

In the Matter of the Petition of

WEST CENTRAL EDUCATION ASSOCIATION –  
RIVER FALLS BUS DRIVERS UNIT

To Initiate Arbitration Between Said Petitioner and

RIVER FALLS SCHOOL DISTRICT

Case 43  
No. 61535  
INT/ARB-9726

Decision No. 30924-A

Appearances:

Mr. Brett Pickerign, Executive Director, West Central Education Association, 105 21<sup>st</sup> 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 Bus Drivers Unit.

Mr. Stephen L. Weld, Weld, Riley, Prenz & 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 Bus Drivers Unit (hereinafter Union) is a labor organization maintaining its offices at 105 21<sup>st</sup> Street North, Menomonie, WI 54751. River Falls School District (hereinafter District or Employer) 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 bus drivers employed by the District, excluding all professional, managerial, supervisory, confidential, and casual.

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 26, 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 on October 28, 2002, at which time said investigation reflected that the parties were deadlocked in their negotiations. On or before 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 Bus Drivers Unit 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 XVII - Insurance, Section A as follows:

#### **ARTICLE XVII - INSURANCE**

**Health Insurance** - Any bus driver who wishes to join the ~~district-selected~~ **District-select** group health plan plans may do so within the first thirty days of employment (insurance company underwriting requirement) providing the other underwriting requirements of the insurance company are met. ~~Employees who wish to enroll in the District's group health insurance plan after the first thirty days of employment shall be subject to the eligibility requirements and rules of the carrier. The district will contribute \$141.00 per month for the 2000-2001 school year and \$175.00 per month for the 2001-2002 school year toward the premium cost for a full year (12 months). These dollar amounts were based upon 45% of the cost of each year's premiums.~~ **The District will pay 50% of the WEA family health insurance premium or 100% of the WEA single health insurance premium each month.**

so that it reads as follows:

Health Insurance - Any bus driver 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 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 wage rates effective July 1, 2002, by 2.25% and by increasing the wage rates July 1, 2003, by 3% as follows:

#### **ARTICLE XVI – COMPENSATION**

<b>Step</b>	<b>Years of Service</b>	<b>2002-2003</b>	<b>2003-2004</b>
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A	1 year or less	\$12.68	\$13.06
B	2-3 years	\$14.11	\$14.53
C	4-6 years	\$14.47	\$14.90
D	7-9 years	\$14.83	\$15.27
E	10 years and above	\$15.18	\$15.64

**District**

1. Revise Article XVII - INSURANCE as follows:

**ARTICLE XVII - INSURANCE**

Any bus driver who wishes to join the district-selected group health plan may do so within the first thirty days of employment (insurance company underwriting requirement) providing the ~~other~~ underwriting requirements of the insurance company are met. Employees who wish to enroll in the District's group health insurance plan after the first thirty days of employment shall be subject to the eligibility requirements and rules of the carrier. The district will contribute ~~\$141.00 per month for the 2000-2001 school year and \$175.00 per month for the 2001-2002 school year~~ toward the premium cost for a full year (12 months). ~~These dollar amounts were based upon 45% of the cost of each year's premiums.~~

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Any bus driver who wishes to join the district-selected group health plan may do so within the first thirty days of employment (insurance company underwriting requirement) providing the other underwriting requirements of the insurance company are met. Employees who wish to enroll in the District's group health insurance plan after the first thirty days of employment shall be subject to the eligibility requirements and rules of the carrier. The district will contribute \$175.00 per month toward the premium cost for a full year (12 months).

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E	10 years and above	\$15.18	\$15.64

**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 asserts that there are no organized groups of bus drivers within the Big Rivers Conference; that no other schools in the conference directly employ their drivers; that to look for appropriate comparables, the Union used the criteria of size, geographic proximity, district employment of drivers and union representation of the drivers; that for size the Union selected districts with a minimum of 900 students, compared to the 2000 students of the district; that for geographic area, the Union used the CESA 11 boundaries; that since this criterion, in addition to the other criteria, produces only three comparable districts, the Union added CESA 10 as it is contiguous and contains enough larger districts to give a reasonable selection of comparable districts; that the final two criteria, district employed and organized drivers, are necessary to produce comparable units; that applying such criteria, the Union proposes that the comparable group be composed of the following districts: Altoona, Amery, Ladysmith-Hawkins, Mondovi, Neillsville, Osseo-Fairchild, Saint Croix Falls, Stanley-Boyd, and Unity; that the District's first tier of

comparables is based upon districts that border River Falls; that this makes some sense but includes groups that are not similar in size to River Falls and which are not organized; that the District's second tier of comparables makes no sense; that it is a collection of districts of a wide range of sizes; that some are organized; that none of them are contiguous; that this group does not meet the District's own suggested criteria for inclusion; that this group should not be considered a proper group for comparability; that the District's final group, labeled "Other Organized", is contained in the Union's list of comparables but for Barron, which the Union understood was not organized; that as it seems to meet the Union's criteria, the Union would add it to the comparability group;

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 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 breaking with the past tradition of contributing a dollar amount based upon a percentage; that the District provides no rationale for the dollar amount that it offers to the bus drivers for the insurance payment; 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 straits that it need to start cutting back on benefits.

In addition, the Union argues that its proposal increases the employer 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 five of the comparables pay a percentage of family premiums significantly more than what the Union is asking; that two of the comparables pay a percentage that is essentially the same; that while one comparable pays a lesser amount than the District is offering, that one comparable does not pay for health care or offer a stipend in lieu of health care; that two comparable may not be the same; that even giving the District the benefit of the doubt, the comparable districts favor by 7 to 4 a plan equal to or greater than the one the Union is offering; 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 District's allowable revenue limit for the two-year term of the contract was 3.88%; that the average for the four year period of 2000-01 through 2003-04 was 3.83%; that the District has consistently taxed the maximum allowable levy; that the Union's proposed change in health insurance is a very costly proposal; that the Union's final offer for 2003-04 will cost \$20,381 more than the District's offer; that this constitutes a 9.87% 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 increase when the employees become aware that the insurance coverage is "free"; that two other bargaining units, the Paraprofessionals and the Special Education Assistants,<sup>1</sup> are also seeking the same health insurance premium contribution; that if all three units were successful in arbitration, the District will experience a cost increase of \$33,053 per month in 2004-05 if the employees in the three units who are not currently taking health insurance choose to do so; 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 expenditures increased 6.68% in 2002-03 alone; that this figure does not include 2002-03 wage increases for five support staff units currently in arbitration; that the wages not yet paid in 2003-04 ranges from \$471,013 under the District's proposals to \$700,172 under the Union's proposals; that much of the \$875,441 in 2003-04 excess revenues will be needed to cover unpaid wage increases for 2003-04; 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

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<sup>1</sup>The contract for the Special Education Assistants is before this arbitrator in another case.

has established no “need” and provided no quid pro quo; that the District proposes to maintain the 2001-02 health insurance contribution of \$175 per month in both 2002-03 and 2003-04; that the Union proposes to maintain the 2001-02 contribution at \$175 per month in 2002-03, even though that does not equal 45% of the premium; that the Union proposed increasing the District’s health insurance contribution to 100% for single coverage and 50% for family coverage in 2003-04; 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 under the Union’s proposal, the parties would be locked into WEA coverage; 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 is the equivalent to a wage increase of \$4,076.16 in 2003-04 for each of the five 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 16 bargaining unit members will be entitled to fully paid single health insurance upon issuance of the arbitration award; that the cost of single health insurance in 2004-05 is \$6449.77 per employee annually; that if the 16 uninsured employees in the bargaining unit sign up for the fully paid single health insurance, the District’s monthly cost will be \$8,866.00 for those 16 employees in 2004-05 alone; 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 Union’s demonstrating a need for the change, the District asserts 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 employer contribution for full-time employees of 50%; that the District has been contributing less than 50% since at least 1998-99; that the WEA Insurance Trust decided it needed to enforce its underwriting guidelines in River Falls when the parties reached the final offer stage of bargaining this contract; that the District asserts collusion between the Union and the Trust; that the Trust’s threat to terminate coverage is nothing more than a strong-arm attempt to influence the outcome of this bargain; that if the District should prevail and the Trust gives its threatened 60-day notice to terminate coverage, the parties have 60 days in which to either secure health insurance coverage from another provider or, since the term of this contract has already expired, negotiate a successor agreement which will bring the District into compliance with the Trust’s guidelines; that the Trust does not require fully paid single health insurance; that the Trust underwriting guidelines require only 50%; 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 proposal will result in immediate dramatic increases in health insurance costs; that the five employees with health insurance coverage in 2003-04 is a drop in a bucket when compared to the cost incurred when employees currently without health insurance become entitled to free WEA coverage; that the Union's proposal 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 support staff bargaining units, including the drivers, have historically bargained for and voluntarily settled with a dollar health insurance premium contribution; that the same dollar amount is offered for either single or family coverage, regardless of the number of hours worked, as long as the underwriting guidelines are met; that only full-time full-year secretaries and custodians receive fully paid single or family health insurance; that for those secretaries and custodians who work less than full-time full year, a prorated contribution is required; that the Union's final offer makes no provision for prorating contributions for drivers; that there are significant differences between the hours worked by the drivers and those of secretaries and custodians; that a full-time secretary works 1,968 hours per year and a full-time custodian works 2,080 hours per year; that in both instances, the District's health insurance contribution is prorated based on those hours; that full-time bus drivers work 5.25 hours per day or 960.75 hours per year; that under the Union's proposal, drivers would be entitled to the same 100% single health insurance contribution that exists for custodians and secretaries despite working over 1000 hours less; that a custodian working the same regular hours as most driver would be entitled to a contribution equivalent to 46% of the single health insurance premium; that a secretary similarly situated is entitled to 49% contributions; that there is simply no justification for the Union's demand for fully paid single health insurance for part-time school year employees; that the fact that the District's support staff units have different contractual insurance contributions demonstrates how each bargaining unit has voluntarily negotiated settlements consistent with its own goals; that the District has negotiated approximately the same 3.8% total package increases with each bargaining unit for the six years prior to the 2002-04 contract; that within each voluntary settlement, the units had the option of allocating the money to wages or health insurance or a combination; that the drivers have historically allocated the available money to wages while freezing the dollar contribution toward health insurance; now the driver's union demands fully paid single insurance and across-the-board wage increases as well because the secretaries and custodians have it; that the secretaries and custodians elected, in their voluntary settlements to maintain 100% medical insurance contributed by the District; 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; and that even the District's full-time teachers contribute 2.5% of the cost of their monthly premiums.

In terms of external comparables, the District argues that external comparables representing employees performing similar services appropriately include 'labor market' comparables as well as districts with represented bus drivers in a larger geographic area; that since this is the first arbitration

involving the drivers, the traditional ‘comparable pool’ has not been established for this bargaining unit; that establishing an appropriate comparable pool in this case is a challenge in that all districts in the Big Rivers Athletic Conference subcontract their bus service; that several ‘labor market’ districts have non-represented drivers; that for its comparable pool, the District includes non-conference districts which are contiguous to it (Ellsworth, Prescott, Spring Valley and St. Croix Central), as well as non-conference districts contiguous to those districts (Baldwin-Woodville, Elmwood, New Richmond, Pepin, Plum City and Somerset); that because of the limited number of districts which are close to River Falls and have represented bus drivers, the District has also included districts which are less geographically proximate but closer in enrollment size with unionized drivers (Altoona, Amery, Barron, St. Croix Falls and Unity); that the Union omits the neighboring district of Prescott and CESA 11 district of Barron; that both districts have unionized bus drivers; that neither offer health insurance; that there is no reason to automatically exclude districts which have non-represented drivers; that the District submits a mix of represented and non-represented drivers representing both the local labor market as well as a somewhat broader geographic area; that regardless of which districts are determined comparable, there is minimal support for the Union’s final offer; that none of the districts proposed by District as comparable pays 100% of the cost of single health insurance for its drivers; that in one district proposed by the Union, Mondovi, does the employer provide 100% single health insurance; that many districts use 100% as the benchmark for full-time employees in wall-to-wall bargaining units; that in all comparables other than Mondovi, the employer contribution is prorated; that only eight of the 18 possible comparables contribute toward family insurance; that the Union’s offer opens the door for each and every unit member to receive fully paid health insurance; that it includes no proration requirement; and that neither the District’s nor the Union’s proposed comparables support such a generous health insurance benefit.

In addition, 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 Union proposes 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 \$20,381 for the five employees taking health insurance during the 2001-02 base year; that this will result in a total package increase of 9.82% in 2003-04; that the cost for the 16 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 proposal and utter failure to offer any quid pro quo, the Union’s final offer is unreasonable; and that the District’s final offer should be selected.

### **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 argues that this is not a case where one party is seeking a change from the status quo; that both parties are seeking a change; that the District seeks to call its offer the status quo since the dollar amount they are offering in the two years of the contract is the same as the dollar amount contained in the final year of the prior agreement; that to claim that maintaining the dollar contribution from the prior agreement preserves the status quo is to misrepresent what the status quo was in that agreement; that the parties negotiated increasing rates that were determined by calculating a percentage of the premium cost; that by this the parties agreed to share the burden of rising costs of insurance; that it was understood that if the individual drivers are forced to shoulder the costs alone, they would soon be unable to afford the benefit; that then the benefit would be lost altogether without gaining anything to replace it; that the District proposes limiting its contribution to the rate paid in 2001-02 rather than increase the contribution to keep it in line with the percentage it paid in the past; that the District further seeks to strike the language indicating that the dollar amounts specified in the contract are based upon 45% of the cost of each year's premium; that this change is striking in that it shifts a shared burden solely upon the employee and makes it likely that the employees will not be able to afford the benefit in the future; that the Union proposal does allow the District to drop the 45% coverage guaranteed in the first year of the contract and hold it at \$175 for one year; and that this proposal by the Union therefore does offer some quid pro quo for its change to the status quo while the District offer provides none.

In terms of demonstrating a clear need to modify the Status Quo as proposed in its offer, the Union argues that its brief in chief 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 change is needed to bring the drivers in line with 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 while few drivers may have the need to participate in the District health insurance plan, it is an important benefit for those who do; that the District, rather than upholding its earlier obligation of sharing the increasing costs with the employees in this unit are

letting the employees pick up all the increase in cost; 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 has historically shared the costs of raising premiums with the drivers; that while the District's share of this burden has been rather low, it had helped insulate the drivers from the full effect of spiraling health care costs; that if the drivers have to shoulder this burden alone, they will not be able to afford this benefit long and will have to drop insurance altogether; that if and when the drivers do drop the insurance, there is no buy out or alternative benefit to replace it; that the District wins by eliminating a benefit with no need to offer a quid pro quo; that the District's proposal to cap the increase seems to be relying upon this hard fact; that the District ignores its failure to meet the insurance company's eligibility requirements; that the charge of collusion and strong arm tactics is patently false and unfounded; that the Trust has contacted the District about its failure to provide the adequate level of funding for the insurance in the past; that, rather than facing the problem by increasing the contribution to meet the requirement, proposing a change in carrier, or modifying the benefit to some form of cafeteria style plan, the District proposes rejecting its past practice of sharing future cost increases and caps the dollar contribution it knows is inadequate to meet the current insurer's eligibility requirements; 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.

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 'full-year' employees are eligible for 100% of a family plan while the 'school year' employees are presented with flat dollar contributions that have no relationship to hours worked by members; that the Union's proposal provides some form of consistency for the benefits of all the groups; that the District advocates strongly for the idea of pro ration of the benefits but none of its proposals to any of the groups seeks to establish a system of pro ration of employees' benefits; that the District in the past has not been in as financial healthy state as it is today; that past settlements show that the units were working with the District's concerns about its financial condition and putting off critical issues until such times as the District was better able to address them; that the time is now; that there is a lack of parity in the insurance benefits; that the benefit must be improved now to be maintained; and that this is an issue the District must address.

In terms of comparables, the Union argues that organized units provide best and most accurate representation for external comparable; that the Union stands behind its criteria for choosing comparable districts; that it has no objection to adding districts that meet the criteria set out in its

brief; that we need to be sure that we are comparing apples to apples; that we should know whether those districts offer any benefit in lieu of insurance and not just that they offer or don't offer health insurance; that, for example, the District claims Altoona does not offer an insurance benefit; that Altoona does contribute to a cafeteria plan which can be used for purchase of insurance; that the comparables generated by applying the elements offered in the Union's brief general a healthy and realistic portrayal of the bus driver labor market in the area; that the District's brief fails to show any reason why the Union's standards are insufficient or that their comparables are preferable; that the vast majority of comparable units offer a much larger contribution for insurance than currently provided by the District or that is offered by the District's final offer; that, indeed, the majority provide higher levels of benefit than the Union is proposing; that when looking at the district that prorate, the contribution is generally higher than the 50% of a family plan requested by the Union; that this is compared to the District's proposed 15% of the family plan; that the District is far below the average; and that the Union's plan is much closer to the mean.

In addition, the Union argues that the fact that the District can provide its employees with health insurance while not having to increase the mill rate suggests that the Union's proposal is in the best interest 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 the enrollment increase resulted in an allowable revenue increase of 4.12% in 2003-04; that even if enrollment and, therefore, revenues continue to increase at 4.12%, when wage and benefits comprise 85% of the District's operational budget and increase by 9.87% as they do under the Union's final offer in 2003-04, it will not take long for expenses to exceed revenues; that the District has a healthy Fund 10 balance; that it was able to achieve that balance by reducing spending; that the District made a commitment to increase the fund balance to reduce the costs of borrowing to meet its cash flow needs; that the District has the ability to pay; that it has been taxing to the max under the State's revenue limits; that revenues have exceeded expenditures by design; and that the District has been building up the District's cash reserves so that it could avoid borrowing and be prepared for contingencies.

In terms of health insurance, the District asserts that the Union's argument that its proposal represents the District absorption of "some of the burden" of health insurance increase is incorrect; that the Union's proposal has the District absorb virtually the entire burden while eliminating any burden on the employees; that the District is not changing the status quo; that the existing health insurance language calls for a specific dollar amount who represent 45% of the premium in 2000-01 and 2001-02; that the dollar amount contributed in 1999-00 amounted to 46.45% of the single premium; that the Union has been given the option of allocating monies to wages or health insurance or a combination of the two, as they saw fit; that there is no guarantee that employees will lose insurance coverage; that the District has not contributed adequately under the WEA's guidelines for years; that the Union avoids discussion of single health insurance contributions; and that there is no internal support for fully paid single health insurance for employees who work less than full-time

during the school year.

## **DISCUSSION**

### **Introduction**

Both final offers include Compensation, but since both final offers are the same regarding compensation, that issue is not in dispute. The only issue in dispute involves health insurance, though inside that issue resides several disputes.

The Union's offer changes the dollar amount contribution to health insurance that the District makes to a percentage: 100% for single coverage and 50% for family coverage. The District's offer freezes the dollar amount contribution it makes to health insurance at the 2001-02 rate. The District also seeks to eliminate language which connects the health insurance contribution to a percentage. The Union also seeks to include the name of the insurance carrier in the contract. The District stands with the status quo in which it has the right to select the insurance carrier. The Union's offer eliminates language that limits joining the health plan to within the first 30 days of employment. The District does really not argue this issue. It is small and will have no influence on the outcome of this case. The parties also dispute the comparables. That is where we need to begin.

### **Comparables**

None of the obvious and usual comparables, school districts in the District's athletic conference, employs bus drivers. Chippewa Falls, Eau Claire, Hudson, Menomonie, and Rice Lake all subcontract bus driving.

In response, the Union expanded its search to include all school districts within CESA 11, proposing the three school districts with at least 950 students and whose bus drivers are organized for purposes of collective bargaining: Amery, Saint Croix Falls, and Unity. It then expanded its search to CESA 10, a contiguous CESA district, and found six more school districts that met the criteria it had established: Altoona, Ladysmith-Hawkins, Mondovi, Neillsville, Osseo-Fairchild, and Stanley-Boyd.

The District responded by looking at the contiguous school districts because of their proximity to the District: Ellsworth, Hudson, Prescott, Spring Valley, and Saint Croix Central. These five district are a mix of subcontracted drivers (Hudson), non-represented drivers (Ellsworth and Saint Croix Central) and organized drivers (Prescott and Spring Valley). It then looked at those school districts contiguous to the first tier of contiguous districts: three have subcontracted bus driving (Menomonie, New Richmond, and Somerset), three have non-represented drivers (Baldwin-Woodfield, Plum City, and Pepin), and one has organized drivers (Elmwood). Finally, the District expanded its search to districts less geographically proximate but closer in enrollment size to River Falls whose drivers are organized: Altoona, Amery, Barron, Unity, and Saint Croix Falls).

The choice of comparables will not make much if any difference in this case. My preference would

be to use the four districts offered by both parties (Altoona, Amery, Unity, and St. Croix Falls), the five organized districts offered by the Union (Ladysmith-Hawkins, Mondovi, Neillsville, Osseo-Fairchild, and Stanley-Boyd) and two of the districts offered by the District as organized drivers (Barron and Prescott). The District offered two other districts with organized drivers, Elmwood and Spring Valley, but they are excluded as their student enrollment is much smaller than the River Falls District. If need be, I would fall back on the athletic conference for labor market comparables as a secondary pool, but this matter will not need to look to them for guidance.

### **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 9.87% 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.<sup>2</sup> The District is not making an argument that it can not pay. There is no evidence that the

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<sup>2</sup>The 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.

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 the basic parts of Union's proposal.<sup>3</sup> But I also find that this factor does not particularly cut in favor of the Union;<sup>4</sup> therefore, it will not be a determining factor in this arbitration.

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<sup>3</sup>This 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.

<sup>4</sup>The 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.



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.<sup>5</sup>

## **Health Insurance**

The District wants to freeze the dollar amount it contributes to health insurance at \$175 per month.<sup>6</sup>

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<sup>5</sup>Again, 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.

<sup>6</sup>The 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

The District is saying it no longer wants to split the insurance increases with the employees. The premium payment for single coverage in 2003-04 is \$514.58 a month, an increase of \$124.86 over the 2001-02 base year rate of \$389.72 a month. Subtracting the \$175 that the District is willing to contribute to the health insurance premium, that leaves \$339.58 a month for the employee to pay. That amounts to over \$4000 a year. This is a huge payment for a driver making between \$12,000 and \$15,000 a year.

So the Union wants the District to pay the \$339.58 per month, in addition to the \$175 a month, for a total monthly payment of \$514.58 a month or, in other words, 100% of the cost of the monthly single plan. Needless to say, the Union's offer is a huge percentage increase over what the District has been paying. Of course, at this point, the District is only paying for five of the 21 drivers, all of whom take the single plan, so the total dollars are not as much as one might fear. But the percentage increase is large.

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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.

The parties have different numbers for many of the comparables, but it is clear that, on average, the District's payment of \$175 per month for health insurance is low, very low, in relation to the comparables. On the other hand, the Union's offer is high, very high, compared to the comparables. If this was the entire battle, it would be an interesting one: the freezing of the insurance premium by the District versus the increasing of the insurance premium to 100% of the single premium by the Union.<sup>7</sup> But while the District's offer is low, very low, the problem exists in the Union's offer. The Union's offer is 100% payment for single health insurance across the board (and 50% payment for family). This means that every bus driver, all of whom appear to work 5.25 hours a day, receive 100% paid single health insurance.<sup>8</sup>

The Union points to the secretarial and custodial units of the District in which employees receive 100% of single coverage as supportive internal comparables. These employees, however, are full-time, working 7.5 hours a day (secretaries) or 8.0 hours a day (custodians). The District asserts and the Union does not dispute that secretarial and custodial employees who work less than full time do not receive 100% of the single health insurance premium. Such secretarial and custodial employees do receive an insurance contribution but is prorated based on the number of hours worked yearly. Prorated. I looked through the Union's offer for that word and I could not find it. I looked and I looked and I looked. I could not find it anywhere. I then looked for variations of the word, such as

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<sup>7</sup>While the offer of 50% for family insurance is also on the table, that is not the part of the offer that is of real concern here, first, because none of the current drivers take family insurance and, second, because of the huge cost of this aspect of the Union's offer. If the Union's offer on single coverage did not decide the issue so decisively, I would spend some time on the 50% family contribution aspect of the Union's offer.

<sup>8</sup>The Union points out correctly that the District's dollar cap offer does not include proration, either, that all employees, regardless of hours worked, receive \$175. 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.

'proration'. Again, I was unsuccessful. The word was nowhere to be found in the Union's final offer. So, in essence, the Union's offer says that employees of this bargaining unit who work 5.25 hours per day should receive 100% paid single health insurance, even though no other employees of the District have such a benefit. It is a pretty hard argument to make that part-time employees should receive a benefit greater than full-time employees.

The District points out that the secretaries and custodians are full time calendar year employees, working 1968 hours (secretaries) or 2080 (custodians), while the member of the bargaining unit are school year employees working 183 days a year for a total works is 960.75 hours a year. A secretary or custodian working 960.75 hours a year would not be paid 100% of the single health premium but considerably less (if anything at all as it is less than half time). It is pretty hard to argue that school year employees should receive 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 drivers are receiving better benefits than teachers.<sup>9</sup>

While the external comparables show that the District is low, very low, in its contribution rate, they also show that when drivers have insurance coverage, it is almost if not always prorated based upon the number of 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: an District offering a freeze on insurance contributions which makes its contribution rate significantly lower than the lowest comparables versus a Union offering a 100% insurance contribution for all members of the bargaining unit which is a higher contribution than any of the employees working for the District, based upon hours worked, including the teachers, and all of the comparables, and which does not prorate the benefit, regardless of hours worked. That would be an interesting case. I am still not sure it would be close.

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, five bargaining unit members take insurance and 16 do not. The District argues that offer the 16 bargaining unit members a free single coverage health insurance plan, they will take it. The Union says "Maybe not." I would take it and they will take it and this would add an enormous financial burden to the District. The District's offer on health insurance is, in many ways, unreasonable, and may cause the five 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,<sup>10</sup> but it sets it at such a rate and in such a way that no

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<sup>9</sup>This discussion is focusing on the single coverage because as will become evident later, this is the turning point of the case.

<sup>10</sup>The current language states the dollar amounts contributed by the District, and then add, "These dollar amounts were based upon 45% of the cost of each year's premiums." Does this equate to a percentage rate, or is it just informative as to how the rate was derived? Even if this was a controlling percentage rate for insurance contribution, the District's move to a lower percentage rate expressed

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 from an unreasonable unwillingness to share the burden of rising health care costs, it is nonetheless the preferable offer when the ramifications of the Union's offer are viewed, not only from the extended coverage it offers but the price it will cost the District.

### **Other Issues**

The District argues vehemently that the Union has not offered a quid pro quo for its proposed change. 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 regarding other criteria under the statute, all of which have been reviewed and found wanting in one way or another. The case boils down to this: the District's insurance offer is unreasonable in many ways, but the Union's insurance 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 18<sup>th</sup> day of February, 2005.

By \_\_\_\_\_  
James W. Engmann, Arbitrator

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only in dollar amounts would still rule the day over the Union's 100% single non-prorated insurance proposal. In any case, the parties spend little time on it, and it ultimately has little impact on the final outcome of this case.