

BEFORE THE ARBITRATOR

In the Matter of the Petition of
WEST CENTRAL EDUCATION ASSOCIATION –
RIVER FALLS CUSTODIANS
To Initiate Arbitration Between Said Petitioner and
RIVER FALLS SCHOOL DISTRICT

Case 44
No. 61689 INT/ARB-9762
Decision No. 30959-A

Appearances:

Mr. Brett Pickerign, Executive Director, West Central Education Association, 105 21st Street, North, Menomonie, Wisconsin 54751, on behalf of the Association.
Weld, Riley, Prenz & Ricci, S.C., Attorneys at Law, by Mr. Stephen L. Weld, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of the Employer.

ARBITRATION AWARD

West Central Education Association – River Falls Custodians, hereinafter referred to as the Association, and River Falls School District, hereinafter referred to as the Employer or District, met on several occasions in collective bargaining in an effort to reach an accord on the terms of an initial collective bargaining agreement. Said agreement covers all regular full-time and regular part-time custodial employees including head custodian, delivery van driver, and district-wide maintenance employees, excluding summer grounds crew, casual snow removal employees, professional, managerial, supervisory, confidential, temporary, casual and all other employees of the District. Failing to reach such an accord, a petition was filed on October 15, 2002, with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties by June 30, 2004, issued an Order wherein it determined that the

parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard, the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on July 29, 2004, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on November 8, 2004, at River Falls, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by January 13, 2005. The record was closed as of the latter date.

THE FINAL OFFERS:

The Association and District final offers are attached and identified as attachment "A" and "B," respectively. Attachment "C" is the parties' stipulations.

BACKGROUND:

At the hearing in the instant case, both parties presented numerous exhibits in support of their positions. Representatives for each side presented, reviewed and explained their exhibits to the Arbitrator.

In addition, the Association presented one witness and the District two. The Association's witness Custodian Dennis McAleavey testified about the custodial and head custodial duties. The District's witness, former Finance Director Dorothy Jacobsen testified about the District's budget and financial and fiscal matters and Superintendent Boyd McLarty testified with regard to the head custodian position and duties.

River Falls School District has an enrollment of approximately 2,933 students. It is in the Big Rivers Athletic Conference along with Chippewa Falls (4,465),¹ Eau Claire (10,835), Hudson (4,426), Menomonie (3,348) and Rice Lake (2,668). Other schools in the area are Baldwin-Woodville, Ellsworth, Elmwood, Glenwood City, New Richmond, Plum City, Prescott, Somerset, Spring Valley and St. Croix Central.² The enrollment in the area schools varies from 2,443 to 390 students.

The District has seven represented bargaining units. In addition to the instant custodian unit, there are the following: paraprofessionals, bus drivers, special education assistants, secretaries, engineer and teachers. Five of the units, i.e., custodians, bus drivers, paraprofessionals, secretaries and special education assistants are in arbitration for contract years 2002-2003 and 2003-2004. The engineer unit, one employee, is unsettled. The teacher unit is settled for the 2002-2003 and 2003-2004 school years.

POSITIONS OF THE PARTIES:

The parties filed comprehensive, well-reasoned initial and reply briefs in support of their positions including the citation of numerous arbitration cases cited in support thereof. The

¹ Student population.

² They are in the Middle Border and Dunn-St. Croix conferences.

following is not intended to be a detailed review of the parties' arguments, but, rather, a brief general overview of their main arguments. The parties, however, should be assured that the Arbitrator has reviewed their briefs, and cases cited therein, in detail.

Union's Position

External Comparables

Both the Union and the District consider the Big Rivers Athletic Conference as a proper source of comparables. The districts in the Big Rivers Conference share similarities in size, enrollment and geographic proximity. The District also relies on the Dunn-St. Croix and Middle Border Athletic Conferences. While the Union believes that the said conferences are not proper comparable districts, it believes that they further support the Union's position.

Factors Given the Greatest and Greater Weight

River Falls stands out as a district in a strong economic position. The enrollment in River Falls has gone up by 11.12% since 1993 compared to the State average of 8.44% and second only to Hudson in the Big River Athletic Conference. Only three of the primary comparables exceed the State average.

The trend of increasing enrollment is one that seems likely to continue into the foreseeable future. The significance of this is that the District has received and is likely to continue to receive an increase in its revenue base.

In addition to the increasing revenue the District receives from the increasing enrollment and levy, the District has received an additional \$299,813 credit as a result of the Act 11.

The District's financial robustness is best demonstrated by a look at the Fund 10 balance. At the end of the 2002-2003 school year, the District showed a balance of money in its Fund 10

of \$5,494,695, an amount equal to 23.59% of its total budget which is significantly higher than the State average of 17.3%. It places them at number two in rank in the Conference for the largest Fund 10 measure against the total annual budget. Furthermore, the money being placed in the fund from year to year has been steadily growing.

Clearly, the District has room to spend more money than it does each year without even touching its already sizeable Fund 10 balance.

Not only are the District's finances in good repair and sound, so is the community in which the District is located. Pierce County has the highest increase in average income of all the counties in the Big Rivers Athletic District. The income per return totals for the River Falls District also places household income at \$46,236 behind only Eau Claire and Hudson in the Big Rivers Athletic Conference.

Wages

It is the Union's position that the River Falls custodians are woefully behind all other Big Rivers School District in career earning ability as measured by their low starting salary of \$8.83 per hour, the years it takes to advance in the salary schedule, the low top pay and the low longevity.

In 2001-2002, River Falls custodians had the lowest starting wage in the Conference by between \$1.17 per hour compared to Hudson (the next lowest in pay) and \$6.31 per hour lower compared to Eau Claire's first shift secondary school custodian, the wage leader, with the District's proposal of a freeze and a 1% increase in 2002-2004, the custodians would lose ground by falling behind \$1.68 per hour compared to Hudson \$7.14 per hour compared to Eau Claire. Under the Union's proposal, the custodians would trail Hudson by \$1.23 per hour and Eau Claire by \$6.69 per hour.

This problem is compounded by the time it takes a custodian and maintenance worker to reach the top of the salary scale. It takes the custodian eleven and the maintenance worker eight years to reach the top. The majority of comparable districts allows both to reach the top in about two years.

Once they do reach the top, it is not notable. Top pay for custodians in River Falls is less than the top pay for all categories of custodians in Chippewa Falls, Eau Claire and Menomonie. It is also lower than the top pay for the Rice Lake elementary custodians and only slightly higher than the regular custodian and pool aid in Rice Lake and Hudson custodians. Top pay for the Building Maintenance is as bad. He is at a minimum \$4.58 per hour and a maximum of \$10.08 per hour behind the comparables.

Lastly, the longevity payment does not make up for the wage inadequacy. In two of the five Rig Rivers districts, the comparable stipend is significantly higher than the one provided in River Falls. In two others the top benefit is the same as the cap proposed by the River Falls School District but the employees in those two districts start to earn the longevity pay much sooner. In fact, in all the comparable districts that have longevity, the employees start collecting earlier in their career than the River Falls custodians can reach the top of the River Falls salary schedule. What this, coupled with the substandard pay rates shown above and the length of time to reach to the top step, equates to is significantly less career earning for the employees in River Falls.

With respect to the settlement trends, the Union argues that generally the comparable districts settled for about 3% in 2002-2003. In 2003-2004, Rice Lake and Eau Claire both settled at 3% per cell wage increase. Chippewa Falls came in lower at 2% per cell. Hudson and Menomonie are harder to pin down to a clear increase. As stated above, Hudson's raise was

higher than 3% for the custodian (5%) and lower for the lead custodians (2.5%) suggesting some work on the schedule was continuing to occur. In Menomonie the increase to the regular custodian was 2.5% and 4.5% for the field house custodian. Comparatively for both years the trend seems to hover around 3% with a few dips and spikes by different groups. However, no group saw a salary freeze and the only instance of a 1% came between years of significantly above-average increases. In comparing the trend to the proposal of the District it is clear the District's offer is far lower than what is being offered in all the comparable districts. The 3% per year proposed by the Union is right in line with the trend.

The wages proposed by the District are not only lower than the comparables, but it is also below the cost-of-living increase over the 2002-2004 contract years. For the two years, the CPI rose 2.11% and 2.9%, respectively. The District CPI numbers are slightly different because it uses the CPI for the year prior to the contract year in question. The CPI used by the District is an increase of .7% in the first year and 2.1% for the two years. The District's proposal of 0% and 1% is still out of line with the CPI.

Insurance

Health insurance is the most significant issue in the arbitration. The District proposes major reductions in longstanding benefits with no justification or quid pro quo for the change. The School District of River Falls has had a longstanding practice of paying full coverage for health and dental insurance. The District has proposed not only withdrawing from its commitment to maintain 100% payment of health and dental insurance premiums but it is lowering its payment to a dollar amount that is significantly less than the cost of the premiums.

Citing previous cases, the Union argues that, generally, when a party wishes to make a change in the status quo, they must demonstrate a need for the change, prove the change meets the need and establish some quid pro quo exchange of value for the change.

The District now pays 100% of all insurance premiums. Notwithstanding the District's argument, the 100% pick-up is not responsible for the increase in health and dental costs. The increase in cost by itself is not justification for backing out of an obligation that had been agreed to in the past with the parties' awareness that the cost of insurance would go up.

When comparing rate increases with the comparables, the River Falls rate increases are about average for the two years. Further, the amount paid by the District is not prohibitively expensive. As demonstrated under the greatest weight argument, the District has the money to cover the increased cost for the 2002-2004 contract. Although the insurance increase was significant in 2002-2003, the District has the money to pay for the increases. In fact, those years are actually over and the District has paid the full premium without having to borrow money to do so. After that, the rate of increase will moderate to an increase below the average – 5.3% in 2004 and 5.6% in 2005.

Nor is the insurance benefit for custodians out of line with the comparables. River Falls is slightly better than several of the comparable districts in contribution rate, but not so much higher to justify a change in benefit much less than the one proposed by the District. In the Big Rivers Conference it is normal that the districts pay a percent of the family premium with five out of the six Big Rivers districts contractually bound to pay a percent of the family health premium. This percent contribution ranges between River Falls at the top at 100% to Menomonie and Chippewa Falls at the bottom at 90%. Only Eau Claire offers to pay a fixed dollar amount, although historically they have increased this amount every year that the

insurance rates increased. The dollar amount they have committed to in 2003-2004, in fact, brings the contribution up to 100% of a family plan. In 2003-2004, there are actually two districts in the Big Rivers Conference that would be paying 100% of a family plan. So, in 2003-2004 within the Big Rivers Conference we see two districts at 100% contribution, three districts at 95% and two at 90% contribution for a family plan. River Falls, as one of the districts at 100% contribution, is clearly – and has been historically – a benefit leader in this area but not that far out of line with the group. Even looking at the broader set of comparables that the District proposes, we find that the River Falls status quo of 100% contribution for a family plan is in line with what these small districts offer. Out of the ten districts from the Middle Border and Dunn-St. Croix Conferences, five have 100% employer contribution toward family plans and none have an employer contribution of less than 95% of a family plan.

In terms of dental insurance, a similar situation exists.

The Union argues that the District's proposal does not solve the problem of rising health care costs. The District's proposal is to shift the cost of a benefit onto the employee. It is a proposal that is not justified and does not solve the underlying issue of rising health and dental care costs. There are ways that can address increasing costs other than simple cost shifting. Historically, the parties have done so. In April 2001, the custodians agreed to a modification in their plan that lowered the premiums by over 4%.

Further, the District's proposed change will impose an unreasonable burden which is not offset with a quid pro quo. Where the custodians once had the highest percentage contribution for health insurance, they will drop to less than the District with the current lowest contribution. In 2003-2004, they go from 100% contribution to 87.8% in a comparable group that the next

lowest contribution is fixed at 90%. In return, the District not only offers nothing, but actually lowers dental insurance contribution as well and offers a salary increase far lower than the comparables average income.

In actual dollars for the District's proposal which is effective January 1, 2004, is big. The difference for 2004 will be \$138.92 per month until the rates change in July; then the difference will be \$202.64 per month. So each custodian on a family plan will owe the District \$2,049.36 plus an additional \$202.64 for every month past January 2005. Thereafter, they will be forever responsible for picking up the difference between the actual cost of a family premium and \$1,000 per month.

In addition to the above, the District is proposing to cut the dental insurance contribution as well. In 2004, each custodian will owe the District \$139.20 plus an additional \$15.66 per month thereafter.

Further, the additional 1% wage increase does not offset the negative insurance proposal. A custodian at the top of the schedule will have his salary go up \$291.20 but his insurance contributions will have increased \$878.76. The proposed change is an unreasonable burden on some of the employees and the District offers nothing to offset the ongoing burden.

Head Custodian Pay

There are two aspects to the Union's proposal in modifying the pay for head custodians. The first aspect is to make the premium for head custodians uniform and dependent upon their responsibilities and not the building to which they are assigned. The second is to make sure all head custodians receive it, including the day custodian at the Academy.

Head custodian premium is an additional payment made to the head custodian in each building to compensate them for their additional duties and heightened level of responsibility.

They are ultimately responsible for ensuring that cleaning and maintenance tasks are completed, that the building needs and deficiencies are reported to management and addressed, and that laws are complied with and safety standards are met. Each building has unique needs and demands different specific tasks from its head custodian, but the responsibilities of the head custodian from building to building remain the same.

The Union contends the existing level of stipend paid to the equivalent position in comparable schools is quite higher than that proposed by the Union. The Union does not seek the highest stipend paid but only that all head custodians should be treated and paid the same amount. This includes the head custodian of the Academy who shoulders all of the responsibilities for the Academy. His duties continue to increase from year to year. As the only custodian in the building, he is responsible for the building's cleanliness, security, safety and serviceability. He should be paid the same as the other head custodians.

District's Position

Greatest Weight

In the past four years, the River Falls School District's allowable revenue increase has averaged approximately 3.8%. The District's allowable revenue limit for the two-year term of the contract at issue was 3.88%; the average for the four-year period of 2000-2001 through 2003-2004 was 3.83%. The District has consistently levied the maximum allowable under the law.

The District's labor costs comprise approximately 85% of the District's operating expenditures. The administration, the teachers and all five of the represented support staff units are not settled for 2003-2004. The wages for those seven groups of employees range from a minimum of \$471,013 (under the District's proposals) to a maximum of \$700,172 (under the

Union's proposals). Much of the \$875,441 in 2003-2004 excessive revenues will be needed to cover the unpaid wage and benefit increases and the District's total expenditures in that year will rise.

The total package increase for the custodial unit in 2002-2003 represents a cost increase of 10.3% under the Employer's final offer and 13.24% under the Union's final offer. The cumulative total package increase for the five units in arbitration, if the District's offer were awarded, would result in a 6.85% increase in 2002-2003 and a 4.66% increase in 2003-2004. The cumulative total package increase for the five units in arbitration, if the Union's offers were awarded, will result in increases of 8.27% in 2002-2003 and 9.35% in 2003-2004. Because labor costs represent 85% of the District's operating budget, the District simply cannot increase its wage and benefit costs at 8 – 9% levels when its revenues are increasing less than 4% per year. There is an obvious problem if the annual revenue increase approximates only 3.8% and the annual wage and benefit costs double that figure. The District submits that, as a result, under the "greatest weight" factor, the District's offer emerges as the more reasonable.

The District's Proposed Change in Health and Dental Insurance
Contributions Addresses a Legitimate Problem

The primary rationale behind the District's proposed cap on health and dental insurance contributions is cost. Health insurance premiums are skyrocketing. River Falls' health insurance premiums have increased 182% for single coverage and 147% for family coverage between 1992-1993 and 2003-2004. Dental insurance premiums have increased 94% for single coverage and 88% for family coverage during the same time period. The District has absorbed 100% of those costs.

Health insurance premiums increased over 16% in 2000-2001, over 24% in 2001-2002, and 30% in 2002-2003. The 30% increase in health insurance, combined with an increase in dental insurance premiums of over 10% in 2002-2003, resulted in a total package cost increase of 10.3% in 2002-2003, without any increase in wages, (District final offer). The only way to provide any wage increase in 2003-2004 and, at the same time, maintain a total package increase consistent with the District's revenue limitations was to cap the District's contribution to health and dental insurance premiums.

Requiring employees to participate in the cost of health and dental insurance premiums gives them an incentive to become better consumers and allows the parties to negotiate on where the available dollars should be spent – wages or insurance.

Citing numerous cases, the District argues that arbitrators have long recognized the validity of employee cost-sharing of insurance premiums and other insurance expenses in the face of rising health care costs. The only way the Union will realistically negotiate over the impact of skyrocketing health and dental insurance premiums is to implement dollar caps on the District's contributions.

The Mutual Problem of Escalating Health Insurance Premiums Eliminates the Need for a Traditional Quid Pro Quo

In recent years arbitrators have come to the conclusion that the economic impact of ever-increasing health insurance premiums has eliminated the burden of requiring a traditional quid pro quo, especially where existing contract provisions were bargained prior to the drastic increases in health insurance costs. River Falls' 2002-2003 single and family health insurance premiums (483.66 and \$1,084.04, respectively) were the highest of any Big Rivers Athletic Conference schools. In 2003-2004, River Falls' single health insurance premium of \$509.26 and

family premium of \$1,138.92 were exceeded only by Hudson (which reduced its contribution from 97% to 96% in 2003-2004) and one of the three plans offered in Eau Claire. A review of the actual employer health insurance premium contributions in 2003-2004 reveals that River Falls' contribution was the highest for both single and family coverage (with the exception of the contribution for family coverage in Hudson). The District's proposal to reduce its contribution to \$400 for single and \$1,000 for family on January 1, 2004, would bring it more in line with the actual dollars paid by the Big Rivers Athletic Conference schools for the 2003-2004 school year.

River Falls also has the highest cost dental insurance premiums. In 2002-2003 and 2003-2004, its dental premiums were exceeded only by Menomonie (by a few cents) and Chippewa Falls. However, in Chippewa Falls, as Employer Exhibit 50 reveals, the effect of the high dental premiums is not felt by the District because Chippewa Falls caps its contribution (at \$14 for single and \$40 for family coverage). Menomonie contributes only 90% of the single and family premiums.

Some relief from the high cost of health and dental insurance is clearly needed.

Internal and External Comparables Support an Employee Contribution Toward Health and Dental Insurance

Numerous arbitration cases are cited in support of the proposition that where the comparables support a proposed change to the status quo, arbitrators have also found that a quid pro quo is not necessary.

Internally, three of the six support staff bargaining units, all of which have a larger membership than the custodial unit - the paraprofessionals, special education assistants, and bus drivers - have a dollar cap on the District's contribution. The dollar cap ranges from \$175 per

month to \$286 per month. Given the contributions required of the District's other support staff units, a custodial contribution of \$109.26 per month for single coverage and \$138.92 per month for family coverage for the last six months of the 2003-2004 school year is reasonable.

The secretarial unit and the one-member engineer unit also have fully paid health and dental insurance. The District is seeking, via arbitration, the same dollar caps for health and dental insurance with the secretarial group. Historically, the engineer falls in line with the custodians.

Even the teachers contribute toward their health and dental insurance; they contribute 2.5% of the applicable single or family premium for both health and dental insurance. The bus drivers, paraprofessionals and special education assistants, like the non-represented food service employees, receive no District contributions toward dental insurance.

For external comparisons the District uses the Big Rivers Athletic Conference as the primary comparables and as secondary comparables districts in the Middle Border Conference and the Dunn-St. Croix Conference schools, all of which are located in Pierce or St. Croix counties. The secondary schools are in close proximity to River Falls and share the same labor market.

River Falls is the only Big Rivers Conference school with language requiring full premium payment for single and family health insurance coverage.

Eau Claire negotiates a dollar amount contribution for the first year of each contract and then a percentage increase in that dollar amount for subsequent years. That contribution may or may not cover the full premium costs.

Chippewa Falls and Menomonie contribute 90% of the family premium. Hudson contributed 96% in 2003-2004 and Rice Lake contributed 95% of the family premium. Hudson

contributed 96% for single health insurance while the other districts continue to contribute 100% for single coverage.

Within the secondary pool of comparables, half require an employee contribution for both family and single health insurance. Baldwin-Woodville contributes 97%, Ellsworth 98% and Prescott, Elmwood and Plum City all contribute 95% for both single and family coverage.

Other public sector employers in the County and City, all except the City policy, require employee contributions for both single and family health insurance.

With respect to dental insurance, two of the Big Rivers schools, Chippewa Falls and Menomonie, require an employee contribution for single dental insurance coverage and three of five, Chippewa Falls, Menomonie and Rice Lake, requires an employee contribution for family dental insurance.

Pierce County and St. Croix do not offer dental insurance. The City of River Falls contributes about one-half.

When considered as a whole, the external comparables overwhelmingly support an employee contribution toward health and dental insurance premiums. The District's proposal on insurance is, therefore, more reasonable than the Union's demand to maintain fully paid health and dental insurance.

The District's Wage Offer is Appropriate When View in
Terms of the total Package Increase

The District proposes a wage freeze in 2002-2003 and a 1% wage increase in 2003-2004. The Union proposes a 3% wage increase in both 2002-2003 and 2003-2004. There is no doubt that the District's wage proposal is less than the wage increases received by the external comparables. However, the District believes that, in the context of a 31% increase in health

insurance costs, and a 10.4% increase in dental insurance costs in 2002-2003, and a 4.14% step movement cost, a wage freeze in 2002-2003 and a minimal wage increase in 2003-2004 are mandated.

Although most districts do not provide information on total package increases, those that do support the District's position. Employer Exhibit 37 sets forth total package increases for those districts which provide the cost of total package increases. Eau Claire's total package increases were 5.29% in 2002-2003 and 4.34% in 2003-2004, or an average of 4.82%. Menomonie costed its total package increase in 2003-2004 only (the first year the custodial/maintenance employees became a separate unit) – at 4.63%. In contrast, the total package increase under the District's offer herein averages 7.34% (10.3% in 2002-2003 and 4.37% in 2003-2004), compared to the 10.5% average under the Union offer (13.24% in 2002-2003 and 7.76% in 2003-2004).

River Falls wage rates are in line with wages paid by the secondary comparables. For both years, the District's proposed maximum rate is higher than seven of the ten comparables. Further, the Union's proposed 3% wage increase is not supported by the secondary comparables. Only one school implemented an increase of 3%; all others were lower.

With respect to the Big River Conference, the District submits that the Union's proposal of a 3% wage increase each year and status quo on health and dental insurance does not represent the settlement pattern in the Conference. There are some districts that gave a 3% increase and others 2% or so, but their insurance is not fully paid nor have the increases been as large. In others, employees pay a percentage of the premium.

A thorough analysis of wage increases and contributions toward health and dental insurance reveals that there is no support in the external comparables for wage increases of 3% each year in conjunction with fully paid health and dental insurance.

The District further points out that because of step movement, 12 of the 23 unit members receive an actual wage increase, ranging from 8¢ to \$1.17 per hour in 2002-2003, or an average wage increase of 46¢ for the 23-member unit despite there being no across-the-board adjustment. All employees will receive a wage increase ranging from 13¢ to \$1.60 per hour in 2003-2004. That results in an average wage increase of 75¢ under the District's offer.

Internal Comparisons Support the District Offer

The District bargains with its units on a total package basis. The costing includes the cost of step movement.

Although River Falls has consistently attempted to negotiate the same increase each year with each unit, that becomes impossible in the 2002-2004 contract term because of health insurance premium increases. The premium increases affected the custodians and secretaries more than the other units. The District offered them more than a 3.8% package to avoid a decrease in wages. The District's offer to the custodians of a two-year average of 7.34% is the highest total package increase offered to any of its support staff units. Yet, the Union demands a two-year average total package increase of 10.5%.

While bargaining with each support staff unit for the 2002-2004 contract term, the District implemented a 3.8% QEO for the teachers for the 2001-2003 term. That implementation resulted in a 0.278% decrease to the teachers' salary schedule in 2002-2003 (after a 0.51% increase per cell in 2001-2002). Not only did teachers on the top steps of the salary schedule experience a salary decrease, but their 2.5% share of health and dental insurance premiums

increased due to the 30% health insurance and 10% dental insurance premium increases. The custodial unit will receive a total package increase of 10.3% under the District's final offer in 2002-2003 – 6.5% more than the teachers received – without any wage deduction for health and dental insurance. The 3% wage rate increase sought by the custodians for 2002-2003 – along with fully paid health and dental insurance – would result in a total package increase of 13.24%, or 348% of the teachers' total package increase.

The Union's Proposed 80¢ Stipend for Head Custodians at the Elementary Schools and for the Day Custodian at the Academy is Unwarranted

Under the Union's final offer, the head custodians at the District's three elementary schools and the day custodian at the Academy would receive the same 80¢ stipend received by the head custodians at the high school and middle school. Currently, the elementary head custodians receive a 40¢ stipend and the day custodian at the Academy receives no stipend. The District submits that this proposal is totally without merit.

The Union's proposal is akin to a reclassification request. For the Union to prevail, it must demonstrate that the elementary head custodians and the custodian at the Academy have duties as complex as those of the head custodians at the high and middle schools.

The Union's evidence focused entirely on the custodial position at the Academy. The position is not a highly complex position. The custodian basically pushes a broom. His request for the additional stipend is based more on the amount of work he is required to perform rather than the complexity of the work or level of responsibility. He does basically the same work as the regular custodians, not the head custodians.

The "areas of responsibility," "knowledge and abilities required," and the "performance responsibilities" of the high school and middle school custodians is much greater than the

Academy custodian. The high school and middle school head custodians are responsible for supervision. The custodian at the Academy is the only custodian and, therefore, there is no one to supervise. Further, said head custodians are responsible for recruitment, training and supervision/evaluation of all crew members. They also coordinate activities, vacation and work assignments to ensure maximum efficiency of staff.

The comparison of the relevant job descriptions demonstrates that the custodian at the Academy is not even close to being comparable to the high school and middle school head custodians. Similarly, a comparison of the descriptions between the latter two and the middle school head custodian reveals a justification for the 40¢ per hour stipend disparity. The supervisory responsibility of the elementary head custodian position is limited. There are only two custodians working in each elementary school – the head custodian who works the day shift and another custodian who works the second shift. The high school and middle school head custodians work under the immediate supervision of the Buildings and Grounds Supervisor and have specific responsibility for the supervision of all custodians assigned to work at their buildings, while the head elementary custodian reports primarily to the Building Principal. Further, the elementary head custodian has less overall responsibility for the work performed and the scheduling of employees.

While the Union's proposed stipend change may be a minor cost issue, the District considers it a major equity change. Granting the Union's request will create a major inequity in compensation. The proposed 80¢ per hour stipend for the Academy custodian and the increased 40¢ per hour stipend for the elementary head custodian are totally without merit.

Interest and Welfare of the Public

The District does not claim an inability to pay, but it cannot willingly agree to provide fully paid health and dental insurance benefits and, at the same time, provide 3% wage increases. Despite enrollment growth and increases in total allowable revenues which are the second highest in the Conference since 1993-1994, the District's financial stability is at risk.

Despite the aggressive actions taken by the District recently, its financial well-being is not good. The District's 2002-2003 fund balance of \$5,494,695 represents 23.59% of its 2002-2003 annual budget. But, the fund balance does not represent available cash. Second, River Falls' fund balance is designated for specific purposes. Third, the remainder of the District's fund balance is designated for working capital and to cover the District's cash flow needs so as to avoid borrowing.

Further, state aid has been decreasing. Therefore, there is a need for a higher fund balance as the state aid decreases. River Falls has received less state aid, as a percentage of total revenues, every year between 1999-2000 and 2003-2004. In the same time period, the District has worked diligently to increase its fund balance to a level where it is no longer required to borrow to meet payroll and other cash flow needs.

Finally, the District argues that the size of the Fund 10 balance should not determine the arbitration. The District has gone to great lengths to create a comfortable fund balance. The District's efforts should not now be negated or used to justify excessive employee wage and benefits increases.

The interest and welfare of the public criteria supports the District's offer.

Cost of Living Criterion

It is well established the total package cost of the parties' offers is the most appropriate measure to use in a comparison with inflation indices. Also, arbitrators have noted that an analysis of CPI changes should focus on the previous one-year period. The CPI in June 2002 and June 2003 was .7% and 2.1%, respectively. The District's exceeds the CPI and is more closely aligned to the CPI than the Union's.

Based on all of the above, the District argues that its offer is the most reasonable of the two.

DISCUSSION:

Section 111.70(4)(cm)7 of the Wisconsin Statutes directs the Arbitrator to give weight to the following criteria:

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 expenditure that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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

...

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

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employed, (sic) including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties in support of their positions addressed the criteria of “greatest weight,” “greater weight,” interest and welfare of the public, external and internal comparables, CPI, and overall compensation. Factors a, b, f, i and j were not relied upon and, therefore, the Arbitrator finds them to be non-determinative.

Further, the parties, at the hearing, agreed to provide the Arbitrator with the other interest arbitration awards issued involving the instant parties in their other four bargaining units. All

were heard prior to this case. The awards in those cases have been issued and provided to the Arbitrator.³

“Greatest Weight” and “Greater Weight” Factors

Clearly, the statute requires that limitations on expenditures or revenues that may be collected (factor 7) and the economic conditions of the municipal employer (factor 7.g.) be given greatest and greater weight than the other statutory factors.

The Employer argues that its revenue is limited by state imposed revenue caps. School districts can only increase their operating expenditures to the extent allowed by the revenue caps. The District has consistently levied the maximum allowable under the law.

The Employer contends that 85% of the District’s operating expenditure is comprised of labor costs. It argues that the District’s annual revenue increase of approximately 3.8% is less than the recent wage and benefit increases and the proposed double digit increase by the Union. This, it is argued, is problematic and cannot be continued. Specifically, allocating a greater proportion of the District’s budget to health insurance costs, due to the dramatic increases in premiums, also affects the District’s ability to comply with the spending restrictions.

The Union counters that total package proposals that are in excess of the total percent increase of the District’s overall revenues should not be determinative. This is so, it is argued, because total revenue is a much larger number so multiplying it by a percent will generate many

³ West Central Education Association-River Falls – Special Education Assistants and River Falls School District, Decision No. 30293-A, February 18, 2005, (Engmann); West Central Education Association-River Falls Bus Drivers Unit and River Falls School District, Decision No. 30924-A, February 18, 2005, (Engmann); School District of River Falls and West Central Education Association, River Falls Para-Professionals, Decision No. 30925-A, March 1, 2005, (Bellman); School District of River Falls and West Central Education Association (Secretaries), March 12, 2005, (Rice).

more dollars than multiplying a smaller cost by the same number. Here, the parties are apart about \$82,077 which the District can easily afford. The Union argues that the District annually spends less than it takes in.

The Arbitrator in addition to the above has considered and studied all of the evidence presented and the parties' arguments regarding the "greatest" and "greater" weight factors. With respect to the "greatest weight" factor, the Employer makes a number of good arguments as to the predominance of the budget by labor costs and its increasing impact on the total budget. But, in the final analysis the parties are approximately \$88,000 apart and there is no evidence that the District's budget cannot absorb the difference or that the difference would have any particular impact on the overall budget.⁴

The Arbitrator reaches the same conclusion with respect to the 7.g. "greater weight" criterion. A review of the record evidence convinces the Arbitrator that the condition of the local economy can support either party's final offer. There is no evidence that the economy of River Falls or Pierce County is markedly different than its comparables.

⁴ Likewise, Arbitrator Engmann concluded as follows: "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 cannot pay. There is no evidence that the state imposed spending units 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 the Union's proposal.² But I also find that this factor does not particularly cut in favor of the Union's proposal,³ therefore, it will not be a determining factor in this arbitration." (Footnotes omitted) Decision No. 30923-A, pp. 14 and 15.

Arbitrator Rice held that, "The Employer has not made an argument that it cannot pay. There is no evidence that the state imposed spending limits would prevent the Employer from funding the Union's final offer. The greatest weight factor does not prevent the Employer from funding the basic parts of the Union's proposal but it will not be a determining factor in this arbitration. (p. 18).

The Arbitrator concludes that the “greatest weight” and “greater weight” criteria are not, alone, determinative in this case. Rather, the issues are best decided on their merits as determined by the other statutory criteria.

Appropriate Comparables

The parties agree that the school districts in the Big Rivers Athletic Conference are the appropriate set of comparables. The District also proposes a secondary set of comparables comprised of school districts in the Middle Border Conference⁵ and the Dunn-St. Croix Conference.⁶

Because said secondary schools are geographically proximate to River Falls and are in the same labor market as this District, they will be considered as secondary comparables, if necessary.

ISSUES:

There are three issues in dispute: health insurance contribution, wages and amount of stipend the head custodians at the District’s three elementary schools and the day custodian at the Academy should receive; specifically, whether they should receive the same 80¢ stipend received by the head custodians at the high school.⁷

⁵ Baldwin-Woodville, Ellsworth, New Richmond, Prescott and Somerset.

⁶ Elmwood, Glenwood City, Plum City, Spring Valley and St. Croix Central.

⁷ The elementary head custodian now receives a 40¢ stipend and the head custodian at the Academy receives no stipend.

Both parties agree that the health insurance issue is the most significant. Both are monetary issues. Thus, while the merits of each will be discussed separately, the two issues must be considered together since they impact each other.

Given the importance of the insurance and wages issues, it follows, then, that whichever party prevails on those issues will be determined to have the more reasonable offer. This does not mean that the head custodian issue standing alone is not important or that the parties are not firm in their belief, but only that the outcome of said issue will not influence the outcome of this case.⁸

Wage and Health Insurance

If the Arbitrator were to consider the wage issue separately from the insurance issue, there is no question the Union's final offer would be found to be more reasonable.⁹ It is more in line with both the primary and secondary comparables, than the Employer's. But, such an analysis is not useful because the wage and insurance issues are really economic issues (although there is some principle involved) and they must be considered together to get a realistic

⁸ The Arbitrator, nevertheless, has reviewed the evidence regarding head custodian pay. Most of the evidence presented related to the head custodian at the Academy. The glaring difference between the duties of the head custodian at the Academy and those of the head custodians at the high school and middle school is that the head custodian at the Academy has no supervisory duties or responsibilities and those at the elementary schools have limited supervisory responsibilities. The high school has nine custodians, including the head custodian and the middle school has four custodians including the head custodian. At the elementary school there are two at each school; a head custodian on days and another custodian who works the second shift.

From the record presented, the added supervisory responsibilities of the head custodians at the high school and middle school over those at the elementary school and the Academy justify the difference in stipend.

⁹ The Employer, understandably, concedes this point. However, if wages were the only issue, the Employer's position, no doubt, would be more in line with its comparables.

evaluation of the parties' proposals. In other words, the Union's more reasonable wage proposal will not carry the day unless its package is deemed more reasonable when considered with its insurance proposal. Conversely, the same can be said of the Employer's final offer. Thus, the wage and health insurance issues will be discussed and analyzed as a package.

Unfortunately, the Arbitrator is presented with what the Arbitrator deems to be too unreasonable packages. We arbitrators recognize that the issue of health insurance and the sharing of premiums is an important issue and very difficult for the parties to resolve. But often times, as in this case, the Arbitrator is left struggling with which one of the two unreasonable final offers of the parties to select. This is so because so often the employer submits an offer that tries to make up too much ground in one contract and, on the other hand, the union submits a proposal that yields fractional or no ground at all.

Here, with respect to health insurance contributions, the Employer in the 2003-2004 contract seeks to go from ranking at the top, among its comparables, with its 100% contribution, to the bottom with a dollar amount of contribution of \$1,000 (87.80%). This is with a wage freeze the first year, a 1% increase the second year and no quid pro quo. The Union is at the other extreme with no change in insurance and two 3% annual increases. There simply is no attempt by the parties to fashion an equitable transition from the current generous 100% plan to a plan in this contract calling for a reasonable contribution by the employees that recognizes that, in terms of wages, this unit is near the bottom in comparison to their comparables. Simply stated, the Arbitrator is not satisfied imposing either proposal on the parties. But, he must since the law limits his selection to one of the two total package final offers proposed.

As stated earlier, the instant case is one of five impasses submitted by the parties to interest arbitration. The four other units consist of bus drivers, special assistants, para-

professionals (teacher aides) and secretaries. Awards have been issued in all four and the Employer's offer was selected in all four. The primary and determinative issues in all of the cases, like here, was the amount of health insurance premium contribution by the parties.

Arbitrator Jim Engmann in the bus drivers and special assistants cases, had problems with both offers because neither side presented what he considered to be a winning offer. It was a matter of selecting the lesser of two unreasonable offers. Both of Engmann's cases and Arbitrator Howard Bellman's case involving the para-professionals were similar, but different than Arbitrator Zel Rice's case involving the secretaries and the instate case.

In the Engmann and Bellman cases, the Union proposed going from a \$230 per month cap on the District's health insurance contribution in the bus drivers unit and a \$175 per month cap in the special education assistants unit, to a 100% single/50% family contribution in both. The District proposed to freeze its cap forcing employees in the bus drivers unit to pick up the increase of \$325.41 per month.

Despite the severity of the Employer's offers in the two cases, Arbitrator Engmann favored the Employer's offer primarily due to a critical flaw in the Union's offers in that the Union's did not pro-rate its insurance proposal of 100% premium payment by Employer for the single plan to accommodate employees who work less than full-time, even though there are employees who work as little as four hours a day. Arbitrator Bellman, following Engmann's award, concurred with his rationale and conclusion.

The instant case, in all material respects, is identical to the case that was before Arbitrator Rice involving the secretarial unit. Arbitrator Rice, who was presented with the same final offers as in this case, found the Employer's final offer to be the more reasonable of the two.

The undersigned recognizes that even though the secretarial unit and the instant unit involve identical final offers, the parties by arbitrating them separately expect the Arbitrator in each case to reach his own conclusions based on the application of the statutory criteria to the specific facts of his case.

However, having said so, this case, nonetheless, is heavily influenced by the outcome in the other four cases, and especially the Rice award. This is so because they represent the internal comparables. This is particularly true in this case because the primary issue in dispute in all five cases is a fringe benefit, health insurance. The principle that internal comparables is the most important statutory criterion in deciding fringe benefit issues is so widely accepted by arbitrators and consistently applied that no reference is needed.

Internally, the Employer has prevailed in all of the other four units whose impasse was submitted to arbitration. The primary issue, as stated earlier, was the amount of health insurance premium contribution by the Employer.

The undersigned agrees with the other Arbitrators that the high rate of increase of health insurance premiums experienced by the Employer in past years justifies its concern to address the contribution increase. Premiums increased about 16% in 2000-2001, about 24% in 2001-2002, about 30% in 2002-2003, and about 182% for single coverage and 147% for family coverage between 1992-1993 and 2003-2004. The Employer's final offer selected by Arbitrators Engmann and Bellman has a more severe impact on the employees in those cases than employees in this and Rice's case. While here the Arbitrator would have preferred a more gradual transition from the current 100% contribution by the Employer to the proposed dollar amount cap equaling 87.80%, the Employer has lessened the impact by delaying the change to the last six months of the contract.

Further, the Employer's total package increase for the two years is 10.3% in 2002-2003 and 4.73% for 2003-2004 as compared to the Union's 13.24% and 7.76% increases. The Employer's offer is more in line with the CPI than the Union's.

Further, internally, five of the seven bargaining units have a dollar cap on the Employer's contribution and in one, the teacher unit, the Employer contributes 97.5%. Employer contributions in three of the six support staff units, which range from \$175 per month to \$286 per month, are significantly higher than in this unit.

Lastly, with respect to external comparables, the Union's offer would result in the River Falls School District being the only district left in the Big Rivers Athletic Conference contributing 100% of the family health insurance premium. Chippewa Falls is at 90%, Hudson 96%, Menomonie at 90%, Rice Lake at 95% and Eau Claire at a dollar cap of \$921.08 equally about 93%.

Based on the above and especially based on internal comparables, the Arbitrator finds the Employer's proposal to be the more reasonable of the two and the one that serves the interest and welfare of the public best. I concur with Arbitrator Rice's summation in the secretarial unit case where he stated:

On the issue of health insurance, the Employer's proposal is an attempt to get a handle on regularly increasing cost of health insurance. The Union has been rigid in holding out for 100% payment of the cost of health insurance by the Employer. The policy covering the employees has been described as a "Cadillac" policy that has had substantial increases over the years. The Employer seeks to have a contribution by it's (sic) employees to help control the cost of the insurance. This is a regular feature in negotiations in almost all contracts and the pattern has been for the employer to share the costs with the employees. There are different ways of sharing. The Employer has chosen to contribute a fixed amount as opposed to a percentage contribution. Perhaps a percentage contribution would have been more satisfactory to the Union but it only asked for 100%. The pattern of settlements in the comparable group and in almost all employer/employee relationships is to have the employees make a contribution toward the cost of

insurance. This is a hard blow for the Union to accept but it is only for a 6 month period. There are other ways of reducing the cost of insurance and that is a responsibility of the Union as well as the Employer. Under the circumstances, the arbitrator selects the final offer of the Employer.

Based on the foregoing facts and discussion, the Arbitrator renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful evaluation of the testimony, arguments, briefs of the parties and the record as a whole, the Arbitrator finds the Employer's final offer more closely adheres to the statutory criteria than that of the Union and directs that the final offer of the River Falls School District be incorporated into the collective bargaining agreement between the parties for the 2002-2003 and 2003-2004 term.

Dated at Madison, Wisconsin, this 22nd day of March, 2005.

Herman Torosian, Arbitrator