STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OMRO SCHOOL DISTRICT
EMPLYOYEES (CUSTODIAL DIVISION
AFSCME LOCAL 1838, AFL-CIO

Union,

v.

OMRO SCHOOL DISTRICT,

Employer,

Case 42 No. 63106
Dec. No. 31068-A
INT/ARB-10076

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on January 7, 2005. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs and Reply Briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the parties' briefs in reaching his decision.

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All of those tentative agreements are incorporated into this Award. The parties are also in agreement that the amount of Life Insurance provided to employees in the bargaining unit shall be increased to "equal the employee's salary."[1] The remaining open issues are:

[1] The District proposes the increase coincide with its proposed changes to health insurance. The Association proposes that the change occur as soon as possible after the issuance of this Award.

Union

Wages

2% across the Board increase July 1, 2003
2% across the Board increase July 1, 2004
2% across the Board increase July 1, 2005

Employer

Health Insurance

Point of Service Plan

The District will pay 90% of the monthly premium as a maximum toward a family plan of the Point-of-Service plan and will pay 100% of the monthly cost of the single plan of the Point-of-Service plan.

The maximum aggregate benefit of the Point-of-Service plan per covered individual will be $2,000.000. At Level 1, the individual/family will pay $0 deductible, $0 co-insurance, and $0 stop loss threshold. At Level 2, the individual/family shall pay $100 individual/$200 family deductible, 10% co-insurance, with $600 individual/$1,200 family stop loss threshold. Level 3 will be $100 individual/$200 family deductible, 20% co-insurance, and $1,100 individual/$2,200 family stop loss threshold. The drug card shall be $0/$5/$20.

Managed Care Plan

The Maximum aggregate benefit of the Managed Care Plan per covered individual will be $1,000,000.Under such policy the individual/family shall pay $100 individual /$200 family front-end deductible, $0 co-insurance with a $0/$5 MCP Drug Card. Stop loss equals the deductible.

Wages

1.5% across the Board increase July 1, 2003
2% across the Board increase July 1, 2004
2% across the Board increase July 1, 2005

An additional 1% increase shall be effective at the same time the health insurance changes above become effective.

BACKGROUND

The Union represents all regular full time and regular part-time maintenance and custodial employees, excluding secretarial employees, food service employees, professional employees, teaching personnel, transportation

personnel, and all other employees. There are currently 13 employees in the bargaining unit. Their average years of service with the Employer are 11 years. The current collective bargaining agreement expired on June 30, 2002. This Arbitrator issued a decision involving this Employer and this bargaining unit in 1998 in an interest dispute.

The difference in total cost to the District in the wage offers of the parties for 2003-04 is $1721. The offer of the Employer in 2005-06 if its health insurance proposal and additional 1% wage increase were adopted is $8065 less than the Union offer. Its wage costs would be $1937 more than under the Union offer. This amount would be offset by a $10,002 savings in health insurance premiums for a net difference of $8065. The wage proposal of the Union in 2004-05 is $1643 higher because of the added increase in 2003-04. Thus, the total cost difference in the two proposals is $12,063 for the three years.

STATUTORY CRITERIA

111.70(4)cm(7), Wis. Stats., sets forth the criteria that the Arbitrator is to consider in making his award:

> 7. `Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state 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.
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> 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 under subd. 7r.

7r. `Other factors considered.' In making any decision under the arbitration procedures authorized in 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 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 employes, 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.

The parties agree that many of the above criteria are not applicable to this dispute. Neither party has indicated that the factor to be given greatest weight, a lawful order or directive is relevant. The Union appears to argue that the factor to be greater weight, local economic conditions, favors its proposal. It believes that this District is in good financial health and that its increase is, therefore, warranted. The District disagrees and argues that this factor is not relevant in this dispute. The Arbitrator agrees with the District. The cost differential between the parties' proposals is not great enough for this factor to be of any value in resolving this dispute. Furthermore, there is no showing that there has been any significant change in the economic health of the community in recent years. While it has not been hit as hard as other communities by the limitations placed on Districts by the State, there is no evidence that this is something new. This Arbitrator has dealt with this issue before and has required a showing that conditions in the Employer in question have recently changed vis-à-vis others in order for this factor to be invoked. There is no such showing here. Therefore, the Arbitrator finds that this factor is not relevant in this case. The only factors that play a role in the outcome of this case are sub-parts (c) (d), (e), and (g), although not all to the same degree. The discussion will begin with an examination of the wage offers and the applicability of each of these factors to the parties' respective proposals.

Wages

The Union is seeking a 2% increase in school year 2003-04. The District is offering a 1.5% increase. In the second and third year of the agreement, both parties are proposing a 2% increase. The only difference in proposals the last year is the additional 1% being offered as the quid pro quo for the health insurance change. That extra 1% will be discussed later. Since the parties actual wage increases for the last two years of the agreement are identical, there is no need to examine how those proposals correlate to the increases offered to other bargaining units or to Employers in other communities. The cost is identical and no matter whose set of comparables is chosen the same result is reached. A 2% increase. Thus, this discussion will focus on the first year and begin with a review of the external comparbles.

External Comparables

The Statute requires the Arbitrator to look at the "wages, hours and conditions of employment" in "comparable communities" and "other employees in the private sector." The parties agree on some of the communities to which the Arbitrator should look for comparison. They agree that Berlin, Wautoma and Winnecome should be included. All three are unionized. They also agree that Ripon should be included. It is not unionized. They disagree on the remainder of the employers that should be included.

The Union argues that the Arbitrator should use those Districts that are in the East Central Flyway Conference established by the Wisconsin Interscholastic Athletic Association. It proposes adding to the list Horicon, North Fond du Lac and Waupun. These are the Districts in that Conference that have collective bargaining agreements with a Union. It cited several cases

where arbitrators have used Athletic Conference makeup as the proper comparables. Those Arbitrators have used the schools in a conference as comparables because an independent body chose them with an eye towards putting like entities together. They did so irrespective of labor relations. In particular, it cited Arbitrator Knudsen who held in Dec. No. 30633 (Mondavi):

> The District relies on the Dunn-St. Croix conference, of which the District is a member, as the comparable school districts. Those districts are Boyceville, Colfax, Elk Mound, Elmwood, Glenwood City, Pepin, Plum City, St. Croix Central and Spring Valley. The Union would exclude the unorganized districts of Pepin, Plum City and St. Croix Central and include two districts, i.e., Prescott and Somerset, which were in the Dunn-St. Croix conference until 2002-03. In its post-hearing brief the District cited several decisions in support of its argument that the Dunn-St. Croix conference is the appropriate group of comparables. The Union presented no convincing argument as to why such a group of comparables should be expanded to include the two districts removed from the conference, namely Prescott and Somerset. The undersigned is persuaded that arbitrators generally find the athletic conference to provide the best group of comparables and believes such is an appropriate group of comparables herein.

Thus, the Association believes that it is the current conference makeup that should be utilized and not what the conference looked like when this Arbitrator established the comparables in 1998. The Conference changed since then and the comparables, it believes should change with it.

The District cites the Decision by this Arbitrator in 1998 involving these same parties, where it was found that Hortonville, Little Chute, Ripon and Waupaca were included in the comparable list.[2] It argues that this Arbitrator as well as many others have long held that once a comparable group is established it should not be changed absent some special circumstances, which are not present here. It notes that this procedure is necessary for

[2] The three Districts already agreed to were and still are in the Conference. .

continuity reasons so that the parties know exactly what other employers to use when negotiating wages for the bargaining unit.

This Arbitrator did adopt the list cited by the Employer in his 1998 decision. Some of the Employers used had employees that were represented by a Union and others did not. Those that were organized were considered to be the primary comparable group and those that were not organized were to be considered as a secondary group. At the time, only three of the Districts included on the list had employees represented by a Union. What is interesting is that the list was derived from the then current makeup of the Eastern Central Athletic Conference. In that earlier case, this Arbitrator noted that the Employer had argued that: "those schools comprising the Eastern Central Athletic Conference should be utilized." It then noted: "other arbitrators have used a similar method for selecting comparables."[3] The Employer in its brief to the Arbitrator in that case argued that:

> The District believes that for the sake of consistency and stability in the collective bargaining relationship, the Arbitrator in the instant case should likewise find the entire East Conference Athletic Conference to be relevant in resolving the instant dispute.

Here, it again argues that uniformity is critical, but it now argues the set previously used, even though some of the school districts are no longer in the Conference, should take precedence over simply again looking at the Conference. Its justification is that conference makeup changes regularly and that changing comparables as conferences change is not in keeping with the need to have Unions and Employers know precisely to whom to refer when they sit across from each other at the bargaining table.

[3] Dec. No. 29313-A at p. 20.

This is a most unique question. Did this Arbitrator adopt the Conference as comparables or the Districts in the Conference in the earlier case? If the former were true, then consistency would require again utilizing the schools in the Conference as comparables. If the latter were true then the prior schools must be used. In reviewing the record in the prior proceeding, the Arbitrator concludes that it was the Conference that was adopted as the comparable and, that, therefore, that must be used again here. As the Union pointed out, neutral persons are putting the conference together based on similarities. That was why the Employer urged using the Conference in 1998 and why it should still be used today.[4]

It should be noted that the parties did negotiate once more following the earlier case and after the Conference Schools were changed. If it were clear that notwithstanding the Conference change that the parties in 2002 used the old schools as comparables, this Arbitrator would have also utilized the old schools as the comparables. It is unclear from the record what schools if any were used. Thus, it cannot be said that the Arbitrator is changing the parties' practice. Furthermore, by making the Conference the comparables, the parties do always know whom to use as comparables when they sit at the bargaining table. They always know who is in the Conference. The parties might have to take a new look at rankings, but again it is easy to determine who paid what in the past.

Despite the fact that this Arbitrator has chosen one set of comparable over the other, both sets will be used for comparison here as the Arbitrator has

[4] It was on that same basis that Arbitrator Knudson rejected the Union argument in Mondavi to include as comparables two Districts that had previously been in the Conference, but were no longer included.

found that using either set, the outcome on this issue and even on the health insurance issue is no different. Thus, the Arbitrator has prepared charts showing the percentage and actual dollar wage increases for both sets of comparables. The maximum wage rate was utilized for this comparison. A second chart shows the wages paid in both sets of comparables in 2002-03 and then in 2003-04 and the ranking of Omro with those sets of comparables. The Employer has argued that the Arbitrator needs to only look at actual wages paid and not just the increases to determine whether its proposal is fair. The Arbitrator agrees that is part of the answer. That is why the comparison of actual wages in terms of increases is made. However, the other information is also relevant to this question and for that reason a chart showing percentages is included.[5]

COMPARABLES[6]

Employer's proposed Comparables

Primary	2003-4	
Berlin	Not yet settled	
Wautoma	3%	$.35
Hortonville	2%	$.32
Average	2.5%	$.335
Secondary		
Ripon	3%	$.50
Waupaca	4%	$.56
Average	3.5%	$.53
Omro (Employer)	1.5%	$.32
Omro (Union)	2%	$.39

[5] The chart uses the maximum or top rate for comparison

[6] Winnecome is not used in calculation since its wage increase is tied to insurance increases and it is a total package. The more health insurance increases, the smaller the wage increase and visa-versa.

Union's proposed Comparables

Horicon	4.8%	$.69
N. Fond du Lac	2.8%	$.35
Waupun	2.6%	$.45
Wautoma	3.1%	$.35
Average	3.3%	$.46
Omro (Employer)	1.5%	$.32
Omro (Union)	2%	$.39

This chart demonstrates that using either set of comparables the Union proposal in percentage and actual cents is below the average. The Employer proposal on a percentage increase basis is well below. Using actual dollars as the Employer proposes still shows that only Hortonville proposed as little as is offered here and Wautoma received less than is contained in the Union offer. In percentages, Hortonville's increase was exactly the same as proposed by the Union and Wautoma gave a larger percent increase.

Average wage for 5 comps used by U 2002-03	$13.42
Omro Wage (Mainteance-Custodian)	$14.68
Difference	$ 1.26
Rank	4 of 6
Average wage for 5 Comps used by U 2003-04	$13.94
Omro Wage (Union)	$14.97
Difference	$ 1.03
Rank	4 of 6
Omro Wage (Employer)	$14.90
Difference	$ .96
Rank	3 of 6
Average wage for 5 of 7 Comps used by Er 2002-03*	$13.98
Omro Wage	$14.68
Difference*	$ .70
Rank	3 of 6
Rank (adding Berlin)	3 of 6

Average wage for 5 of 7 Comps used by Er 2003-04	$14.64
Omro Wage (Union)	$14.97
Difference	$ .33
Rank	3 of 6
Rank (adding Berlin)	4 of 6

*Berlin not counted in average as wage for 2003-04 not yet settled.

Like the first chart, this chart also shows that the proposal of the Union is not out of line with either set of comparables on either a wage basis or ranking basis. The rank remains unchanged and the differential is actually closed under either proposal. The Employer has argued that the wages paid in this District are among the highest of all comparables. It believes that a lesser increase is warranted as others try to catch up to this District. That is just not so any longer. Furthermore, the Union offer is lower than the increase already obtained by most of the Districts. For all these reasons, the Arbitrator finds that the external comparables favor the Union proposal for School-Year 2003-04 no matter what set of comparables is used in this case.

Internal Comparables

Arbitrators have generally recognized that where wages are concerned external comparables play a larger role than internal comparables unless a definite pattern has been established internally. There are other bargaining units represented by AFSCME in this District and they are still in negotiations or arbitration. The parties' wage proposals follow along the same lines as is offered by the parties here. Given the application of the QEO Law to the teachers, neither side has argued that wage increases in that agreement apply. Thus, the Arbitrator does not find this factor to be relevant on this issue.

COLA

The District argues that COLA favors its offer. The Union counters by showing that COLA rose more than either of the parties' offer in the last year. COLA rose by over 3.5% last year. Neither the 1.5% offer of the District nor the 2% offer of the Association is higher than COLA. The Arbitrator finds that this factor favors neither party.[7]

Conclusion

The Union's wage proposal is favored over the Districts for the 2003-04 School Year. Since there are no internal comparables that are settled other than teachers, the only relevant factor, external comparables, favors its proposal.

Health Insurance

It is helpful to discuss the differences between the old Plan and the one the District seeks to add and the pros and cons of the two plans. The only plan available to the bargaining unit at this time is the MCP Plan. That plan has a $100 single and $200 family deductible. An employee can go to any provider for medical services. There is no co-pay for generic drugs and $5 co-pay for brand names, and no co-pay for medical services after the deductible. The Point of Service Plan that has been proposed has three tiers of coverage. If the employee goes to a medical facility that participates in the Plan, there is no deductible. An employee going to a Level 2 provider has the same deductible as currently exists, but with a 10% co-pay. The maximum co-pay is $800/$1200. An out-of-

[7] The District also suggests that its proposal is in the best interests of the residents of the District. This argument is more relevant when discussing the insurance question.

network provider is paid under Level 3. There is a 20% co-pay with a $1100/$2200 maximum.

The premium for MCP for 2005-06 is $618.13 for single and $1389.70 for family coverage. The current rate for family coverage is $1229.82. The employee currently pays 10% of that rate or $123. The Employer pays $1107. The POS Plan premium for 2005-06 is $564.40 for single coverage and $1270.77 for family coverage. If the Employer proposal were adopted, it would pay $1143.69 or slightly more than it pays now towards family coverage. Any employee that moved to the POS family plan would pay $127. That is $4 more than the employee pays now. The employee would pay $139 for family coverage if the Employer proposal were rejected and the Employer would pay $1250 towards premiums or $107 more than under its proposal. If the employee stayed in the MCP for family coverage, the employee would pay $246.01 per month towards premiums. An employee who wishes single coverage that stayed in MCP Plan would pay $53.73 per month versus no payment now. A single employee would pay nothing if moving to the POS Plan.

Best Interests of the Public

The District notes that the rising uncontrollable increase in insurance costs has had a negative impact upon the citizens residing in the School District. More and more of the District's funds have gone towards health insurance. Controlling costs it contends is in the best interest of the citizens it represents. They are certainly correct that health insurance is a problem that needs to be controlled. Whether this desire justifies adoption of its proposal, however, depends primarily on how its proposal fares when it is evaluated against the

other statutory factors. While this factor favors the District, it is only one factor among many that must be considered.

External Comparables

The chart below shows the average percentage of premium for family coverage that is paid by the Union's comparables and the actual average dollar amount paid by them in 2003-04. That year is used because it is the last year with sufficient figures available.

Average %age paid by Comparables for family coverage under Union comparables –		95%
Average amount paid by Employer	2003-04	$1138
Paid by this District		$1081

This Employer pays less of a percentage than the comparables and pays in actual dollars below the average of that same group. On the other hand, the percentage of premiums paid by the comparables has not changed over the years. This Employer has always been on the low end in percentage. The Union and Employer agreed to the percentage when they negotiated the last contract. They knew where they stood but still agreed to the 90%. Thus, the fact that the percentage paid is less here is not determinative. The fact that it pays less in dollars is significant. As part of the total package, what it is paying is not extreme when compared to these other Districts.

The Employer has pointed out that using the Union's comparables, it can be clearly seen that there is trend towards the POS Plan. Two of the six comparable Districts have a dual plan option identical to that proposed by the Employer here. One has only the POS Plan. Three have just the Front End or MCP plan like that currently in use here. There is no evidence that any of the

Districts has changed recently from one plan to the other or by adding the POS Plan, although that would seem to be the most likely scenario. Thus, there is a mixed pattern. While change is occurring, it is not yet prevalent.

Using the Employer comparables, the average percentage of premiums paid by the Districts for family coverage is 91.6%. That is slightly higher than the percentage paid here.[8] None have settled yet for 2005-06 so no comparison can be made as to how this District would compare under its proposal with the schools in the District's proposed comparable group.

The above demonstrates that while there is a trend towards a point of service plan among the comparables, that trend is offset by the higher premiums that those comparables pay for insurance versus what is done here. That is not to say that there is not a burden placed on the District here as premiums increase. What it does mean is that the financial burden on the comparable districts per employee was greater than is experienced here. The Arbitrator finds that while this factor does not strongly favor one side, it does tilt towards the Association.[9]

Internal Comparables

There are three other bargaining units in the District. The Professional Staff or Teachers accepted the dual option insurance program that is proposed here. There are approximately 94 employees in that bargaining unit. The three support staff units, which includes this unit have all rejected the dual option proposal and are in arbitration. There are approximately 55 employees in the

[8] It is unclear how much the premiums are in these Districts or by what Plan(s) the employees are covered.
[9] The District also believes that the Arbitrator should take into consideration the fact that public employers pay a far greater percentage of the premium than do private employers. The average percentage in the private sector is under 60%. Of course, this is mostly offset by the higher wages paid in the private sector. The Arbitrator does not believe this comparison carries a great deal of weight here.

three units. The administrators who are not represented have been given the dual option plan like that proposed here. There are ten administrators. The District pays the full insurance premium for family coverage under the Point Service Plan for the administrators. It pays 95% of that premium for the teachers. It currently pays 90% of the family premium for the three support staff units. Neither side has proposed changing that in this contract. This dichotomy has existed for a number of years.

The District argues that internal comparables are the most important factor in this case and the fact that 2/3 of the employees are already under the dual option should persuade the Arbitrator that the same thing should be done here. It also notes that the District has always had uniformity among its employees when it comes to health insurance. The same plans and options have been available to all employees in the District. It cited numerous cases, including one from Arbitrator Petrie where he held:

> It is undisputed that other District employees, including those in the teacher's bargaining unit, have already accepted the same future employee health insurance premium contribution proposed by the Employer in these proceedings. Arbitral consideration of the internal comparables, therefore, supports the position of the District in these proceedings.[10]

It also cited Arbitrator Yeager, citing this Arbitrator:

> Additionally, the City's final offer was selected by arbitrator Dichter in the DPW bargaining unit arbitration involving this same Union. The undersigned believes that internal comparability in matters of a fringe benefit as significant as health insurance should, aside from the greatest weight and greater weight factors, receive paramount consideration.
>
> Other arbitrators have concluded similarly. See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 254999-A (1/89); arbitrator

[10] Mellen School District, Dec. No. 30408-A, p. 46 (3/21/03.)

> Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89); arbitrator Kessler in Columbia County (Health Care), Dec. No. 28960-A (8/97); and arbitrator Torosian in City of Wausau (Support/Technical), Decision No. 29533-A, (11/99). And arbitrator Dichter said as much in his recent decision involving the Union and City in the DPW bargaining unit arbitration.

It believes based on these cases and the facts in this case a similar Award should be made here.

The Association argues that the above cases are distinguishable. In the cases cited, the Employer paid the same percentage of premiums for the support staff that it paid for the teachers. That is not the case here. It contends that many of the cases cited are in other ways factually different from the instant case.

The Association is correct that the percentage of total premium paid by the District for the support staff is lower than the percentage it pays for the higher paid teachers. Their argument that this disparity negates the District's position that internal uniformity is applicable here would be more persuasive if this were a recent development. The evidence indicates that the District paid, at least in the previous contract and the current contract 95% of the family premium for the professional staff and 90% for the support staff. The only Plan available was the Managed Care Plan under the old contract for both professional and support staff. The District now proposes keeping the same percentages and providing the same insurance plans for each group. Adopting their proposal would continue the uniformity that existed in the past between these two groups. That uniformity included the percentage disparities.

The District's argument would point this factor in its favor, but for one thing. Not all of the other bargaining units have accepted the District proposal. In

reality, one has and three have rejected it. The one that did had incentive to do so given the QEO Law. If premiums could be lowered, more of the statutory pie would be available for wage increases. There is no such incentive here. Under these circumstances, can it be said that a pattern has been established. The answer is no given the fact that the issue remains an open issue for 1/3 of the represented employees and 3/4 of the bargaining units. Even though the largest unit has accepted the change, that unit is still only one of four bargaining units. For this reason, the cases cited by the District are distinguishable. The change here is not as universal as it was in the cases it cited. The pattern simply is not there yet. Therefore, the Arbitrator finds that while this factor favors the District, it does so only marginally. This factor alone cannot carry the day, as it would have had there been a more clearly discernible pattern.

Conclusion

The externals favor the Association and the internals favor the District. Neither factor strongly favors one side or the other. However, it is the District that is seeking to change the status quo. The factor favoring it is not strong enough for it to prevail simply on the merits of its proposal. The District perhaps aware of that fact has proposed a quid pro quo for the changes it seeks. In order for the Arbitrator to consider its proposed quid pro quo, the District must meet certain tests. It must first show that there is a need to make the change. It must then show that its proposal reasonably meets that need and addresses the change. Only if it meets those tests, does the sufficiency of the quid pro quo become relevant. Those three tests must now be examined.

Is there a Need for the Change

The Association believes the District has not proven that there is a compelling need to make the change it seeks. The lack of consistency both internally and externally it argues negates the District argument that a need has been shown.

The District contends that it has demonstrated that there is an urgent need that must be addressed. It points to the rise in health insurance premiums over the years. It notes that health insurance premiums for family coverage have risen from $512 in 1992 to $1229 for the current school year. Health insurance has increased on an hourly basis from $2.66 to $6.39 and the ratio of fringe benefits to wages is now 52%.

This Arbitrator found for the County of Waukesha[11] two years ago. He found that the County had proven that it urgently needed to make a change to its health insurance plan. The County had been required to transfer funds from its reserves to its operating budget to cover costs. It is true, as the Association has pointed out, that the situation here is not as extreme as it was in the Waukesha case. This District has not had to dip into its reserves and is not in the same financial condition that existed there. Nevertheless, insurance costs have risen and will continue to rise dramatically. This District is correct that all employers, public and private, have been attempting to find ways to control ever escalating increases in insurance rates. Frankly, in these times when it comes to health insurance, the need to curtail costs is a uniform problem that almost ipso facto creates a need for the change in of itself. Obviously, the need

[11] Dec. No. 30468-A

may be greater or lesser in different places at different times, but it is always there. Thus, the Arbitrator finds that there is a need, albeit not as compelling a need as existed in the Arbitrator's case in Waukesha. The level of need does impact the quality of the quid pro quo that is proposed. The greater the need the smaller the quid pro quo required. As Arbitrator Petrie observed in the Mellen School District, cited earlier:

> What next of whether the District has provided an *appropriate quid pro quo* in support of its proposed cost sharing of group insurance premiums for new employees. In this connection it must be recognized that the District is not proposing the elimination or major modification of a *recently negotiated and stable benefit*, but rather is addressing a long standing health insurance benefit, the costs of which have dramatically escalated to the extent where they no longer resemble the conditions present when they were agreed upon by the parties; accordingly, it is unreasonable to conclude that any *major quid pro quo* should be required in support of the Employer's modest proposal addressing this significant and *mutual problem*...On the above described bases the undersigned has determined that the Employer proposed changes in group health insurance are fully consistent with the *arbitral standards governing significant changes in the negotiated status quo ante*, including its having met the requisite *quid pro quo requirement*. (emphasis in original decision)

The Quid Pro Quo[12]

The 1% increase

The Employer is offering to pay to employees an additional 1% increase in wages effective with the change in insurance coverage. The Association believes this is far too little. It points to the Winnecome School District to support its position that the quid pro quo suggested by the District here is insufficient. It argues that Winnecome changed from a Managed Care Plan to a Point of Service Plan in its last contract. However, employees received a 6% increase in

[12] The Employer proposal reasonably addresses the need. It is a reasonable proposal. The Arbitrator finds that the second prong has been met.

wages in exchange. That is far different than the 1% offered here. When carefully examined, however, Winnecome did not do precisely what the Association contends. As noted by this Arbitrator when discussing wages, Winnecome's wage increases were tied to insurance costs. The Union and District negotiated a total package increase. If insurance costs rose above the parties' estimate, wages were decreased accordingly. Conversely, if insurance costs were less than anticipated, wages rose. That is what occurred in Winnecome by the change in plans. This is not dissimilar to what the teachers did here. The change in Plan lowered the premium cost and wages rose more than the wages listed on the wage schedule. The District is correct that no such correlation exists here. Wage increases and insurance costs are separate. One is not dependent upon the other. Thus, Winnecome is not a good example to use.

The proposed wage increase amounts to approximately a $.16 per hour increase for employees in the bargaining unit. That equates to approximately $350 per year. This amount must be balanced against the potential costs that could be incurred by the employee. The employee choosing to go to the POS Plan and to go to a Level 1 provider would actually be better off than under the current plan. There is no deductible. The monthly premium paid by the employee for family coverage would be $12 less than the employee would pay if the Employer proposal were rejected and only the MCP were available. The employee going to a Level 2 provider has the same deductible, but now would have a potential co-pay, but with a maximum. That employee could be out of pocket up to $1200 in the worse case scenario. To that employee, the new plan could have a consequence. The employee going out of network would face the

largest potential consequence. That employee could pay $2200. Of course, few of the employees in the bargaining unit would hit that maximum.

On the whole, most employees will come out better off monetarily with the Employer 1% proposal. Most will probably move to the POS Plan and most will not have out of pocket expenses that would negate the extra $350 per year they would be receiving. The additional annual savings in premium cost of $144 would then supplement this amount under the Employer proposal. There are clearly financial gains for the majority of the bargaining unit under the Employer proposal. Those savings could come to almost $500 for the healthy employee and family using Level 1 coverage.

Life Insurance

Both sides agree that more life insurance should be provided to employees. The District notes that the Arbitrator should also consider this gain by the employees as part of the quid pro quo it has offered. The Arbitrator recognizes that this is a gain for the employees and does take it into consideration. It does have a benefit to the employee, although it is not precisely quantifiable.

Conclusion

This would be a close case if the insurance issue were the only open issue. The problem is that the quid pro quo offered by the District must be coupled with the wage proposal made by the District. The Arbitrator has already indicated that the wage proposal of the Association is the better proposal. If the Arbitrator adopted the offer of the District, the employees would only realize ½% more than if the Union offer were adopted, because they would gain ½% less the first year. Thus, when compounded with its other proposal the quid pro quo is not as great as it would appear on the surface to be. The Arbitrator

does not have the luxury of adopting the Union wage proposal and the Employer insurance proposal. That is something that would be tempting, but under the Law it is all or nothing. Under those circumstances, the Arbitrator must conclude that the quid pro quo is not enough to justify the change that it seeks. Undoubtedly, the time will come for the employees to make the change proposed. The parties will negotiate again soon. If insurance premium increases continue to mount, as they most surely will, the need will be greater and the required quid pro quo will be less. As more and more other Districts make the change this too will show that the time for the employees in this Unit to make the change is ripe. This Arbitrator is only dealing with school year 2005-06 and the Employer has not shown under this set of facts that the time for that change is at hand.

AWARD

The proposal of the Union together with the tentative agreements is adopted as the agreement for the parties for School years 2003-04 to 2005-6.

Dated: May 5, 2005

Fredric R. Dichter,
Arbitrator