BEFORE THE ARBITRATOR

In the Matter of the Petition of FLORENCE SCHOOL DISTRICT To Initiate Arbitration Between Said Petitioner and FLORENCE COUNTY EMPLOYEES UNION, LOCAL 1315-A, AFSCME, AFL-CIO	Case 27 No. 63152 INT/ARB-10094 Decision No. 31023-A

Appearances:

Mr. Barry Forbes and Mr. Scott W. Gad, Wisconsin Association of School Boards Staff Counsel, on behalf of the District.

Mr. Dennis O'Brien, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

ARBITRATION AWARD

The above-captioned parties, herein "District" and "Union," selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, ("MERA"). A hearing was held in Florence, Wisconsin, on November 9, 2004. The hearing was not transcribed and the parties subsequently filed briefs and reply briefs that were received by March 2, 2005.

Based on the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes a unit of non-teaching personnel employed by the District which includes custodians, custodian-drivers (or driver-janitors), bus drivers, cooks and instructional aides. The parties engaged in negotiations for a successor collective bargaining agreement to replace the prior agreement which expired on June 30, 2003, and the District filed an interest arbitration on December 30, 2003, with the Wisconsin

Employment Relations Commission, ("WERC"). The WERC appointed Sharon A. Gallagher to serve as an investigator and to conduct an investigation pursuant to Section 111.70(4)(cm)6(b) of MERA. The investigation was subsequently closed on or about July 29, 2004, and the WERC on August 23, 2004, issued an Order appointing the undersigned to serve as the arbitrator.

FINAL OFFERS

The District's Final Offer states:

1. The cover page should be modified as follows:

~~July 1, 2000 to June 30, 2003~~ July 1, 2003 to June 30, 2005

The remainder of the cover page should red as it does in the 2000-2003 agreement

2. AGREEMENT, paragraph 1, should read as follows

THIS AGREEMENT is entered into this first day of July, ~~2000~~ 2003, by and between the School District of Florence County, hereinafter referred to as the "Employer," and the Florence County Employees Union, Local 1315-A, AFSCME, AFL-CIO, affiliated with the Wisconsin Council of County and Municipal Employees, hereinafter referred to as the "Union."

The remainder of the AGREEMENT provision, paragraph 1, should read as it does in the 2000-2003 agreement.

3. ARTICLE 16 – TERMINATION, should be modified as follows:

This Agreement shall become effective with the payroll period beginning July 1, ~~2000~~ 2003 and shall remain in full force and effect up to and including June 30, ~~2003~~ 2005, and shall continue in force and effect until such time that either party desiring to open, alter, amend or otherwise change this Agreement shall serve written notice upon the other not later than February 1, ~~2003~~ 2005, or on the 1st of February of any year thereafter. Both parties agree to submit only six (6) items for bargaining succeeding contracts, two of which are wages and duration of contract.

The remainder of ARTICLE 16 should read as it does in the 2000-2003 agreement.

4. ARTICLE 8, section D, paragraph 1, should read as follows:

Employees will be granted a maximum of three (3) days with pay for necessary time off from work due to death in the immediate family. Immediate family is defined as spouse, children, parents, mother-in-law, father-in-law, grandparents, grandchildren, brothers, sisters, and other members of the household. Funeral leave may be granted in other special cases at the discretion of the administrator.

The remainder of Article 8, section D, should read as it does in the 2000-2003 agreement

5. APPENDIX B – SALARY SCHEDULE, should be modified as follows:

~~All employees rates reflect a 3% increase per year except Aides will receive $.25 increase plus a 3% each year effective 7/1/00 and 7/1/01 and 3% effect. 7/1/02 and Bus Drivers (4) will receive $.25 increase in 7/1/00 and 7/1/02.~~

During the 2003-2004 school year, the salary schedule will not be increased or decreased (i.e. the salary schedule will be identical to the salary schedule for the 2002-2003 school year). During the 2004-2005 school year, the salary schedule will not be increased or decreased (i.e. the salary schedule will be identical to the salary schedules for the 2002-2003 and 2003-2004 school years). The employee salary schedules for the 2003-2004 and 2004-2005 school years shall be as follows:

Insert correct wage schedules here:

The remainder of Appendix B should read as it does in the 2000-2003 agreement.

6. APPENDIX C – FRINGE BENEFITS, should read as follows:

~~The Board will pay one hundred percent (100%) of the hospital-surgical-major medical insurance plan (WEAIT).~~ Employees may enroll in the front end deductible hospital-surgical-major medical insurance plan (WEAIT). ~~The Board may change carriers, however, the benefits of the new plan must be substantially equivalent or superior to the 1989-90 WPS plan.~~ The Board may change carriers in the future as long as the benefits of the new plan are substantially equivalent or superior to the benefits of the plan adopted by the parties commencing with the 2004-2005 school year.

The front end deductible hospital-surgical-major medical insurance plan incorporates the following: (1) ninety percent (90%) / ten percent (10%) co-insurance; (2) a five hundred dollar ($500) single deductible (the Board will pay the second half of the single deductible); (3) a one thousand dollar ($1,000) family deductible (the Board will pay the second half of the family deductible); (4) a two hundred and fifty dollar ($250) single stop loss; (5) a five hundred dollar

($500) family stop loss; and (6) a three tiered drug card requiring a five dollar ($5) contribution to generic drugs, a ten dollar ($10) contribution to preferred drugs, and a twenty five dollar ($25) contribution to non-preferred (brand name) drugs.

Employees electing the single health insurance benefit will contribute fifty dollars ($50) per month toward the single monthly premium. Employees electing the family health insurance benefit will contribute one hundred dollar ($100) per month toward the family monthly premium. The Board will contribute the remainder of the monthly health insurance premium. **The employee contributions described in this paragraph (i.e. fifty dollars ($50) per month toward the single monthly premium and one hundred dollars ($100) per month toward the family monthly premium) are effective starting on July 1, 2004, and will be retroactively collected upon the implementation of this contract (i.e. the 2003-2005 master agreement).**

The Board will pay the full single premium or up to the following amounts on a family policy of a dental insurance program agreed upon by both parties:

Janitors	$420.00
Cooks	420.00
Aides	420.00
Bus Drivers	306.25

The Board will provide a long-term disability insurance for all employees working more than seven hundred twenty (720) hours and paid life insurance in the amounts of $10,000 for twelve-month employees and $5,000 for nine-month employees.

Employees (except bus drivers hired before *insert the date this contract is ratified*) must work more than seven hundred twenty (720) hours per year to receive health and dental benefits. Such employees hired after June 30, 1997, will have the District's contribution to insurance benefits prorated based on their regular hours as a percentage of 2080 hours (rounded to the nearest 5%).

Bus drivers hired subsequent to 6/30/93 will contribute twenty-five percent (25%) of the cost of their health and dental benefits.

The Union's Final Offer states:

90%-10% Front End Deductible Plan; $500/$1,000 Deductible (the Board will pay the 2nd half of the deductible); stop loss $250/$500

$30 Single / $60 Family Share of Premium

3 tier drug card $5-$10-$25

This insurance applies to everyone including present bus drivers. The drivers no longer pay the extra 25%

2.50% pay increase for the 2003-2004 school year and a 2.75% pay increase for the 2004-2005 school year

Funeral leave language to include grandparents and grandchildren

The benefits of the insurance plan must be substantially equivalent or superior to the present plan. Delete reference to 1989-90 WPS plant from Appendix C.

Remainder of agreement will be status quo

The parties agreed at the November 9, 2004, hearing that there is no dispute between them relating to items 1, 2, 3, and 4, in the District's Final Offer and that those items were agreed to; that funeral leave should be extended to cover grandparents and grandchildren; and that the District's proposed health insurance plan - which had been placed on hold for this bargaining unit pending resolution of this matter - should be implemented as soon as possible after the hearing and before the issuance of this Award.

The following items thus remain in dispute:

1. Wages

The District proposes that the salary schedule not be increased for either year of the agreement.

The Union proposes that employees receive a retroactive 2.50% across-the-board pay increase for the 2003-2004 school year and a 2.75% across-the-board pay increase for the 2004-2005 school year.

2. Health Insurance Premiums

The District proposes that employees pay $50 per month for single coverage and $100 per month for family coverage towards their monthly health care premiums effective July 1, 2004.

The Union proposes that employees pay $30 for single coverage and $60 per month for family coverage following the issuance of this Award.

3. Health Insurance for Bus Drivers

The District proposes that school bus drivers hired after June 30, 1993, continue paying 25% of the cost of their health and dental insurance and that bus drivers hired after the issuance of this Award must work 720 hours a year to receive pro-rated coverage.

The Union proposes that bus drivers hired after June 39, 1993, no longer pay 25% of the health insurance premium. The Union also opposes the District's attempt to eliminate health insurance for future drivers who do not work 720 hours a year.

STATUTORY CRITERIA

Section 11.70(4)(cm)7 of MERA reads 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:

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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. 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.

f. 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.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The Union contends that while "the District's financial health is not the best," nothing "places it on such a uniquely poor position, when compared to either the Union's or its own proposed comparable districts, which would justify the Board's offer under the greatest weight criteria," and that the greater weight factor does not support the District's offer because: "There is no evidence in this record that would allow the District to claim that economic conditions in this district are uniquely poor, either intrinsically or on comparison to either party's proposed comparables." The Union adds that its health care proposal is more reasonable because it already has made significant concessions relating to deductibles and drug costs which have saved the District about $132 a month; because it is unfair to compare the employees here with teachers and administrators who earn considerably more; because "The District was not concerned with internal comparisons when retiree insurance or longevity became part of the teachers' and administrators' employment contracts"; because "the employees of Florence County are significant internal comparables for the support staff"; and because such comparables support its position.

The Union also states that there is no support for the District's wage offer among the comparable districts which it maintains should include the Three Lakes and Wausaukee school districts, and that the Union's offer demonstrates "fiscal restraint" because it is "substantially below the group average in both $/hour and as a % increase." The Union adds that the District's zero wage offer would have an adverse impact on an impending retiree's retirement, thereby causing "a permanent reduction," and that a zero wage increase would be particularly "devastating" to bargaining unit members who will pay more for health care. It adds that there is no merit to the District's claim that the employees here are appropriately compared to the District teachers because the teachers did not receive any across-the-board wage increases and because the employees here received step increases when they moved through the wage schedule. It also asserts that its bus driver proposals should be adopted because only two drivers are affected by reducing health care premiums and because it would be unfair to require future drivers to work a minimum number of hours to receive health care coverage.

The District contends that its Final Offer should be adopted pursuant to the "greatest weight factor" because of the District's dire financial condition which will only get worse because of declining enrollment and deteriorating revenues, and because the District already has done everything possible to cut its expenses. It claims that the "greater weight factor" supports its position because a referendum to raise taxes failed, thereby reflecting local economic conditions. The District also claims that its wage offer here is similar to the one it offered its teachers because it did not grant any across-the-board wage increases to teachers; because employees here can move through the wage schedule faster than the comparables; and because the "dynamic status quo" doctrine required it to pay for step and lane increases. It also claims that it "was a wage leader among the Union's comparison group" in the 2002-2003 school year, and that regardless of which offer is selected, "the District's maximum hourly pay rankings will remain the same or fall one place from where they were during the 2002-03 school year."

The District maintains that its health care offer "provides Union employees with the same health insurance benefits as teachers, administrators, and non-union support staff personnel," and that its offer provides the greatest health insurance benefit level of any district in the Union's comparison group. It also claims that its two health care proposals relating to the bus drivers should be adopted because all of the District's non-driver support staff personnel must work at least 720 hours a year to get health insurance, and because the external comparables do not support any reduction in the health care premiums they are now paying.

DISCUSSION

The record establishes that the District is in dire financial straights caused in part by a declining student population and revenue caps.

The number of full-time students has dropped from about 929 in 1996 to about 693 at the present time, with a projected decline of about 601 students for the 2008-2009 school year, (District Exhibit 31). This enrollment decline led the District to close its Hillcrest Elementary School in 2004, which led to the loss of about another 29 students who transferred to other school districts and which caused the District to lose the state aids formerly generated by those students.

The District in the 2003-2004 school year lost about $14,000 in revenue limits, and it will lose about $93,000 in the 2004-2005 school year and about $166,000 for the 2005-2006 school year, (District Exhibit 31). The District's reserved fund balance is now $228,000, rather than the recommended $1,400,000 - $1,805,000. To reduce its expenses, the District in the 2003-2004 school year eliminated 7 full-time equivalent positions, ("FTE's"), and it in the 2004-2005 school year cut another 15 FTE's. As a result, class size in grades 1-6 has increased by about 5 students per class.

The District also had reduced its expenses by eliminating its prior full-time certified business manager position and by assigning some of his duties to someone who is now paid about an extra $5,000 a year for doing so, and by eliminating a principal's position and by creating a combined K-12 principal. The District also has eliminated numerous school activities, programs and courses, and it has delayed certain purchases and has deferred certain maintenance projects. In addition, most administrators and non-union personnel did not receive any wage increases in the 2003-2004 school year, and all administrators and all non-union personnel received no wage increases in the 2004-2005 school year.

Furthermore, the District in recent years has levied the maximum tax allowed under Wisconsin's revenue limits, and it in May 2004 unsuccessfully tried to pass a school referendum aimed at allowing it to raise the revenue limits by$750,000 over five years.

Several other factors have contributed to the District's financial difficulties.

The District in 2000 bought out the contracts for its then-superintendent and two principals at a cost of about $450,000, some of which is still being paid off. That former superintendent receives health insurance coverage until he is 65 years of age even though he is now working for another school district. In addition, the District several years ago overspent its budget by about $400,000.

The District also must make contributions to its early retirement plan which provides former teachers and early retirees with health insurance, some of whom will receive insurance until they are 75 – that's right, <u>75</u> not 65 - years of age. Other early retirees receive health insurance until they reach 65 years of age, and new hires no longer are eligible for early retirement.

The District's various financial problems have caused the District's general fund balance to drop to about $228,129 in 2004, (District Exhibit 20-A).

The combination of the above factors has led the District to explore the possibility of filing for bankruptcy, and legislation allowing it to do so was proposed in 2004 but defeated in the State legislature, (District Exhibit 27-G).

In part because of the District's financial difficulties, the Union's bargaining unit has shrunk from about 42 employees to 27 employees.

The difference in the parties' proposals over two years is about $45,489, exclusive of the costs associated with the Union's proposal relating to health insurance for bus drivers, (District Exhibit 12).

The Union has not costed out the total package costs of its Final Offer.

The District has costed out the total package costs of the Union's Final Offer to be minus 10.78% for 2003-2004 and minus 15.84% for 2004-2005, (District Exhibit 14). The Union's Final Offer carries a negative cost because the District's health insurance costs have dropped because of switching to a new insurance plan.

The District has costed out the total package costs of its Final Offer to be minus 12.17% for 2003-2004 and minus 17.88% for 2004-2005, (District Exhibit 13).

This, then, is an extraordinary case because it turns on which Final Offer carries the biggest overall wage and benefits reductions.

The statutory criteria spelled out in Section 111.70(4)(cm)7 must be considered within this unique setting.

As for that, there are no issues relating to the statutory authority of the municipal employer, and the stipulations of the parties do not affect the selection of either party's Final Offer.

The CPI of 2.18% and 2.02% for the 2002-2003 and 2003-2004 school years, (District Exhibit 77), is closest to the Union's Final Offer because that offer provides for less of an overall package decrease than the District's Final Offer.

In addition, there have not been any changes during the pendency of this proceeding which impact upon the Final Offers, and the "interests and welfare of the public" are served by selecting either offer.

The "financial ability of the unit of government to meet the costs of any proposed settlement" is tied to the District's financial condition related above.

The Union's Brief acknowledges that: "The District's financial health is not the best."

The District's "financial health" is, in fact, on life support and only getting worse. That is why the District has engaged in the above cost-saving measures aimed at reducing its expenses in the face of ever declining enrollment and revenues.

The Union nevertheless asserts that "there just isn't that much to be saved from this group . . ." because "the District has been very inconsistent in how it has addressed its concerns for its labor costs," as it points to what the District is now paying to certain administrators.

I find that the record fully justifies the level of pay now being paid to the District's administrators. District Administrator Jan Dooley explained that one person was given a $5,000 raise because she is now working a longer work week performing some of the work performed by the District's former business manager, and that another person was hired out of retirement and is now doing the work of two principles. These two measures therefore have saved money for the District.

That is why, except for one significant caveat, the District has presented an overwhelming case as to why the "greatest weight" factor supports its proposal.

The caveat centers on the need for equal treatment and the need for joint sacrifices among all of the District's employees. Equal treatment and common sacrifice are needed because it is unfair to favor one group of employees over another, and to give a wage increase to one group but not the other.

Here, it is true that no across-the-board wage increases were given to the teachers by raising the amount of each cell on the teachers' salary schedule, and that the District's Final Offer here also does not provide for any across-the-board wage increases.

However, all teachers except those at the top of the salary schedule got wage increases in the 2003-2004 school year when they received step and lane increases pursuant to the salary grid in their expired collective bargaining agreement with the District. All teachers except those at the top of the salary schedule in the 2004-2005 school year also got wage increases when they received step increases, but not lane increases. Since each step increase represented about $500, that means that nearly all teachers received about $1,000 in step increases in that two-year period. Teachers who got lane increases in 2003-2004 also got another $500 or so dollars, thereby leaving them with a total wage increase of $1,500.

The District's costing shows that step and lane movement costs in the 2003-2004 school year totaled about $54,182, and that step movement for the following year cost about $31,169 for a total of $85,335, (District Exhibit 18-B). That amounted to 2.23% of salary schedule costs in 2003-2004 and 1.56% in 2004-2005. Here, by contrast, almost all bargaining unit members would receive zero wage increases.

The District claims that it had to grant teachers such raises under the "dynamic status quo doctrine" which generally requires employers to pay step and lane increases during a contract hiatus after a collective bargaining agreement expires, and that it cut the best deal it could with the teachers' union and that it had to do what it did there as the price for not going to interest arbitration where it may have ended up paying even more.

The WERC explained its "dynamic status quo doctrine" in Wisconsin Rapids, Dec. No. 19084-C, (1985), p. 17, as follows:

. . .

> *the dynamic status quo doctrine calls upon parties to continue in effect the wages, hours and conditions of employment in effect at the time of the expiration of the predecessor agreement or the time of the union's initial attainment of exclusive representative status.*
>
> *Where the expired compensation plan or schedule, including any related language – by its terms or as historically applied or as clarified by bargaining history, if any – provides for changes in compensation during its term and/or after its expiration upon employee attainment of specified levels of experience, education, licensure, etc., the employer is permitted and required to continue to grant such changes in compensation upon the specified attainments after expiration of the compensation schedule involved.* (footnote omitted)

. . .

Since the District historically has provided for increases during a contract hiatus, the District was required to also do so at the end of the teachers' prior agreement. It was not required to do so, however, for the second year of the new agreement.

Moreover, the District somehow found about $85,335 to pay for step and lane movement out of its strapped budget. If the District could do that there, it also can do so here by somehow finding the money to pay for the Union's wage proposal which is almost half that amount.

The "greatest weight" factor therefore does not favor either party's proposal.

The “greater weight” factor centers on local economic conditions. While the economic conditions in Florence County are not good, all other bargaining units in Florence County received wage increases in recent years.

The District points out, however, that there is a significant difference between the District’s employees who work for a school district and thus are covered by Wisconsin’s revenue limits law and other county employees who are not. Hence, while the District’s revenues are regulated and cannot be raised without a referendum, county and city entities can raise revenues by simply raising the mill rate.

This is a significant difference. However, since local economic conditions enabled the District to pay out about $85,335 for step and lane movement, those same conditions enable the District to meet the Union’s wage proposal here since it represents about half of that amount.

Turning now to the criteria pertaining to external comparables, it is first necessary to establish the appropriate pool of comparables.

Both parties agree on the following school districts: Beecher-Dunbar-Pembine, Crandon, Elcho, Goodman-Armstrong, Laona, Niagara, Phelps, Wabeno, White Lake, and Wausaukee. [1] The parties only disagree over whether the Three Lakes School District should be included with these other comparables.

The Three Lakes School District is in the same geographic area as some of the other comparables, and it is in the same athletic conference as the District and some of the other comparables, i.e. the Northern Lakes Conference. Furthermore, the Three Lakes School District has almost the same number of students and teachers as the District. In the 2002-2003 school

[1] The District states in its main Brief at p. 33: “Given Wausaukee’s geographic proximity to Florence, and the other districts that both parties agree are comparable . . . the Board hereby concedes that Wausaukee is a comparable school district for purposes of this interest arbitration.”

year it had 729 students and 55.6 teachers, as compared to the District which had 792 students and 54.4 teachers, (District Exhibit 50-B). It therefore cannot be excluded as a comparable based upon any of these factors.

The only basis for excluding the Three Lakes School District centers on the fact that its support staff is not unionized. The Union claims that it should be disregarded as a possible comparable because of its non-union status, and the District claims otherwise.

Both parties have cited a plethora of arbitration cases in support of their respective positions where arbitrators have addressed the question of whether non-unionized school districts should be included or excluded as comparables.

There is no point in addressing each of those cases. It suffices to simply state that there is a split in arbitral authority on this issue, with some arbitrators excluding non-unionized employers, and with other arbitrators including them for at least some purposes.

I believe that non-union jurisdictions must be considered for economic issues if they satisfy all of the other criteria to be a comparable because the statute on its face does not exclude non-union jurisdictions when it addresses external comparability and because such jurisdictions often are part of a common labor market which helps determine local wages.

As a result, and because it meets all of the other criteria to be a comparable, the Three Lakes School District should be included in the pool of comparables referenced above.

Turning now to the health insurance proposals involving the bus drivers, the Union asserts that the District is having difficulty retaining bus drivers; that some drivers "would not make the minimum threshold for health insurance" in the future; that the District's proposal to grandfather current bus drivers does not "mitigate the effect in time on this unit" because the District knows that four out of the five most senior bargaining unit employees are bus drivers;

that the “benefits offered in this contract are the fruits of a long hard bargaining relationship”; and that the District “should not be allowed to vitiate the contract . . .” It also claims that the District has deliberately reduced the hours of other bargaining unit employees to under 720 to avoid paying their health insurance.

The District contends that its contribution for the bus drivers’ health insurance is the highest among the comparables and that: “The Union should lose this arbitration on this issue by itself. There is no justification for this change.”

The 13 bus drivers in the 2003-2004 school year worked about 546, 556, 546, 816, 726, 360, 546, 726, 726, 816, 816, 546, and 816 hours, respectively, (District Exhibit 17, p. 4). All but four of them received health insurance. Bus drivers in the 2004-2005 school year were scheduled to work about 546, 546, 816, 726, 546, 726, 726, 816, 816, and 546 hours respectively, (District Exhibit 17, p. 5). All but four of them received health insurance.

The District in the 2004-2005 school year will spend about $14,476 for health insurance premiums for one bus driver scheduled to work about 581 hours a year, (District Exhibits 13; 17, p. 5). He therefore will earn about $25-$26 in health insurance premiums for every hour he works.

The Union’s proposal that bus drivers hired after June 30, 1993, should no longer be required to contribute 25% toward the cost of their health care premiums affects several bus drivers who were hired after that date and who now receive health insurance, (Union Exhibit 8, p. 4; Union Exhibit 11, p. 2).

The external comparables do not support the Union, a point acknowledged by the Union which states: "The Union concedes that its offer requires greater contribution from the District than the external comparables . . .," but which it justifies on the ground that its proposal "only affects two employees who earn $9,776.06 as bus drivers."

Seven of the eleven school districts offer no health insurance to their bus drivers, and the remaining four that do – i.e. Beecher-Dunbar-Pembine, Crandon, Wabeno and Wausaukee – require bus drivers to either meet higher eligibility requirements and/or to pay more for their health insurance.

Beecher-Dunbar-Pembine now pays 25% of the single or family health insurance premium for drivers who work under 20 hours; up to 50% of the premium for drivers working 20-30 hours; up to 75% of the premium for drivers working up to 35 hours; and up to 95% for drivers who work more than 35 hours, (District Exhibit 58, pp. 9-10). Crandon pays single health care insurance for support staff personnel with 7 years' service; 75% single health care insurance for full-time staff employees with less than 7 years' service; 50% family health care insurance for employees working 20 hours or more a week; and 75% family insurance or two weeks' vacation for employees who work 42 or more weeks a year for 15 consecutive years, (District Exhibit 60, pp. 22-23). Wabeno pays close to 80% of the family premium and 90% of the single premium for full-time school year employees, and 70% of the single or family premium for employees who work at least 17.5 hours per week, with another 2% added each year on the employee's anniversary year, (District Exhibit 75, pp. 17-18). Wausaukee in 2002-2004 paid 55% of the health insurance premiums for bus drivers who "had (1) consecutive prior year of employment with the School District," (Union Exhibit N, p. 10).

Here, by contrast, bus drivers hired after June 30, 1993, pay only 25% of the cost of their health and dental benefits <u>regardless of how few hours they work</u> – a benefit not enjoyed by any other comparable.

In addition, the internal comparables do not support the Union. Thus, non-bus driver employees hired after June 30, 1997, receive a prorated contribution from the District toward their health insurance based on 2,080 hours per year (rounded to the nearest 5%). None of these employees are therefore guaranteed that the District will pick up 75% of their health premiums regardless of how few hours they work.

Absent any support from the external or internal comparables, I conclude that the Union's proposal must be rejected.

The District's proposal calling for newly hired bus drivers to work a minimum of 720 hours to receive any health insurance is supported by all the external comparables.

It also is supported by the internal comparables because all other support staff personnel must work a minimum of 720 hours to receive this benefit.

Based on these external and internal comparables, I conclude that the District's proposal should be adopted.

Turning now to the proposals regarding premium sharing for health insurance, the District's proposal calls upon employees to pay $50 per month for single coverage and $100 per month for family coverage effective July 1, 2004. The Union's proposal calls upon employees to pay $30 per month for single coverage and $60 per month for family coverage upon issuance of the Award.

The District's proposal is supported by the internal comparables because teachers and all other District employees are now paying what the District proposes here.

The external comparables on health insurance, (District Exhibit 10), are as follows:

	Single/Family '03 – '04	Single/Family '04 – '05	Premium percentage Employer/employee
CRANDON	597.18/1347.26	625.84/1412.82	
ELCO	560.10/1257.34		95/5
GOODMAN	613.94/1381.70	659.66/1487.54	95/5
LAONA	603.64/1359.86	624.86/1489.94	100/0
NIAGARA	509.96/1146.87	581.90/1309.84	92.5/7.5
PEMBINE	578.22/1306.90	637.26/1441.66	95/5
PHELPS	529.00/1190.84	557.58/1256.44	100/0-single 90/10 family
WABENO	596.36/1344.30	622/1403.60	92/8
WAUSAUKEE	508.70/1322.70		100/0
WHITE LAKE	562.56/1270.02	590.22/1333.28	90/10
GROUP AVERAGE	565.97/1292.78	612.41/1381	90/10
FLORENCE	596.18/1341.81	603.22/1359.40	Single family Union- 30 60 District- 50 100

The Union asserts that it already has agreed to a "substantial increase" in bargaining unit members' out-of-pocket costs; that its concessions are not matched by any of the external comparables; and that its offer for 95% premium sharing is supported by the comparables. It also points out that the employees here will be paying a higher percentage for their insurance when measured against their wages because they earn less than other District personnel.

All of this is true. However, employee contributions for health insurance traditionally are calculated as a percentage of the premium or a flat dollar amount regardless of employee income, and there is no reason to not do so here.

The Union claims that the District's "serious problem with health insurance costs" does not center on the costs associated with this bargaining unit, but rather, with the costs of paying for the health insurance of about 25 former teachers under its former early retirement plan, (Union Exhibit 6-B, p. 29, Appendix E). The Union also states that the District has not always insisted upon internal parity in the past because it established an early retirement plan for teachers and others that it never offered to this bargaining unit, and that it is unfair to require this bargaining unit to make even greater concessions on health insurance because of the financial problems generated by the early retirement plan.

There is some merit to this claim because the District did not follow parity when it offered an early retirement plan to the teachers but not to the employees here, and because it is unfair to saddle this bargaining unit with the fiscal fall-out created by that plan.

Nevertheless, the problem at hand is the problem at hand and not what happened many years ago. The parties' health care proposals therefore must be judged by their reasonableness based on today's situation and the District's dire financial difficulties which make it necessary for the District to cut its health care costs.

Both proposals are reasonable, particularly when it is remembered that the Union already has made concessions on health insurance and on drug coverage which have saved the District about $132 per month per employee.

The question of parity on health insurance contributions is closely tied to the question of parity regarding the parties' wage offers. For if the District's wage offer here is identical to the wage offer made to the teachers, that is a strong reason to hold employees here to the same health insurance premium sharing reached there. On the other hand, if the District's wage offer is different, the employees here should not be held to the agreement reached there.

As related above, the District granted step increases to all teachers who were not at the top of the salary grid which totaled about $1,000 over two years per teacher, and the District in the 2003-2004 school year also granted lane increases which amounted to about another $500.

The District claims that since it paid for step movement under the salary schedule here, it has treated the employees here the same as the teachers.

The Union claims that the District was not required to grant wage increases to the teachers because it "could have offered cost saving changes and arbitrated, claiming the greatest weight as in the instant matter," and that the "District knows this because it is one of the very rare districts to offer less than the QEO to its teachers, arbitrate, and win." The Union also cites Green Bay Area School District Voluntary Impasse Procedure (1987), where Arbitrator Sherwood Malamud ruled that while teacher increments normally are included as part of total package costs, that is not true for blue collar units because: "Normally, any increases generated by step movement from the hiring step to the maximum rate . . . is normally not included in the percentage increase costed to these employees."

The salary schedule here only has 3 steps for eight classifications. The teachers' salary schedule has a total of 14 steps and 13 lanes, thereby greatly enhancing how much money a teacher can earn by moving through that schedule. Hence, while only one or two bargaining unit employees got a step increase here over the last two years, [2] every single teacher except those at the top of the salary schedule got a step increase for two years and some teachers received a lane increase for one year.

Does this represent equal treatment? If it does, the District has made a persuasive case why employees here also should receive a general across-the-board wage freeze because that is what the teachers have received. If it does not, the Union has made a persuasive case why employees here should receive some form of wage increase just like the teachers.

I find that there is a significant difference between moving through a salary grid where all teachers except those at the top of the salary schedule got a raise and moving through a much

[2] The District's Reply Brief on p. 12, note 11, acknowledges that "most (but not all) members of this bargaining unit are at the top of the wage schedule."

more compressed wage schedule where only one or two employees got a raise, as the record establishes that the District between 2003-2005 granted step and lane increases which totaled about $85,235 – which is a little less than double what the Union is seeking here.

The teachers, unlike the employees here, therefore really were not subjected to a wage freeze.

As a result, I find that the internal comparables support the Union's claim that its members deserve a wage increase.

The Union's wage offer also is supported by the external comparables. The external comparables for wage increases are as follows, (Union Exhibit 11, p. 1):

	'03 – 04	'04 – '05
CRANDON	.75 (7.1-4.6)	.75 (6.7-4.2)
ELCO	.40 (4.3-3.3)	.40 (4.1-3.2)
GOODMAN	.33 (3.5-2.4)	.33 (3.5-2.4)
LAONA	.29 (4.0-2.7)	.29 (3.8-2.6)
NIAGARA	(5.9) 12-03	(2)
PEMBINE	.25 (2.3-2.2)	.30 (2.7-2.5)
PHELPS	.35 (3.6-3.2)	.35 (3.3-3.1)
WABENO	.50 (6.6-4.2)	.50 (6.2-4.1)
WAUSAUKEE	.31 TO .39 (2.75)	.25 (2.6-1.7)
WHITE LAKE	.25 (3.3-2.2)	NS
FLORENCE	Union offer – 24-34 (2.5) Dist. offer - 0	Union offer – 27-38 (2.75) Dist. offer - 0

Not one of these comparable school districts froze the wages of its support staff.

The District claims that its wages will remain competitive even if no wage increase is granted, and that some employees now are paid more than their counterparts in the comparables, (District Exhibits 51). The District also contends that its employees "get to the top of the wage schedule in two or three years . . .," and that it takes longer for employees elsewhere to move to the top of their wage schedules and that, furthermore, the District is a "wage leader" among the comparables.

If the District froze the wages of <u>all</u> of its employees, I would agree that some slight slippage in its wage rates would be warranted because of its financial difficulties. That slippage, however, is unwarranted in the face of the wage increases the District granted its teachers.

I therefore conclude that the Union's wage offer should be selected because it is supported by the internal and the external comparables, along with the CPI.

<u>CONCLUSION</u>

This is a very difficult case because it involves selecting one of two <u>very</u> flawed Final Offers that will leave highly undesirable consequences.

On the one hand, the Union has established that its members deserve a wage increase just like the teachers and that the District, in spite of its dire financial condition, can find a way to pay for such increases, just as it found a way to pay for the teacher increases.

On the other hand, the Union proposes that bus drivers hired after June 30, 1993, no longer should be required to pay 25% of their health insurance premium, and the Union opposes the District's attempt to grandfather those bus drivers and to require <u>future</u> bus drivers to work a minimum of 720 hours to receive such insurance which is the current threshold for all other District employees. As related above, the Union's position on these two proposals is not supported by either the internal or external comparables.

At first blush, these two bus driver proposals may not appear to be that big a deal because only two current bus drivers will be immediately affected by the Union's proposal to no longer require them to pay 25% of their health insurance premium. In addition, the Union's proposal would take effect only after the Award is issued (as opposed to making it retroactive), thereby reducing cost of this proposal during the 2003-2005 contract term.

The long term effects, however, can be staggering.

Removing the 25% contribution will cost the District about $7,000 - $8,000 a year after the current agreement expires for the two drivers who would be immediately impacted by this proposal.

The Union's Final Offer also would force the District to pay nearly 100% of the health insurance for newly hired bus drivers regardless of how few hours they drive. The four senior bus drivers now have 43, 26, 21, and 20 years of service, (Union Exhibit 8, p. 4), thereby indicating that the District may have to replace them in the near future when they retire. At that point, the Union wants the District to spend about $14,476 a year for each replacement even though no internal or external comparables support such an extravagant proposal, and even though it is pellucidly clear that no school district – let alone <u>this</u> school district – can afford to do that.

In time, that means that the District may spend about $29,000 a year on health insurance for just two new bus drivers. That is in addition to the $7,000 - $8,000 a year it will spend on the current two bus drivers who no longer would be required to pay 25% of their health insurance premium. The total cost for the Union's two proposals therefore can be $36,000 - $37,000 <u>a year</u>; or higher, depending upon how many more senior bus drivers must be replaced. That sum is not that much lower than the $45,489 which now separates the parties' Final Offers.

The true cost of the Union's offer is, of course, speculative and no one really knows what it will cost over time if it is adopted. Nevertheless, it is necessary to at least attempt to look into the future in trying to calculate the long term effects of a party's bargaining proposal, and I believe the above scenario fairly represents the natural consequences of what probably will happen if the Union's Final Offer is selected.

Seen in that light, it becomes clear that the Union's Final Offer represents a ticking time bomb that will go off at some time in the future, with the only questions being when and exactly how much fiscal carnage will be caused by the detonation.

Hence, the Hobson's choice in this case: Should the District's Final Offer be selected even though it does not provide for any wage increases and even though equity dictates that increases be granted because of the wage increases granted to the teachers,, or should the Union's Final Offer be selected even though its proposals relating to health insurance for bus drivers are so costly and are so utterly lacking in merit.

If the Union's Final Offer is selected, the District might be able to bargain away the Union's bus driver proposals in subsequent contract negotiations.

That, though, is not good enough because selecting a party's Final Offer cannot rest in the <u>hope</u> that a losing party can get rid of another party's proposals in future negotiations. Instead, a decision must be made based on the facts at hand and on the assumption that proposals will continue to bring about the very consequences a proponent advocates, which in this case requires the District to pay for nearly all of the health care premiums for bus drivers in the indefinite future regardless of how few hours they work for the District – a situation that has <u>zero</u> support among the comparables and perhaps even <u>zero</u> support among the rest of the state's school districts.

Since the long-term costs of the Union's proposals can be so exorbitant and are so unjustified, I conclude that the District's Final Offer, flawed as it is, is less flawed and that it should be adopted.

In light of the above, it is my

AWARD

That the parties' successor agreement shall contain all of the terms of the District's Final Offer related above.

Dated at Madison, Wisconsin, this 8th day of April, 2005.

Amedeo Greco /s/

Amedeo Greco, Arbitrator