within the scope of Section 111.70(4)(cm)(7r)(j).

the venerable but still highly respected book by Irving Bernstein.

"This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential...

* * * * *

The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."¹⁰⁴

In this area the Association urges utilization in these proceedings of the same set of Wisconsin technical colleges comprising the *primary intraindustry comparables*, which had been utilized by Arbitrator Imes in the parties' only prior interest arbitration in 1995, *i.e.*, Blackhawk, Chippewa Valley, Fox Valley, Lakeshore, Moraine Park, Nicolet, Northcentral, Northeast, Southwest, Western and Wisconsin Indianhead. The District agrees to inclusion of nine of these eleven comparables, but objects to the inclusion of the Fox Valley and Northeast technical colleges on three principal bases, *first*, the fact that they have more than double the FTE enrollments of Mid-State, *second*, they are significantly wealthier and thus better able to finance faculty wage increases than Mid-State; and, *third*, that Arbitrator Imes had noted the demographic and economic differences between the Northeast and Fox Valley technical colleges and Mid-State, and had included them only because both parties had agreed to their inclusion.

¹⁰⁴ See Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), pages 63 and 66. (footnotes omitted)

Without unnecessary elaboration, the undersigned will merely indicate at this point that there is insufficient evidence in the record to justify arbitral modification of the parties' apparent long standing use of the set *primary intraindustry comparables* previously recognized by Arbitrator Imes.¹⁰⁵

At this point I will also note that an impasse over what the College has characterized as a *single year with no salary increase*, due to what amounts to claimed *temporary financial and economic exigencies*, is an unlikely vehicle for arbitral use in modifying the historic composition of the primary intraindustry comparables.

The Normal Application and Importance of the Comparison Criteria, Including its Application in Impaired Ability to Pay Contexts

It has been widely recognized for decades by arbitrators, advocates and scholarly publications, that *comparisons* are normally the most persuasive of the various arbitral criteria in the arbitration of wages, that the most important of these are the so-called *intraindustry comparisons*, which normally take precedence when they come into conflict with other criteria, including a *temporarily impaired ability to pay*. These considerations are well described, as follows, by Bernstein:

"Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.

* * * * *

a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparisons, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.

* * * * *

¹⁰⁵ Arbitrator Imes' inclusion of these two somewhat dissimilar technical colleges within the *primary intraindustry comparables*, represented entirely proper arbitral deference to the parties' history reflecting their inclusion.

A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."¹⁰⁶

The weight generally accorded *intraindustry comparisons* in the context of *public sector interest arbitrations involving professed inability or restricted ability to pay*, was authoritatively addressed as follows by Arbitrator Howard S. Block:

"Ability to Pay: The Problem of Priorities

Nowhere in the public sector is the problem of interest arbitration more critical than in the major urban areas of the nation. Municipal governments are highly dependent, vulnerable public agencies.

Their options for making concessions in collective bargaining are at best limited, and are often nullified by social and economic forces which command markets, resources, and political power extending far beyond the city limits. City and county administration are buffeted by winds of controversy over conflicting claims upon the tax dollar. On the federal level, the ultimate source of tax revenues, the order of priorities between military expenditures and the needs of the cities are a persistent focus of debate. On the state level, the counterclaims over priorities in most states seem to be education over all others.

* * * * *

...How does an arbitration panel respond to a municipal government that says, 'We just don't have the money'?

Pioneering decisions of interest neutrals have assigned no greater weight to such an assertion than they have to an inability-to-pay position of private management. An arbitration panel constituted under Michigan's Public Act 312 rejected an argument by the City of Detroit which would have precluded the panel from awarding money because of an asserted inability to pay. What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber-stamp the city's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations?

While the panel considered the city's argument on this point, it was not a controlling conclusion.

Inability to pay may often be the result of an unwillingness to bell the cat by raising local taxes or reassessing property to make more funds available. Arnold Zack gives a realistic depiction of the inherent elasticity of management's position in the following comment:

¹⁰⁶ See The Arbitration of Wages, at pages 54, 56 and 67. (footnotes omitted)

'It is generally true that the funds can be made available to pay for settlement of an imminent negotiation, although the consequences may well be depletion of needed reserves for unanticipated contingencies, the failure to undertake new planned services such as hiring more teachers, or even the curtailment of existing services, such as elimination of subsidized student activities, to finance the settlement.' ¹⁰⁷

The above considerations were also addressed as follows, in the following except from the authoritative book originally authored by Elkouri and Elkouri:

"In granting a wage increase to police officers to bring them generally in line with police in other communities, an arbitration board recognized the financial problems of the city resulting from temporarily reduced property valuations during an urban redevelopment program, but the board stated that a police officer should be treated as a skilled employee whose wages reflect the caliber of the work expected from such employees. The Board declared that 'it cannot accept the conclusion that the Police Department must continue to suffer until the redevelopment program is completed.' However, the board did give definite weight to the city's budget limitations by denying a request for improved vacation benefits, additional insurance, a shift differential, and a cost-of-living escalator clause. In another case involving police officers and firefighters, an arbitrator awarded a 6 percent wage increase (which he recognized as the prevailing pattern in private industry) despite the city's financial problems. He limited the increase to this figure, though a larger increase was deserved, in order to keep the city within the statutory taxing limit and in light of the impact of the award on the wages of other city employees.

In some cases, neutrals have expressly asserted an obligation of public employers to make added efforts to obtain additional funds to finance improved terms of employment found to be justified. In one case, the neutral refused to excuse a public employer from its obligation to pay certain automatic increases that the employer had voluntarily contracted to pay, the neutral ordering the employer to 'take all required steps to provide the funds necessary to implement his award in favor of the employees.'

Finally, where one city submitted information regarding its revenues and expenditures to support its claim of inability to pay an otherwise justified wage increase, the arbitrator responded that the 'information is interesting, but is not really relevant to the issues,' and explained:

The *price of labor* must be viewed like any other commodity which needs to be purchased. If a new truck is needed, the City does not plead poverty and ask to buy the truck for 25% of its established price. It can shop various dealers and make of trucks to get the best possible buy. But in the end the City either pays the asked price or gets along without a new truck.¹⁰⁸

¹⁰⁷ See Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs, Inc., 1971, pages 169, 171-172. (footnotes omitted)

¹⁰⁸ See Ruben, Allan Miles, Editor in Chief, Elkouri & Elkouri HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1434-1436. (footnotes omitted)

As is clear from the above, interest arbitrators are reluctant to deny the selection of offers containing wage increases otherwise justified by normal wage determination criteria, most notably the intraindustry comparison criterion, in the face of employer professed *unwillingness to pay* or in situations involving *temporary inability or impaired ability to pay* situations. In public sector disputes involving *bona fide temporarily impaired ability to pay*, however, they may sometimes select final offers which both award otherwise justified wage increases and recognize the temporary financial constraints facing an employer; one such technique apparently used by the College in another bargaining unit, was to provide an appropriate wage increase and, through the expedient of deferring its implementation, to reduce the short term costs of the wage increase. Such an approach, however, was not contemplated in the College's final offer in these proceedings.

When considered on the basis of the above, the undersigned has reached the following preliminary conclusions relating to the application of the comparison criteria:

- (1) The *intraindustry comparison criterion*, strongly supports the 3% wage increase proposed in the final offer of the Association versus the 0% wage increase proposed in the final offer of the College. This conclusion is clearly indicated by consideration the 2003-04 wage increases implemented by ten of the eleven comparables, which averaged 3.18%. There is evidence in the record that the negotiated 0% wage increase for 2003-04 negotiated and agreed-upon at Western had been the product of the College's precarious financial situation, including its having then been at the maximum 1.5 mill rate; even if Western's 0% wage increase is included, however, the average 2003-04 wage increase for the eleven primary comparables would be 2.89%, much closer to the 3.0% proposed by the Association than the 0% proposed by the College.¹⁰⁹ Indeed, even if only the nine primary intraindustry comparables proposed by the College, are considered, they averaged 2.69% in wage increases for 2003-04.¹¹⁰
- (2) The *comparison with other public sector employees in the same community and in comparable communities criterion* supports selection of the final offer of the Association rather than that of the College. This conclusion is apparent from consideration of the 2003-04 negotiated wage increases within various bargaining units in the City of Wisconsin Rapids, Wood County, and K-12 wage increases in the Adams-Friendship, Marshfield, Mid-State, Stevens Point and Wisconsin Rapids school district settlements.¹¹¹

¹⁰⁹ See the contents of Association Exhibit 17.

¹¹⁰ See the contents of Employer Exhibit 98.

¹¹¹ See the contents of Association Exhibits 22 to 24.

Although such comparisons are not nearly as persuasive as the *intraindustry comparables*, they indicate, without exception, 2003-04 wage increases much closer to the Association's rather than the College's final offer.

- (3) The *comparison with other employees in private employment in the same communities and in comparable communities criterion*, to the limited extent that data is available for Stora Enso represented employees, also at least somewhat support selection of the final offer of the Association rather than that of the College, in that they apparently received uniform 3.0% wage increases during all periods overlapping the 2003-04 period involved in these proceedings.¹¹²

The Application of the Greater Weight Criterion in these Proceedings

In presenting their respective positions in these proceedings, the parties disagreed as to the application of the statutory *greater weight criterion*, and the degree to which it might modify the normal handling of *impaired ability to pay* situations, which is described above.

- (1) The Union alleges the existence of improving recent economic conditions in the College's service area, including *growing tax bases, increasing property values, projected population growth, and per capita income growth*. Urging that the evidence to the contrary advanced by the College was neither comprehensive nor persuasive, and emphasizing that it has not alleged *inability to pay* the disputed wage increase, it urges that current economic conditions simply do not support the College proposed *wage freeze* in these proceedings.
- (2) The College, emphasizing various economic related characteristics in its service area, including high municipal tax rates, job losses, high unemployment rates, depressed income of local residents, below average per capita income, and loss of state revenue sharing, urges the *determinative application* of the *greater weight criterion* in these proceedings and, accordingly, arbitral selection of its final offer.

While the College argument, in essence, would require that the *greater weight criterion*, when applicable, must be accorded *determinative weight* over any and all other statutory interest arbitration criteria in the final offer selection process, the language in Section 111.70(4)(cm)(7) & (7g) of the Wisconsin Statutes, when read in conjunction with one another, does not support such an interpretation. By way of contrast with the *greatest weight criterion*, which appears in the immediately preceding paragraph, the Wisconsin Legislature, in providing for "...*greater weight* to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in

¹¹² See the contents of Association Exhibit 22.

subd. 7r", clearly intended this factor to receive *greater weight* than any of the other referenced individual factors, but to be reasonably applied in conjunction with them, in the final offer selection process. In previously addressing the incorporation of *the greatest weight* and the *greater weight criteria* into Section 111.70(4)(cm)(7) & (7g) of the Wisconsin Statutes, the undersigned indicated in part as follows:

"The legislature clearly conditioned application of the *greatest weight criterion*, upon presence of the *requisite limitations on expenditures or revenues*. The *greater weight criterion* apparently applies in at least two ways: *first*, by ensuring that an employer's economic condition is fully considered in the composition of the primary intraindustry comparison group; and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the "...economic conditions in the jurisdiction of the municipal employer." In other words, *like employers should be compared to like employers*, and *undue and disparate economic burdens should not be placed upon an employer significantly and comparatively affected by the requisite limitations*. Application of these criteria, however, do not alone require arbitral selection of the least costly of two alternative final offers, without consideration of their reasonableness and the remaining statutory criteria."¹¹³

On the above described bases the undersigned has determined that the *factor given greater weight criterion* cannot alone be assigned *determinative weight* in these proceedings, and that it should be applied with full consideration of both the relative reasonableness of the two final offers and the remaining statutory criteria. In this connection it is noted that even if the College's negative economic "*perfect storm*" argument had been completely borne-out by the record, and it was seriously and persuasively challenged by the Association in many respects, serious questions remained relative to the *reasonableness* of its 0% wage increase proposal for 2003-2004.

The Significance of the Faculty's Preexisting, Overall Level of Compensation, Including their Health Insurance

The *overall compensation presently received by the employees*, including various fringe benefits, are listed in Section 111.70(4)(cm)(7r)(h) of the statutes but, as the undersigned has also emphasized in previous interest proceedings, it must be understood that they are *relative standards*, and that while they may be *initially used to justify the establishment of differential wages or salaries*, they generally have *little to do with the application of*

¹¹³ See the *decision of the undersigned* in Random Lake School District, Dec No. 30545-A (2003), pages 34-35.

general wage increases thereafter, which principle is also addressed as follows by Bernstein:

"...Such 'fringes' as vacations, holidays, and welfare plans may vary among firms in the same industry and thereby complicate the wage comparison.

* * * * *

...In the *Reading Street Railway* case, for example, the company argued strenuously that its fringes were superior to those on comparable properties and should be credited against wage rates.

Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differential between jobs, should not influence a general wage movement. As a consequence, in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should be charged off against wage rates; that offensive odors in a fish-reduction plant merited a differential; that weight should be given the fact that employees of a utility, generally speaking, were more skilled than workers in the community at large; that merit and experience deserved special recognition; and that regularity of employment should bar an otherwise justified increase. ...

The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates. Hence established differentials and premiums are regarded as fixed for purposes of general wage changes."¹¹⁴

In applying the above described principles to the dispute at hand, the undersigned has preliminarily concluded that the *overall compensation presently received criterion* supports selection of the final offer of the Association rather than that of the College, in that the *previously negotiated levels of faculty salaries and fringe benefits, including both its ongoing, comprehensive and expensive health insurance program, and its length of service and education related salary progression, cannot justify lower than otherwise appropriate wage increases emanating from the parties' negotiated wage reopener.*¹¹⁵

The Base Periods Used in Conjunction with Wage Reopeners and/or in Application of the Cost-of-Living Criterion, and the Significance of the Cost-of-Living Criterion in these Proceedings

¹¹⁴ See The Arbitration of Wages, at pages 65-66 and 90. (footnotes omitted)

¹¹⁵ It must be recognized that the only reopener in the three year contract was wages for 2004, not group health insurance. While previously agreed upon benefits, including health insurance, can always be modified by *mutual agreement* of the parties, the Union had no obligation to bargain upon or agree to changes in this benefit under the contractually provided third year wage reopener.

Confusion sometimes arises as to the appropriate *base period* for arbitral consideration, in connection with *wage reopeners* and/or application of the *cost-of-living* criterion. These considerations were addressed as follows by Bernstein:

"Base period manipulation...poses grave hazards. Arbitrators have guarded themselves against this risk by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go beyond such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost of living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding become so much the stronger.

This line of reasoning rests upon the past rather than the prospective behavior of the index, the former being the more common method of calculating a cost-of-living wage change. Where, as occasionally happens, the parties in their last negotiations discounted a future price movement, the expiration date of the prior contract is not appropriate. In this contingency, presumably, the arbitrator would have to make an adjustment for the difference between the estimated and actual performance of the index."¹¹⁶

On the above described bases it is clear that the base for arbitral consideration of *cost-of-living data* and/or *wage comparisons* relating to the wage reopener, dates from the last time the parties went to the bargaining table; since the predecessor agreement apparently expired on August 23, 2001, *historical cost-of-living data* and/or *wage comparisons* preceding this date should not be considered in these proceedings, in that the parties' last contract renewal negotiations are arbitrarily inferred to have disposed of all of the factors of wage determination as of that date.

The *cost-of-living criterion* varies in importance with the state of the national and Wisconsin economies. During periods of rapid movement in prices, it may be one of the most important criteria in interest arbitration, but during periods of relative price stability, it declines significantly in importance. Due to relative stability in the CPI since the August 23, 2001 expiration of the parties' prior agreement, the undersigned has preliminarily

¹¹⁶ See The Arbitration of Wages, at pages 75-76. (footnotes omitted)

concluded that the cost-of-living criterion does not definitively favor the position of either party in these proceedings.

The Application of the Bargaining History Criterion

In this area the undersigned notes a disconnect between portions of the bargaining history relied upon by the College and its final wage offer. While it argued that it had gone to great lengths in the contract negotiations process to inform the Association that it needed a *limited period of time in 2003-04* to reduce its reliance upon and possible increases in the property tax, to achieve savings in health insurance, and to avoid layoffs, the effect of its 0% wage increase proposal, if accepted, would have *very significantly reduced otherwise justified future faculty wage levels for many years to come!*¹¹⁷ If the College's principal interest had been *short term financial relief in 2003-04*, it would have been reasonable to have proposed, by way of example, an otherwise justified general wage increase with a delayed implementation date, which would have provided it with dollar relief during the 2003-04 contract year, rather than a 0% wage increase for 2003-04 and the very significant long term financial implications that would have flowed therefrom.

On the above described bases, the undersigned has preliminarily concluded that application of the bargaining history criterion in these proceedings somewhat favors the final offer of the Association rather than the College in these proceedings.¹¹⁸

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Arbitrator has reached the following summarized, principal preliminary conclusions.

¹¹⁷ See the *testimony of Mr. Dahl at Hearing Transcript*, pages 229-230, and the contents of Employer Exhibits 27 and 28, which project 2002-04 savings from its 0% wage increase proposal of \$195,158, but project future savings based upon its final offer of \$1,036,120.33 over a five year period or \$2,237,267.76 over a ten year period.

¹¹⁸ Although the parties might well have reached an accommodation at the bargaining table with delayed implementation of the Association proposed wage increase, the undersigned again notes that he is limited to consideration of the final offers of the parties *in their entirety*.

- (1) In the case at hand the parties differ *only* on whether their contractual wage reopener in the final year of their three year labor agreement should have resulted in a 3% *across-the-board* wage increase as urged by the Association, or in a 0% wage increase as urged by the College.
- (2) As emphasized by the undersigned in other proceedings, an interest arbitrator is really part of the contract negotiations process, and his/her normal role in applying the statutory arbitral criteria is to attempt to put the parties into the same position they would have reached at the bargaining table, had they been able to do so.
- (3) There is insufficient evidence in the record to justify arbitral modification of the parties' apparent long standing use of the set *primary intraindustry comparables* previously recognized by Arbitrator Imes, i.e., Blackhawk, Chippewa Valley, Fox Valley, Lakeshore, Moraine Park, Nicolet, Northcentral, Northeast, Southwest, Western and Wisconsin Indianhead.
- (4) Arbitral consideration of various comparisons justify the following preliminary determinations.
 - (a) The *intraindustry comparison criterion*, strongly supports the 3% wage increase proposed in the final offer of the Association versus the 0% wage increase proposed in the final offer of the College.
 - (b) The *comparison with other public sector employees in the same community and in comparable communities criterion* supports selection of the final offer of the Association rather than that of the College.
 - (c) The *comparison with other employees in private employment in the same communities and in comparable communities criterion*, to the limited extent that data is available in the record, supports selection of the final offer of the Association rather than that of the College.
- (5) The *factor given greater weight criterion* cannot alone be assigned determinative weight in these proceedings, and it should be applied with full consideration of the relative reasonableness of the two final offers and the remaining statutory criteria.
- (6) The *overall compensation presently received criterion* supports selection of the final offer of the Association rather than that of the College.
- (7) The *cost-of-living criterion* does not definitively favor the position of either party in these proceedings.
- (8) The *bargaining history criterion* somewhat supports selection of the final offer of the Association rather than that of the College.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm) of the Wisconsin Statutes, in addition to those emphasized by the parties and elaborated upon above, the undersigned has

concluded that the final offer of the Association is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm) of the Wisconsin Statutes, it is the decision of the impartial arbitrator that:

- (1) The final offer of the Association is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the final offer of the Association, herein incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

January 3, 2005