

In the Matter of the Petition of

WEST CENTRAL EDUCATION ASSOCIATION –
RIVER FALLS – SPECIAL EDUCATION
ASSISTANTS

To Initiate Arbitration Between Said Petitioner and
RIVER FALLS SCHOOL DISTRICT

Case 42
No. 61534
INT/ARB-9725

Decision No. 30923-A

Appearances:

Mr. Brett Pickerign, Executive Director, West Central Education Association, 105 21st Street North, Menomonie, WI 54751, at hearing and on briefs, and Mr. Greg Spring, Negotiations Specialist, Wisconsin Education Association Council, at hearing, appearing on behalf of the West Central Education Association – River Falls – Special Education Assistants.

Mr. Stephen L. Weld, Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing at hearing and on briefs on behalf of River Falls School District.

ARBITRATION AWARD

West Central Education Association – River Falls – Special Education Assistants (hereinafter Union) is a labor organization maintaining its offices at 105 21st Street North, Menomonie, WI 54751. River Falls School District (hereinafter District) is a municipal employer maintaining its offices at 852 East Division Street, River Falls, WI 54022. At all times material herein, the Union has been and is the exclusive collective bargaining representative of a bargaining unit consisting of all full-time and regular part-time Special Education Assistants and Health Service Aides employed by the District, excluding professional, managerial, supervisory, confidential, temporary, casual, and all other employees of the District.

The Union and the District have been parties to a series of collective bargaining agreements, including one covering the 2000-02 term. On May 16, 2002, the parties met to exchange initial contract proposals for a successor collective bargaining agreement for the 2002-04 term. On August 16, 2002, the Union filed a petition requesting the Wisconsin Employment Relations Commission (hereinafter Commission) to initiate arbitration pursuant to Sec. 111.70(cm)6 of the Municipal Employment Relations Act. Members of the Commission's staff conducted an informal investigation between November 19, 2002, and February 5, 2004, at which time said investigation reflected that the parties were deadlocked in their negotiations. Starting on February 18, 2004, the parties began exchanging their final offers. On May 20, 2004, the parties submitted to the Commission their final offers, as well a stipulation of matters agreed upon, and thereupon the Investigator notified the parties that the investigation was closed. The Investigator then advised the Commission that the parties were at impasse. On June 3, 2004, the Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The

Commission submitted a panel of seven arbitrators to the parties. After the parties alternately struck six, they notified the Commission that the undersigned was the remaining arbitrator. On July 1, 2004, the Commission appointed the undersigned to serve as arbitrator in this matter and to select either the total final offer of the West Central Education Association – River Falls Special Education Assistants or the total final offer of the River Falls School District.

Hearing in this matter was held on September 21, 2004, in River Falls, Wisconsin. The parties offered evidence and made arguments as they wished. The hearing was not transcribed. Following the hearing, the parties submitted briefs and reply briefs, the last of which was received November 23, 2005, and, after waiting to hear if there were any objections, the record was closed. Full consideration has been given to all the evidence and arguments of the parties in reaching this decision.

FINAL OFFERS

Union

1. Effective July 1, 2003, amend Article XIII as follows:

ARTICLE XIII - INSURANCE

Any special education assistant who wishes to join the district-select group plans may do so providing the underwriting requirements of the insurance company are met. ~~The District will contribute \$230.00 per month toward the premium cost for a full year (12 months).~~ **The District will pay 50% of the WEA family health insurance premium or 100% of the WEA single health insurance premium each month.**

2. Amend Article XVI by increasing the salary schedule 1.5% for the first year of the contract and 1.5% for the second year as follows:

ARTICLE XVI – COMPENSATION

1. Salary Schedule

Step	2000-2001	2002-2003	2001-2002	2003-2004
	HOURLY RATE		HOURLY RATE	
1	8.60	8.73	8.60	8.86

2	8.85	8.98	8.85	9.12
3	9.88	10.03	9.88	10.18
4	10.85	11.01	10.85	11.18
5	12.50	12.69	12.50	12.88

3. Amend Article XI by increasing sick leave allowance per year as follows:

ARTICLE XI - LEAVES

1. Sick Leave

Normal Hours Worked <u>Each Day</u>	Sick Leave Hours <u>Allowed per Year</u>	Sick Leave <u>Cumulative Hours</u>
3	24 27	240
4	32 36	320
4.5	36 40	360
5	40 45	400
7	56 63	560
7.5	60 67	600

District

1. Effective on ratification of this Agreement, create a fourth paragraph in Article XIII - Insurance as follows:

ARTICLE XIII - INSURANCE

Effective on ratification of this Agreement, the District will implement to maintain at District's expense an IRS Section 125 plan for all eligible participants subject to state and federal law. Effective with the implementation of the Section 125 plan, employees may redirect salary into the plan as authorized by and consistent with the plan and state and federal law.

2. Amend Article XVI by increasing the salary schedule 1.1% effective January 1, 2002 as follows:

ARTICLE XVI - COMPENSATION

1. Salary Schedule

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Step	2000-2001 2002-2003 HOURLY RATE	2001-2002 2003-2004 HOURLY RATE
1	8.60 8.69	8.69
2	8.85 8.95	8.95
3	9.88 9.99	9.99
4	10.85 10.97	10.97
5	12.50 12.64	12.64

2. Amend Article XI by increasing sick leave allowance per year as follows:

ARTICLE XI - LEAVES

1. Sick Leave

Normal Hours Worked <u>Each Day</u>	Sick Leave Hours <u>Allowed per Year</u>	Sick Leave <u>Cumulative Hours</u>
3	24 27	240
4	32 36	320
4.5	36 40	360
5	40 45	400
7	56 63	560
7.5	60 67	600

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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

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

1. The lawful authority of the municipal employer.
 2. Stipulations of the parties.
 3. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
 4. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
 5. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
 6. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
 7. The average consumer prices for goods and services, commonly known as the cost of living.
 8. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
1. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 10. 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.

POSITIONS OF THE PARTIES

Union on Brief

In terms of comparability, the Union argues that there is little dispute in the choice of comparables; that both the District and the Union look to the Big Rivers Athletic Conference as a proper source of comparables; that the Union also sees value in including CESA 11 in the comparisons as that particular agency provides services of the same nature to the entire area; that much of the work done by CESA aides is comparable to the work done by the River Falls Special Education Assistants; that the Districts Educational Assistants do some training with CESA; that the Union offers this group as a supplement to the Big Rivers Conference to provide a larger variety of units for comparison; that there is historical justification for the inclusion of this group, citing *River Falls v. West Central Education Association*, Dec. No. 26266-A (Miller, Richard, 5/21/90); that at the time of that arbitration, the District was in the midst of moving from the Middle Border Conference to the Big Rivers Conference; that the rationale for including CESA 11 aides still applies today even after the District has been in the Big Rivers Conference for 14 years; that Hudson School District is in the Big Rivers Conference; that its special education assistants are not organized; that, therefore, Hudson is not as suitable a comparable as other units within the Big Rivers Conference; that the Union suggests that the Arbitrator place less emphasis on the Hudson unit as a comparison due to their lack of representation; and that units that are not organized have less bargaining power and are not ideally suited to comparability to represented units.

In terms of the factors given greatest and greater weight, the Union argues that the District is in a strong position financially; that the District not only retains a large Fund 10 balance but they manage to increase it each year by under spending their budget; that not only is the District currently able to under spend their budget each year, but with the likelihood of increasing enrollment in the near future, the District is likely to have even more money to under spend in the future; that the contract term being litigated is already past; that for 2002-2004, all of the cost for those years is known; and that the District can pay for the Union's proposal and still have money to add to its large Fund 10 balance.

In terms of wages, the Union argues that the District's low wage offer is not supported by the settlement trend in the Big Rivers Conference; that it is low by comparison to all the other wage increases during 2002-2004 for all other organized units in the Big Rivers Conference; that it is not offered to offset abnormally high comparative salaries since they are actually behind the comparables in starting pay; that it is not consistent with other internal comparable offers; that it would retain the salary schedule's problem of uneven increments; that the wage proposal by the Union is also low compared to the other Big Rivers settlements; that it is the only wage proposal on the table that keeps pace with inflation; that the District proposes the second freeze in salary this group has seen in two years; and that no other employee group in the Big Rivers Conference has had to endure even one salary freeze in that time frame.

In terms of health insurance, the Union argues that the District is unable to show a reason for its

position on health insurance; that the District cannot show that it is beyond its ability to pay; that it is not beyond the District's ability to pay; that the District cannot argue that the current benefit is too high compared to the comparable districts; that the District cannot argue that its offer brings it back in line with comparable benefits; that it does not; that the District cannot assert that its offer is designed to establish some form of prorated benefit based upon hours worked; that the District cannot say it is to provide more equity in benefits among their employee groups; that it does not; that the District's sole goal in this arbitration and the other arbitrations would appear to be to insulate themselves completely from all future rising costs of health care; that it offers no justification for doubling the burden on its members that already have to pay a large percent of their gross salary to cover health insurance costs; that the District provides no justification for risking being dropped by the insurance carrier for failing to meet policy requirements toward employer contribution levels; and that it certainly is not in such serious financial straights that it need to start cutting back on benefits.

In addition, the Union argues that its proposal increases the District contribution to insurance rather significantly but it offers sound justification of the increase; that the comparables support having a family health insurance plan available to its members; that all of the comparables pay a percentage of family premiums significantly more than what the Union is asking for those employees covered by insurance in 2002-2004; that the proposal by the Union brings the District into compliance with a policy requirement of the insurance carrier; that the Union's insurance proposal prevents the carrier from dropping the group from its coverage; that the Union's proposal offers the promise to employees that health insurance will continue to be a possibility for them while they work in the District; that the amount of money that the parties are arguing over is small in contrast to the District's budget; that the value of the benefit that the Union is seeking to preserve is large; and that the Union's is the reasonable proposal and justified by the facts.

District on Brief

In terms of the "Greatest Weight" criterion, the District argues that this criterion supports adoption of the District's final offer; that while the District's allowable revenue limits have varied somewhat, in the past four years, its annual allowable revenue increase has averaged close to 3.8%; that the Union's proposed change in health insurance is a very costly proposal; that the Union's final offer for 2003-04 constitutes a 14.88% total package increase; that the District's allowable revenue increase was 4.12% in 2003-04; that as the Union's final offer calls for 100% single premium payment by the District, the District anticipates that a number of employees who are not currently taking health insurance will do so when the employees become aware that the insurance coverage is "free"; that despite taxing to the max under the revenue limits, the District's total General Fund revenues increased only 11.8% between 2000-01 and 2003-03 while, during the same period, total expenditures increased 14.71%; that total expenditures increased 6.68% in 2002-03; that this figure does not include 2002-03 wage increases for five support staff units currently in arbitration; that the Union will no doubt argue that the District has a sufficient Fund 10 balance to fund the Union's costly offer; that the fund balance does not represent cash; that a large Fund 10 balance is not a factor that should determine the result of an arbitration proceeding; that the "greatest weight" factors directs the Arbitrator to consider the statutory limits under which school districts must operate; that there is

obvious concern where the annual revenue increase is only 3.8% and the annual wage and benefit costs exceed 3.8%, substantially so in many years; and that the District submits that under the “greatest weight” factor, the District’s offer emerges as the more reasonable.

In terms of the health insurance issue, the District argues that the Union’s offer must be rejected because its health insurance proposal represents a major change in the status quo for which the Union has established no “need” and provided no quid pro quo; that the District proposes to maintain the health insurance contribution of \$230 per month; that the Union proposes to increase the District’s health insurance contribution from \$230 per month in 2002-03 to 100% for single coverage and 50% for family coverage in 2003-04; that this represents an increase cost to the District of \$279.26 per month for each employee taking single health insurance and an increased cost of \$339.46 per month for each employee taking family insurance, more than double the District’s current contribution; that not only has the Union proposed a significant increase in the District’s contribution, but its proposed language requires utilization of WEA insurance; that this language eliminates the District’s ability to control the increased cost of health insurance by selecting another health insurance provider with less costly premiums; that the Union’s language proposal makes no provision for prorating the District’s contribution based on the hours work; that under the Union’s final offer, all bargaining unit members who meet WEA’s underwriting requirements would be entitled to contributions equal to 100% of the single premium or 50% of the family premium; that this includes school year employees; that this is the equivalent to a wage increase of \$3511.67 in 2003-04 for each of the nine employees who took health insurance coverage in the base year; that future costs are significantly higher if the Union prevails in this dispute; that the remaining 26 bargaining unit members will be entitled to fully paid single health insurance in 2004-05; that the cost of single health insurance in 2004-05 is \$6449.77 per employee annually; that arbitrators have consistently held that the party proposing a change in the status quo has a substantial burden; that in cases where the proposed change to the status quo involved fringe benefit improvements, arbitrators are even more hesitant to award such changes through arbitration; that there is a consensus among arbitrators that a labor organization proposing to expand the benefit package has a significant burden; that at a minimum, the Union must demonstrate a compelling need for the proposed change and an adequate quid pro quo; and that the Union has demonstrated neither.

In terms of the burden to expand a benefit package, the District argues that the Union will likely argue that the need to change is the WEA Insurance Trust’s threat to discontinue health insurance coverage because the District is not in compliance with the Trust’s underwriting guidelines which require a minimum District contribution for full-time employees of 50%; that the District has been contributing less than 50% since at least 1999-00; that the Trust does not require fully paid single health insurance; that the Trust’s guidelines do not require that family coverage be offered; that the Union could have fashioned its offer to eliminate the Trust’s threat without requiring that all employees in the bargaining unit be afforded free single health insurance; that the comparables reveal that a 100% contribution is not the norm, particularly for school year employees and particularly for part-time school year employees; that the Union has failed to offer any quid pro quo for the change; that, clearly, a quid pro quo is required for a costly benefit improvement, yet the Union has not even attempted to argue that its final offer includes a quid pro quo; that the Union’s proposed benefit

improvement requires a significant quid pro quo; and that the Union has offered none.

In terms of the comparables, the District argues that the Union's proposed change in the status quo is not supported by the comparables; that internal comparables do not support a change in the status quo; that the Union's proposal to seek fully paid single health insurance for all employees working 20 hours per week or more is unreasonable and cost prohibitive; that even the District's full-time teachers contribute 2.5% of the cost of their monthly premiums; that the Union's proposed change lacks support among the external comparables; that the parties agree to use the Big Rivers Conference for external comparison purposes; that in the previous arbitration the arbitrator included CESA 11 as a comparable because the District was providing services to students from other CESA 11 school districts; that the District no longer provides such services; that CESA 11 does not fall under the statutory revenue limitations; that those limitations did not exist at the time of the prior arbitration; that the circumstances have changed sufficiently to justify excluding CESA 11; that none of the Big Rivers Conference schools contributes 100%, regardless of hours worked; and that the external comparables simply do not support such a generous health insurance benefit.

In terms of wages, the District argues that its wage offer is consistent with the parties' total package approach to bargaining; that the Union's wage offer must be rejected when considered in conjunction with its health insurance proposal; that the District has historically bargained on a total package basis, allowing each bargaining unit to elect where the new monies should be applied, either in wages or benefits or both; that even though the District proposes a wage schedule freeze in 2003-04, all but five members of the bargaining unit will receive a wage increase in 2003-04; that the average wage increase under the District's final offer is 72 cents per hour, compared to an average increase of 88 cents per hour under the Union's offer; that given the high cost of the Union's final offer, representing an average total package increase of 9.76% per year, the District's offer is the more reasonable proposal; that under the District's final offer, bargaining unit members will receive a total package increase of 4.26% in 2002-03 and 7.63% in 2003-04 for an average total package increase of 5.95% for the two year term; and that the Union simply cannot justify wage and benefit improvements which result in an average annual total package increase of 9.76%.

Regarding other criteria, the District argues that the interest and welfare of the public is better served under the District's final offer; that the District's final offer is more reasonable under the cost of living criterion; that, in summary, the District argues that the Union proposed a major and costly change in the status quo with respect to health insurance; that the cost of the Union's proposed change in 2003-04 totals \$31,605 for the nine employees taking health insurance; that this results in a total package increase of 14.88% in 2003-04; that the future costs for the 26 employees who would be entitled to fully paid single health insurance dwarf that figure; that given the lack of both internal and external support for the Union's health insurance and utter failure to offer any quid pro quo, the District submits that the Union's final offer is unreasonable; and that based on the foregoing facts, relevant case law and arbitral authority, the District requests that its final offer be selected by the Arbitrator.

Union on Reply Brief

In terms of the ‘greatest weight’ criterion, the Union argues that the District can afford the Union’s proposal; that it is not a question of whether future increases in the District’s total revenue will keep pace with the percentage increase offered to an employee group; that it is a question of whether the money is presently there to cover the costs; that the answer is undeniable “yes”; that the District attempts to confuse the issue by advancing two fallacies; that the first of the two fallacies is that it is unreasonable to offer total package proposals that are in excess of the total percent increase of the District’s overall revenues; that this claim is inaccurate because total revenue is a much larger number so multiplying it by a percent will generate many more dollars than multiplying a smaller cost by the same percent; that to argue that the percentage or increase in the wage and benefit proposal must be the same as the percent the District increases its total revenue is absurd; that a percentage increase salary and benefits of more than twice the size of the percentage of revenue growth can be easily affordable when the dollar amount is considered; that the second of the fallacies is that the money the Union is requesting is coming out of the Fund 10 balance and that this is money that is already tied up and can not be applied; that the Union is not proposing that the District dip into its Fund 10; that the Union is only proposing that the District spend a little closer to its available yearly budget; that since the Union’s plan does not diminish the size of the Fund 10, the District’s argument that it should not be required to pay out of its Fund 10 is irrelevant; that the District cannot prevail on the “Greatest Weight” factor because the cost of the Union’s proposal does not even come close to pushing the District’s budget up to the revenue limits; and that the District can pay the increase in benefits and still have money left for deposit in its Fund 10.

In terms of the change in the status quo, the Union argued that it has demonstrated a need for a change in the status quo; that the Union’s brief clearly articulates the need for change in the status quo; that the change is needed to ensure continuity of coverage by the insurance carrier; that the Union has explained that the change is needed to bring the unit more in line with their external comparable employees; that the change is needed to make the insurance coverage benefit more consistent and equitable with other internal comparables; that the District is willing to allow the benefit of health insurance to go away either by the employees no longer finding it affordable or by having the carrier drop its coverage on the basis of the District failing to meet its contribution requirement; that the District’s refusal to share any of the costs of the raising health insurance puts the continuity of the benefit gravely at risk; that this risk comes in two forms; that either the insurance simply becomes unaffordable to the employees or the carrier will cancel the policy for the District’s failure to adhere to an underwriting requirement in spite of several prior warnings; that the District correctly points out that the Union offer is more than is required to comply with the insurance underwriting requirement; that it must be noted that the District’s offer completely fails to address the problem; that the District has more means at its disposal to solve this problem; that the District could have bid out the insurance to another carrier; that the District could have proposed a less expensive insurance; that neither of these were offered; that the District could have modified its contribution portion to 50% of a plan complete with proration language to meet the insurers’ requirements as minimal cost; that the District could have proposed the same dollar amount in cafeteria dollars so the loss of the carrier would not have resulted in a complete loss of the benefit; that the District did none of those things; that with prior knowledge of the crisis, the District took no

actions to avert it; and that the District saw this dilemma as an opportunity to eliminate a benefit while arguing it was upholding the status quo.

The Union also argues that its proposal offers sufficient quid pro quo to merit a change in the status quo; that while the District is not proposing eliminating health insurance as a benefit, its proposal may likely have just that impact; that for those who rely upon the District's health insurance, the outcome of this arbitration is critical; that quid pro quo is not a universal requisite form modifying the status quo; that there are occasions where the level of benefit is so out of line with the comparables that changes to bring a District back in line does not require a showing of quid pro quo; that when the contribution rate for insurance in one district is drastically different than the contribution rate of the comparables, it is reasonable to adjust that disparity without a quid pro quo; that when deciding if any quid pro quo is required or what level should be applied, the pattern established by the comparables should be a major factor; that the more out of line the benefit is with the comparables, the less quid pro quo should be required to correct it; that in those cases where some quid pro quo is required, it need not necessarily be a large amount; that there is no requirement that it match the benefit sought; that it must simply be a reasonable one; that the Union has established that the wages and benefits are very low, contrasted to the comparables; that the gross disparity in insurance coverage provided by the District and the insurance coverage provided in other comparable, there is no need for a showing of quid pro quo to correct this shortcoming; that, however, if there is a need for quid pro quo, it would be a modest level that should be required; that the Union's offer does provide a level of quid pro quo in excess of the modest level that should be required; that in spite of the need to catch up starting pay and insurance benefits, the Union has proposed a wage increase of only 1.5% each year of the contract; that this amount is far behind the settlement pattern among the comparables; that this wage concession should constitute sufficient quid pro quo in light of the serious need to modify the status quo and save a benefit; that it is not the only quid pro quo that the Union's proposal provides; that the Union's proposal does not require the new contributions on insurance to take place until the second year of the agreement, allowing the District to enjoy yet another year of savings generated by paying an insufficient share of the insurance burden; that such savings have been considered quid pro quo by some arbitrators; that weighed against the possibility of a de facto disenfranchisement of a major benefit, the acceptance of a wage increase significantly below the comparable trend, the delayed implementation of the new benefit cost, and the years of savings for paying such a low contribution toward insurance is more than sufficient quid pro quo.

In terms of internal comparables, the Union argues that its proposal best affords equity with internal comparables; that the current payments to the various bargaining units are not equitable; that the District's concerns regarding 100% coverage for employee working less than five hours a day is unfounded; that in this two year agreement, no one in this bargaining unit is taking insurance that works less than 7.0 hours; that there are only two bargaining unit members who work in the neighborhood of four hours per day; that neither employee took insurance; that the District speculates that employees currently without insurance will sign up in the future; that this is all speculation; that in terms of other issues, the Union argues that external comparables support sharing more of the burden of health care costs; that the Union's plan best represents the interest and welfare

of the public; and that the Union's offer is best when measured against the CPI.

District on Reply Brief

In regard to the Union's assertion that the District's enrollment growth is likely to continue into the foreseeable future, the District argues that wage and benefits comprise 85% of the District's operational budget; that even if enrollment continue to increase at a 4.12% in 2003-04, when wage and benefit settlements are double digit (a 14.88% Union demand in 2003-04), it will not take long for expenses to exceed revenues; that in regard to wages, the Union argues that a comparison of the wage rates supports the Union's proposal; that this argument mentions only the starting rates; that it makes no mention of the maximum rates; that is because the Districts maximum rates, even under the District offer, are exceeded by only one comparable; that the proposed wage freeze is due to the high cost of step movement for this unit; that the District has a history of bargaining on a total package basis; and that a total package increase of 7.63% in 2003-04 under the District's offer simply does not allow for an increase to the wage schedule.

In regard to the CPI, the District asserts that the Union argues that it is the wage increase, rather than the total package increase, which should be compared to the cost of living; that the District argues that where wage increase include the high cost of step movement, as is the case here, a simple comparison of increases to the wage schedule does not represent an actual comparison of employees' increased buying power; and that the total package increase is an appropriate comparison because it includes wage increases resulting from step movement, rather than just increases applied to the wage schedule.

In regard to health insurance, the District asserts that the Union argues that its proposed change in health insurance is necessary to avoid losing health insurance coverage; that the District argues that there is no guarantee that employees will lose WEA coverage; that the District has not contributed adequately under the WEA's guidelines for years; and that there is clearly no internal support for fully paid single health insurance for employees who work only during the school year.

In summary, the District argues that there is no support, either internally or externally, supporting the same percentage contribution to all employees, regardless of hours worked; that by requiring the District to bear the entire cost of single health insurance, given the open enrollment period provided by WEA, it is highly likely that the vast majority of employees will opt for free single health insurance; that then the District's only option in reducing that cost burden will be to pay again by providing incentives for employees not to take the coverage or attempting to negotiate an employee contribution; and that the District should not be forced via arbitration to increase its health insurance contributions to a level unwarranted by the comparables.

DISCUSSION

Introduction

This is one of those cases in which neither side presents a winning offer, and whoever loses will say,

“How could that arbitrator select that unreasonable offer?” and people will nod their heads and say, “Yes, bad arbitrator, bad arbitration law,” not realizing, of course, that the arbitrator found their final offer was even more unreasonable. Both sides in this case have placed in their final offers proposals that they would probably never get in collective bargaining, things that do damage to each other, issues which both parties should have an interest in resolving together. But they didn’t.

Instead the Union is seeking in the second year of the contract to move from a \$230 cap on the District’s health insurance contribution to a 100% single/50% family contribution, a change in the District’s insurance cost from \$24,840 per year to \$56,445 per year, a \$31,605 increase for the year which calculates out to a whopping 127.23% increase. This is only for the nine of 35 bargaining unit members who presently take insurance.

This proposed 100% payment for single coverage for every employee, regardless of hours worked, flies in the face of the comparables, all of which have proration based on hours worked for school year aides, ranging from 35% to 50% for a four hour day and from 62% to 94% for a 7.5 hour day. In addition, 26 members of the bargaining unit do not take health insurance, but the District argues and this arbitrator agrees that all 26 will take the 100% District paid (meaning free) single plan for an additional cost to the District of \$167,694 per year. The percentage increase – whose calculator goes that high? Finally, the Union is attempting to have the contract specify the name of the insurance carrier, the current carrier, the WEA Trust.

The District is seeking to freeze its dollar amount contribution for health insurance at \$230 for single or family coverage, forcing the employees to pick up the increase of \$315.42 per month/\$3785.04 per year for family coverage over the two years of the contract, an increase of 38.3%, an increase the Union fears will force many employees to forgo health insurance coverage, a fear the arbitrator believes is well founded. The contribution rate for the District would be reduced to 27.93% for the family premium, when the comparables pay 82%, 90% or 95%, which is a minimum of 290% above the District’s offer. To top it off, the District’s offer does not even meet the minimum underwriting standards of the insurance company.

Finally, the District is offering a salary increase of 1.1% the first year, with a freeze, 0.0%, in the second year. This raise and lack of raise are for a unit in which the first three of the five steps available to the District’s employees during the base year 2001-02 are paid less than the first or beginning step of all of the comparables, and in which, under the District’s wage proposal, the employees on the first four of five steps will be paid less than the average start salary for the comparables. Under the District’s proposal, 30 of its 35 employees in year one of the contract and 28 of 35 in the second year will be paid less than average start rate for the comparables.

So which one do you pick? Let’s start with the comparables.

Comparables

The parties agree that four of the five districts in the Big River conference form the basis for a

primary comparable pool. The Union argues that Hudson should be excluded as it is not represented for purposes of collective bargaining. The District argues that, even though the unit is not represented, the rate of pay and benefits received by Hudson aids represents the real market value of their work.

In addition, the Union argues that CESA 11 should be included in the comparables, pointing to the only other arbitration between these parties in which the arbitrator did include CESA 11. The District argues that at the time of the first arbitration, the District offered services to other CESA 11 schools, which it no longer does, and that CESA 11 is not limited by spending caps, caps which were not in place at the time of that arbitration, caps under which the District must now live.

Therefore, the parties agree that Chippewa Falls, Eau Claire, Menomonie and Rice Lake should be included comparables. I will use them as the primary comparable pool. I tend to agree with the Union that Hudson, an unrepresented unit, should not be included, at least at full force. I tend to agree with the District that CESA 11 may no longer be an appropriate comparable because of changes that have taken place since the first arbitration. Therefore, I will use Hudson and CESA 11 as a secondary pool only if needed.

Factor given greatest and greater weight

Sec. 111.70(4)(cm)7, Wis. Stats., directs the arbitrator to consider and give the greatest weight to any state law which places limitations on expenditures that may be made or revenues that may be collected. The District rightfully points out that as a school district, it is limited by state imposed revenue caps, meaning that school districts may increase their operating expenditures only to the extent allowed by the revenue caps.

The District then argues that the District has consistently taxed the maximum allowable levy, that its annual allowable revenue increase has averaged close to 3.8 in the past four years; that labor costs comprise the vast majority of school district operating expenditures. about 85% in the District; that the Union's final offer for 2003-04 includes a proposed change in health insurance which is very costly; and that the Union's final offer constitutes a 14.88% total package increase.

But it is clear from the record that the District has underspent its budget for the past four years and that paying the cost of the Union's proposal would still allow the District to contribute to its Fund 10 account.¹ The District is not making an argument that it can not pay. There is no evidence that the state imposed spending limits would, in any way, prevent the District from funding the Union's final offer. I therefore find that the factor given greatest weight does not prevent the District from funding

¹The District argues that Fund 10 monies should not be used for salary and benefit increases as argued by the Union. In its brief in chief, it can be read that the Union is arguing this, but in its reply brief, the Union clearly states that it is not. In any case, this arbitrator would stand with those who have ruled that Fund 10 accounts should not be used for recurring expenses, such as insurance.

the basic parts of Union's proposal.² But I also find that this factor does not particularly cut in favor of the Union;³ therefore, it will not be a determining factor in this arbitration.

Sec. 111.70(4)(cm)7, Wis. Stats. also requires the arbitrator to give greater weight to the economic conditions in the jurisdiction of the municipal employer. The only argument on this issue in this matter is by the Union which argues that the community of River Falls and the county of Pierce both have sound financial situations. The District does not dispute this. Therefore, this criteria would favor the Union.⁴

Salary

The District argues that its wage offer is consistent with the parties' total package approach to bargaining and that the Unions' wage offer must be rejected when considered in conjunction with its health insurance proposal. The Union argues that the District's wage offer is not supported by the comparables and that the wage schedule is behind the comparables in starting pay.

In fact, as stated above, the salary schedule for this group is way behind the comparables.

As shown in Table 1 below, the District's start rate among the comparables is the lowest by \$1.56 and below the average by \$2.33. The District notes that the maximum pay rate is very competitive,

²This means that the revenue caps do not play a part in this decision if the Union's insurance proposal is limited to those currently taking it and costing is done in a cast forward method.

³The Union's final offer includes a change in insurance which will have a huge financial impact on the District, possibly in the second year of the contract, though it is already expired, and certainly in the future. In terms of the factor given greatest weight, I make no finding as to its application to the impact of that change, a change which I discuss in the Insurance section of this Discussion, a change which will be the key to the determination of the Award in this matter.

⁴Again, the Union's health insurance proposal will have a huge impact in the future. And, again, I make no finding as to whether the factor given greater weight would support that consequence.

placing it as the fourth highest among the five comparables. But that is the only place the salary schedule looks good in comparison to the comparables.

Table 1 – Salary Comparison: Base Year 2001-2002

District	Start Wage	Months to Maximum	Maximum Wage
Chippewa Falls	\$10.75	48 months	\$11.65
Eau Claire	\$10.16	60 months	\$11.79
Menomonie	\$10.29	36 month	\$11.87
Rice Lake	\$12.50	12 months	\$12.79
Comparable Average	\$10.93	39 months	\$12.00
River Falls	\$8.60	60 months	\$12.50

The first thing to note in Table 2 is that this unit accepted a wage freeze for 2001-02. The second thing to note is that step three on the District’s salary schedule is a lower wage rate than the beginning steps of all four comparables, and that the average starting salary for all four comparables is higher than the first four steps of the District’s five step salary schedule.

Table 2 – River Falls Salary Schedule

Step	2000-2001 HOURLY RATE	2001-2002 HOURLY RATE
1	8.60	8.60
2	8.85	8.85
3	9.88	9.88
4	10.85	10.85
5	12.50	12.50

Table 3 shows that not only does the District’s start rate remain way behind the comparables, but it is losing ground. In 2002-03, it is now \$1.65 behind the lowest comparable and \$2.56 below the

average under the District’s offer. Even under the Union’s more generous offer, the start salary loses ground, but not as much as it is only \$1.61 behind the lowest comparable and \$2.52 behind the comparable average. The second thing to note is that the District freezes the salary schedule in the second year. Now I could understand freezing Step 5 in an effort to move that step from near the top of the salary scales among the comparables to closer to the middle. But freezing the first four steps, many of which are below the comparables first step, is counterintuitive.

Table 3 – Comparable Salaries: 2002-03 and 2003-04

District	2002-03 Start Wage	2002-03 Maximum	2003-04 Start Wage	2003-04 Maximum
Chippewa Falls	\$11.07	\$12.00	\$11.29	\$12.24
Eau Claire	\$10.34	\$12.00	\$10.52	\$12.21
Menomonie	\$10.57	\$12.15	\$10.89	\$12.47
Rice Lake	\$12.92	\$13.22	\$13.36	\$13.67
Average	\$11.25	\$12.34	\$11.52	\$12.65
River Falls: District Offer	\$8.69	\$12.64	\$8.69	\$12.64
River Falls: Union Offer	\$8.73	\$12.69	\$8.86	\$12.88

The District argues that it is limited by cost controls and that the traditional total package bargaining between the parties requires a freeze which, the District argues, is only a freeze of the schedule; most employees will still get a raise by moving to the next step.

Table 4 – Comparable Percentage Increases: 2002-03 and 2003-04

District	2002-03 Start Wage	2002-03 Maximum	2003-04 Start Wage	2003-04 Maximum
Chippewa Falls	3%	3%	2%	2%
Eau Claire	2%	2%	2%	2%
Menomonie	3%	2%	3%	3%
Rice Lake	3%	3%	3%	3%
Average	2.75%	2.50%	2.50%	2.50%

River Falls: District Offer	1.1%	1.1%	0.0%	0.0%
River Falls: Union Offer	1.5%	1.5%	1.5%	1.5%

The comparable school districts of Chippewa Falls, Eau Claire, Menomonie and Rice Lake are all under the same spending limits as the District. All of them had insurance increases. All of them have employees moving through the salary schedule. And as Table 4 above shows, all of them increased their employees salaries by a minimum of 2% and on average over 2.5% during each of the two years at issue here, substantially more than the District is offering both as a percentage increase and in dollar amounts as these higher percentages were applied to a higher salary to begin with.

On the issue of wages, the Union’s offer of 1.5% each of the two years is strongly preferable.

Health Insurance

If this case was about salary, we would be done. The Union would win. We would call it a day. But this case is not about salary per se. It is a case about the Goliath of fringe benefits, health insurance.

The District wants to freeze the dollar amount it has to pay at \$230 per month.⁵ This is in a day and age where insurance increases of 38.3% over two years is not uncommon. That is the increase that occurred in this District. That is the increase that the District’s offer has the employees paying the entire share. In dollar amounts, this is an increase of \$315.42 per month. At the low end of the

⁵The Association notes that this amount does not meet the underwriting requirements of the current insurance carrier. As noted in the District’s brief, this is nothing new. If the carrier decides to enforce its underwriting requirements, the District will be in the market for a new insurance company.

But here is where an error in the Union’s thinking occurs. The Union asserts that the District has more means at its disposal to solve this problem. For example, the Union states that the District could have had other insurance companies bid on the insurance and that, therefore, the District could have proposed a less expensive insurance plan. More interestingly, the Union points out that the District could have modified its proposal to include a contribution portion to 50% of a plan, complete with proration language, to meet the insurer’s underwriting requirements. The amazing thing is that, instead of waiting for the District to make such proposals, the Union could have done these things. The Union had the means at its disposal to solve this problem. The Union could have offered a proposal that meets the minimum of the insurance company’s underwriting requirements, but that proposal would not have been for a 100% single/50% family employer contribution. The underwriting requirements only call for a 50% payment of the single plan. This is something the Union could have offered, something to which I think most if not all arbitrators would give serious consideration. But that is not the offer on the table before this arbitrator.

District's proposed salary schedule, an employee would have to work over 36 hours a month just to pay for the health insurance increase! The District is saying it no longer wants to split the insurance increases with the employees. The employees will therefore take home 36 hours of wages less than they did in the base year just to pay for the increase in insurance. The Union asserts, and I tend to agree, that the District no longer wants to be in the health insurance business, at least with this bargaining unit. The District is offering a wage increase that ranges from \$10.29 a month to \$16.01 a month.⁶ For the highest paid of those employees taking family insurance, the best they going to do is to take home \$299.41 a month less than they did in 2001-02.⁷ I can not remember reading about and I certainly have not arbitrated a case where the employer offered this low of a salary increase on a salary schedule that is so far behind the comparables, coupled with a freeze on the dollar amount contributed to health insurance on a cap as low as \$230 per month. If an employer did, my gut reaction is the case is over, the Union wins, and we all go home.⁸

But this is an extraordinary case. I have never struggled as hard on a decision as I have on this one. The problem appears in the Union's proposal on health insurance. The Union is offering 100% single

⁶The Step 1 increase is \$.09 per hour. Multiply that by 1372.5 hours worked per year, which is what most employees in this unit work, and you get a \$123.53 increase for the year. Divide that by the 12 months insurance is paid gives the employee at Step 1 a monthly increase of \$10.29. The Step 5 increase is \$.14 per hour times 1372.5 hours worked per year divided by 12 month per year equals \$16.01 per month increase. \$315.42 per month increase in insurance premiums minus \$16.01 per month increase in wages equals \$299.41.

⁷\$315.42 per month increase in insurance premiums minus \$16.01 per month increase in wages equals \$299.41.

⁸The District does temper its offer by including an IRS Section 125 plan for all eligible participants.

and 50% family employer contribution. On first glance, this seems quite ordinary, someone one might expect to see in a support staff contract. But the Union's proposal is that everyone in the bargaining unit receives, as a minimum, single health insurance coverage paid for by the District.⁹ The 2003-04 cost for this is \$509.26 per employee per month. And not only the employees who work 7.5 hours a day or 7.0 or even 6.5 hours a day get this benefit, but every employee, including those who work 4.0 or 4.2 hours per day. This is farther away from the comparables than the District's wage offer.

⁹Presently, of the 35 bargaining unit members, only nine take insurance: seven take single and two take family.

The Union points to the secretarial and custodial units of the District in which full-time employees receive 100% of single coverage. The District's asserts and the Union does not refute that secretarial and custodial employees who work less than full time¹⁰ do not receive 100%. Such secretarial and custodial employees do receive an insurance contribution but is prorated based on yearly hours worked. Prorated. I looked through the Union's offer for that word. I looked and I looked and I looked. I could not find it anywhere. I then looked for variations of the word, such as 'proration'. Again, I was unsuccessful. The word was no where to be found in the Union's final offer. So, in essence, the Union's offer requires that employees of this bargaining unit who work as little as four hours a day receive 100% paid single health insurance, even though no other employees of the District have such a benefit .¹¹

The District also points out that the secretaries and custodians are full time calendar year employees, working 1968 hours (secretaries) or 2080 (custodians) a year, while the most any member of this bargaining unit works is 1372.5 hours a year. A secretary or custodian working 1372.5 hours a year would not be paid 100% of the single health premium but, since the benefit is prorated, he or she would be paid considerably less. It is hard to argue that these school year employees should receive not only the same but better insurance contributions than calendar year employees. In fact, the professional staff does not receive 100% paid single health insurance. The Union would be hard pressed, I believe, to find a comparable where aids are receiving better benefits than teachers.¹²

The external comparables cut both ways. The range of contribution for full-time employees is 62% to 94%, a much higher rate than the District's 28% contribution and, based upon that alone, shows the need for drastic catch-up. But none of the external comparables pays 100% of the single premium and 100% of the external comparables prorate the insurance contribution based upon hours worked. That does not bode well to the Union's offer.

And if that was all there was, this would be an interesting case: a District under paying in four of five steps of the salary schedule offering a very low wage increase one year and a freeze the second year, coupled with a freeze on insurance contributions which makes its contribution rate even more significantly lower than it has been compared to the other comparables versus a Union offering a 100% single coverage insurance contribution for all members of the bargaining unit which is a higher

¹⁰For secretaries, that appears to be about 7.5 hours and, for custodians, 8.0 hours.

¹¹The Union points out correctly that the District's dollar cap offer does not include proration, either, that all employees, regardless of hours worked, receive \$230. The ironic thing is that the District's offer is so small that any standard insurance proposal (90% or 95% or 100%, prorated based upon hours worked) would give a dollar amount above what the District is offering so, in essence, all the employees would receive at least that much. In other words, the District's offer is so small as to defeat the need for proration.

¹²This discussion is focusing on the single coverage because as will become evident later, this is the turning point of the case.

contribution than any of the employees working for the District, based upon hours worked, including the teachers, and all of the external comparables, and which does not prorate the benefit, regardless of hours worked. That would be an interesting case.

But that is not the case, at least not all of the case, because the Union's offer has fermenting in it an impact of gargantuan proportions for the District. Currently, nine bargaining unit members take insurance and 26 do not. The District argues that offer the 26 bargaining unit members a free single coverage health insurance plan, they will take it. The Union says "Maybe not." I would take it, and these employees will take it too. And this would add an enormous financial increase to the District. At the 2003-04 rate of \$509.26 per month per employee for single coverage, that would increase the District's insurance outlay \$13,240 a month and almost \$160,000 a year. That is just for the 26 employees who are not presently covered. There would be added to that the increase for the other nine bargaining unit members as well. The District's offer on wages and health insurance is, in many ways, unreasonable, and may cause the nine employees who presently take insurance to rethink that. But the Union's offer is so extraordinarily generous as to be even more unreasonable than the District's. It not only sets a percentage amount for insurance coverage in the contract, a worthy goal for a Union to seek, but it sets it at such a rate and in such a way that no other employees in the District or the comparables can match it. If the Union had prorated their offer, this would have been an interesting case, and the Union may very well have ruled the day. But such is not the case.

On the issue of health insurance, even though the District's offer suffers and suffers greatly from an unwillingness to reasonably share the burden of rising health care costs, it is nonetheless the preferable offer when the ramifications of the Union's offer are understood, not only from the extended coverage it offers but the price it will amount it will cost the District, especially because employees who are not now covered will take the free insurance coverage at an amazing cost to the District. Believe it or not, on the issue of insurance, the District's offer is strongly preferred such as to overcome the Union's better position on wages.

Other Issues

The parties both included a modified leave schedule in their final offers. As the final offers are the same and as there is no dispute between the parties as to the leave schedule and as the parties offered no discussion or argument regarding the leave policy, it does not need to be discussed here. The District argues vehemently that the Union has not offered a quid pro quo for its proposed change. The Union argues its below average wage offer is quid pro quo. I do not need to get to that argument as on its face the Union's offer is not acceptable. The parties made other arguments, all of which have been reviewed and found wanting in one way or another. The case boils down to this: the District's wage and insurance offers are unreasonable in many ways, but the Union's insurance proposal, even coupled with a decent wage proposal, is even more unreasonable.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

That the final offer of the River Falls School District shall be incorporated into the collective bargaining agreement between the parties for the 2002-04 term.

Dated at Madison, Wisconsin, this 18th day of February, 2005.

By _____
James W. Engmann, Arbitrator