In the Matter of the Petition of

OMRO SCHOOL DISTRICT

Case 41
No. 63105
INT/ARB – 10075
Decision No. 31069-A

To Initiate Interest Arbitration
Between the Petitioner and

OMRO SCHOOL EMPLOYEES, SECRETARIAL DIVISION, LOCAL 1838, AFSCME, AFL-CIO

APPEARANCES:

Davis & Kuelthau, s.c., Attorneys at Law, by Mr. William G. Bracken, appearing on behalf of the District

Ms. Mary B. Scoon, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union

ARBITRATION AWARD

Omro School Employees, Secretarial Division, Local 1838, AFSCME, AFL-CIO, hereinafter the Union, and the Scholl District of Omro, hereinafter District or Employer, reached impasse in their bargaining for the July 1, 2003 – June 30, 2006 collective bargaining agreement. The District filed the subject interest arbitration petition on December 16, 2003. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition on March 15, 2004, and by September 1, 2004 the parties had submitted their final offers to the investigator. The Commission certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on January 27, 2005, in Omro, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by April 3, 2005.

BACKGROUND:

This dispute is concerned with the terms of the parties 2003-2005 collective bargaining agreement in the bargaining unit of "all regular full-time and regular part-time secretarial employees, excluding custodial employees, food service employees, professional administrators, teaching personnel, confidential secretary and transportation personnel of the District. The parties did not enter into a stipulation of agreed upon items at the time of submission of their final offers, but they did reach tentative agreement on changes to the existing lay off and performance evaluation contract language. Also, their final offers are identical on two items – inclement weather make-up, and an increase in the amount of life insurance provided to each bargaining unit employee. The two items that remain in dispute are wages, and changes in employee health insurance benefits.

FINAL OFFER ISSUES IN DISPUTE:

1. Wages	Effective 7/1/04	Effective 7/1/05	Effective 7/1/05
Union's Offer:	2.0% ATB	2.0% ATB	2.0% ATB
District's Offer:	1.5% ATB	2.0% ATB	2.0% ATB
	Additional 1% ATB effective at the same time the health insurance changes become effective		

2. Health Insurance Changes and Effective Dates

City's Offer:

"As soon as administratively feasible and after and arbitrator's award, provide employees a choice between the WEA Trust Point-of-Service Plan and the WEA Trust managed Care Plan. Employees who choose the Managed Care Plan shall pay the difference between the Managed Care Plan and the Point-of-Service Plan.

Point-of-Service Plan

The District will pay 90% of the monthly premium as a maximum toward the family plan of the Point-of-Service Plan and will pay 100% 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 plan 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% coinsurance, with $600 individual/ $1200 family stop loss threshold. Level 3 will be $100 individual/$200 family deductible, 20% co-insurance, and $1100 individual/ $2200 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/$200family front-end deductible, $0 co-insurance with a $0/$5 MCP Drug card. Stop loss equals the deductible.

Under the existing collective bargaining agreement the only health insurance plan available to employees is the MCP Plan set out above. And, the District is currently contractually obligated to pay the full cost of the single premium and 90% of the cost of the family premium. At the time of the hearing in this matter the breakdown of the number of employees selecting the single and family MCP Heath Insurance Plan was 9 family plans and 2 single plans.

Also, as evidenced by the prior collective bargaining agreement's salary schedule that is shown on pages 17 and 18, there are only three classifications of employees in this bargaining unit – 1) Accounts Payable/Payroll Coordinator, 2) H.S. Administrative Secretarial/Clerical H.S. attendance/ Pupil Service Middle School Elementary School Special Education, and 3) Substitute.

The District is currently in the East Central Wisconsin Interscholastic Athletic Association (WIAA) athletic conference. At the time of a prior interest arbitration

proceeding in 1998 involving the District and its Aides/Food Service bargaining unit it was also in the same athletic conference, but the conference schools have changed since then. In 1998 the conference schools were Berlin, Hortonville, Little Chute, Omro, Ripon, Waupaca, Wautoma, and Winneconne. Today the East Central conference schools are Berlin, Central Wisconsin Christian (Waupun), Horicon, Laconia (Rosendale), Markesan, Mayville, North Fond du Lac, Oakfield, Omro, Oshkosh Lourdes, Ripon, Saint Lawrence Seminary (Mount Calvary), Saint Mary's Springs (Fond du Lac) Wautoma, Winnebago Lutheran Academy (Fond du Lac), Winneconne.
Of the Schools in the current East Central Athletic Conference only Horicon, North Fond du Lac, Omro, Waupun, Wautoma, and Winneconne have secretarial staff unionized bargaining units. In 1998 only three of the conference schools had unionized Food Service/Aides bargaining units as compared with today when five of the conference schools have unionized bargaining units that include secretaries.

DISCUSSION:

In determining which offer to select the arbitrator is required to apply the following statutory criteria established for the evaluation of the parties final offers.

> 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 in subd. 7r.
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> 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:
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> 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 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 in this case have focused their arguments on several of the criteria enumerated in section11.70 (4)(cm)7r. It is clear from the parties' arguments that the "greatest weight" factor is not in issue in this case, and therefore it will not be discussed. The District argues that there is insufficient evidence in the record from which to reach a conclusion as to which final offer is supported by this criteria, and the Union argues the factor the factor is not relevant in this dispute. All of the remaining factors have been considered by the undersigned if they were argued by either party to this dispute.

Comparables:

Arguments:

The first issue that must that must be addressed is what are the other school districts that will comprise the external comparables. The parties do not agree upon which school districts should be included in the pool of comparables to be utilized. The Union argues that Horicon, North Fond du Lac, Waupon, Wautoma, and Winneconne are the most appropriate comparables. It points out that they are located within the same East

Central Athletic Conference and have unionized support staff bargaining units whereas the District's proposed comparable pool is based upon a prior arbitration award when the East Central Athletic Conference was comprised of different districts, and the arbitrator in that case considered non-union comparables. But, it notes that the arbitrator in that case included the nonunion districts because of the small number of unionized comparables in the same East Central Athletic conference, but gave less weight to the nonunion Districts. The Union argues that today, after the conference schools changed in 2001-2002, there are a total of six unionized support staff bargaining units in the conference including Omro. It also contends that most arbitrators agree that non-unionized employee groups should not be used to make comparisons with represented employee groups. It also contends that in terms of population size the unionized comparables compare favorably to Omro. The Union also asserts that the District's inclusion of Hortonville as a unionized bargaining unit is incorrect and that in fact it is not unionized. It argues the District is also incorrect in including the Waupaca secretarial unit among the non-unionized employee groups when in fact it is unionized. The Union notes that the District's comparability pool only includes 3 unionized groups, which it believes is sparse and another reason that the current athletic conference with 5 other unionized secretarial employee groups is the more appropriate comparable pool. Finally, the Union cites the recent arbitration decision in School District of Mondovi, Dec. No. 30633-A 1/2/04 (Knudson) which dealt with the issue of a changed athletic conference make-up. The Union in that case wanted to include two districts that once were in the athletic conference but were no longer, just as the District proposes in this case. In Mondovi, arbitrator Knudson stated "the Union presented no convincing argument as to why such a group of comparables should be expanded to include the two district's removed form the conference".

The District on the other hand argues that the Union's proposed comparables should be rejected by the undersigned. It contends that the prior support staff interest award established the comparable group, and therefore the issue is settled. It believes the appropriate comparable group includes the organized districts of Hortonville, Wautoma, and Winneconne and the unorganized districts of Little Chute, Ripon and Waupaca. The District argues that the comparables once established "should be the touchstone for

measuring wages, hours, and working conditions in future bargains", and "if the comparables are constantly shifting, as the Union advocates in the instant case, the parties are on shaky footing in measuring their settlement". It asserts that the Union has proposed a new set of comparables without any justification which will destroy stability in their bargains and instead produce chaos. The District also claims that the Union did not produce any evidence to prove Omro was comparable to the Districts it selected as comparables. Finally, it argues that the Union's reliance solely upon organized districts runs counter to the express language of the statute, and it contends that it accepts the arbitrator's ruling in the prior case where he stated that while he preferred to utilize organized districts he nonetheless considered them albeit giving them less weight.

Analysis:

The parties' arguments concerning the question of what are the appropriate external comparables presents two issues. First, should the undersigned treat as comparable any district whose support staff/secretarial employees are not unionized? And second, are the appropriate comparable districts those districts that comprise the East Central Athletic Conference today or those that were in the conference in 1998 at the time of the earlier interest arbitration involving the parties.

In the case of the first question, the Union cites arbitrator Kerkman's award in Washburn School District (Support Staff) Dec. No. 24278-A as standing for the proposition that it has long been established that only "organized" employers should be considered among the pool of comparable employers to be examined. He stated in his decision

> "the weight of authority is persuasive that only organized districts should be considered in making the comparisons of the comparables. In arriving at the foregoing conclusion, the undersigned not only considers the number of arbitrators, but the quality of the rationale in support of the proposition that unorganized districts fail to establish comparability"

The undersigned agrees with Kerkman's conclusion, which I believe still represents the mainstream of interest arbitrator opinion and said so in City of Tomah, Decision No. 31083-A (2005). Thus, the Union correctly argues that the District has inappropriately

included unorganized districts as part of its proposed comparability pool. That necessarily means that if the District's proposed comparable districts were utilized Hortonville, because it is non-union, would not appropriately be looked to in comparing the District and Union offers to external comparables.

The second issue regarding external comparables concerns whether the District or Union's proposed set of comparables should be utilized. I agree with the District that predictability/stability is an important consideration in so far as what other districts the parties will look to in formulating and comparing their wage and benefit proposals in bargaining. And, that comparable shopping, like forum shopping, should be discouraged. But, is also apparent from the facts of this case that athletic conference make-up can change from time to time for reasons that are unrelated to collective bargaining. Thus, one party's decision to utilize the make-up of the new athletic conference in arguing comparability is not, in my opinion, akin to forum shopping. Neither party made the decision to change the athletic conference make-up. And, because in Wisconsin interest arbitrators have historically and consistently utilized a district's athletic conference to determine which other school districts will be used for comparison purposes these necessarily are the districts that the parties have looked to in the past for comparative purposes in their bargaining. And even though the athletic conference may change it does not necessarily mean that the Districts that were in the conference, but are no longer, are necessarily no longer comparable for collective bargaining purposes and thus should automatically be excluded from the pool of comparable school districts. Prior bargains have been reached utilizing the schools that made up the old athletic conference and in many cases arbitrators have rendered decisions in which they relied upon comparisons with those districts. So, just because a district is no longer in an athletic conference does not necessarily mean that they can no longer be looked to for comparative purposes, particularly when the change is as recent as in this case. The collective bargaining agreement now in dispute was entered into by the parties with their knowledge and consideration of what was being bargained in these other districts. So I do not believe it is unreasonable for one or both parties to want to continue looking to those previously established comparables in future bargains even though they are no longer part of the athletic conference. Besides, doing so provides and even larger pool of comparable

districts from which to draw a picture of what is going on in the collective bargaining arena at any point in time. In this case, choosing between the District and Union's proposed pool provides either 3 or 5 unionized comparable districts to look at whereas combining the old and new conference schools produces 6 comparable districts. Therefore, in the undersigned's opinion, unless it can be shown that there is a reasonable basis to conclude a district is no longer comparable, other than that a district is no longer in the athletic conference that provided the basis for concluding it was comparable in the first place, then if it was utilized in the past as a comparable I think it appropriate to continue to use it in the immediate future, at least. There has been no evidence adduced in this case showing that Waupaca is no longer comparable. Therefore, for purposes of this decision the undersigned will utilize Horicon, North Fond du Lac, Waupaca, Waupun, Wautoma, and Winneconne.

Wages:

Arguments:

The District argues that its exhibits show that its offer compares favorably to the CPI and that under its offer actual wage increases will amount to 2.7%, 2.6%, and 3.6% in 03/04, 04/05, and 05/06 respectively. It claims that historically over the past ten years its wage increases have ranged from a low of 3.0% to a high of 20.4% as compared to the average consumer price increase of 2.4% during the same period. Its chart shows that in the case of the Accounts Payable/Payroll position in 2002 the wage rate was $12.43 whereas if the 1993 rate had tracked inflation the rate would be $11.68. That is a difference of $0.75 per hour or 6.4% greater than the inflation adjusted rate. The same figures for the H.S. Administrative Secretary position are $12.04 and $11.21 and $0.83 or 7.4% greater than the inflation adjusted rate. The District concludes it is time to bring wages in line with the cost of living, which its offer does, and therefore should be selected.

The Union argues that wage increases given by other comparable districts support its offer in this unit. Its comparison chart shows that wage increases in the comparable districts for the 2003-2004 contract year range from 3.6 % in Wautoma to 6.0% in Wnneconne and for the 2004-2005 contract year only two districts were settled with

Wautoma receiving a 3.4% increase and Waupun $0.60 per hour. Waupun is the only district settled for the 2005-2006 contract year and it received another $0.60 per hour. The Union contends that its offer is moderate and better approximates the pattern of external negotiated increases, while the District's offer of a 1.5 % increase in the first year (2003-2004) ranks dead last among the comparables. The Union argues that its proposal is lower than the settlement pattern and the District's offer is even less, and concludes it offer is supported by the external comparables.

The Union also argues that the District's offer is significantly less than what its teacher bargaining unit received. Its chart shows that while the increase to the BA base was 0.8% and 0.7% in the 2003-2004 and 2004-2005 contract years respectively, the percentage increase at the MA maximum and Schedule maximum were higher than its proposal to this bargaining unit. (2.4% and 3.5% in 2003-2004 and 2004-2005 for the MA maximum and 3.5% and 6.2% at the Schedule maximum in 2003-2004 and 2004-2005 respectively) Thus, the District's claim that its proposal mirrors the teacher settlement does not withstand scrutiny. So, not only is its wage proposal less than the teacher settlement, but it is also the very lowest among the comparables.

Analysis:

There is no internal settlement pattern in terms of a wage increase. The other two support staff units are also in arbitration and the teacher contract which is settled is governed by the QEO law and because of the nuances of the law does not provide any guidance in terms of an internal wage increase pattern. The maximum wage rate for the H.S. Administrative Secretary position under the 2002-2003 contract was $12.77 per hour and the rate for the Accounts Payable/Payroll position in the same contract year was $15.41 per hour. Under the District's proposed 1.5 % ATB increase those rates would be $12.96 and $15.64 per hour fore the 2003- 2004 contract year. Those rates compare with the following rates for the comparables:

	H. S. Secretary	Accts. Payable/Payroll
Horicon	13.47	16.31
North Fond du Lac	12.37	none
Waupaca	10.57	11.09

	(2002-03)	(2002-03)
Waupun	Individual Rates	Individual Rates
	9.71 (max)	10.88 (max)
Wautoma	10.16	
Winneconne	12.95	

Only Horicon's wage rates for 2003-2004 exceed those in Omro under the District's wage proposal. Only Waupun and Wautoma have settled contracts for 2004-2005 and their rates are significantly below what they will be in Omro regardless of which offer is selected. Waupun's 2004-2005 schedule maximum for the top secretary is 10.21 and Wautoma's is 10.51. Only Waupun has a settled contract for the 2005-2006 contract year and its top secretary rate will be 10.71.

The undersigned is persuaded that each party's final offer on wages for the 2003 – 2004 contract year is less than the percentage wage increases among the external comparables. The comparable wage increases for 2003-2004 were as follows: Horicon 5.1 %, North fond du Lac 2.9%, Waupun approximately 5 %, Wautoma 3.6%, Winneconne 6 %. Notwithstanding that the District's wage rates are already significantly higher than some of its comparables its 1.5 % proposal for the 2003-2004 contract year is inadequate and finds no support among the comparables. It is also the case that the District's wage settlement with its teacher bargaining unit in terms of a percentage wage increase at the MA and Schedule maximum is significantly higher than the percentage increases it proposes for the two classifications in this bargaining unit. Further, neither offer is out of line with the CPI. And, it is also true that difference between the two wage proposals in the first year is only $1231 for the contract year. In the undersigned's opinion the Union's 2% ATB first year wage proposal is clearly preferable to the District's proposal.

The second and third year wage proposals, exclusive of the District's 1% wage increase *quid pro quo* for the insurance change it proposes, are identical - 2% ATB.

Thus, the undersigned concludes that the Union's proposal on wages is preferred over the District's proposal.

Health Insurance:

Arguments:

The District argues that its final offer includes a dual choice proposal that gives employees the choice to maintain the existing MCP Plan or a Point of Service Plan (POS). If an employee wishes to remain in the MCP Plan that employee must pay the difference between the two plans. The parties are in agreement that the District will contribute 90% of the family plan premium and 100% of the single premium. If the employee chooses to remain in the MCP Plan then he/she would have to pay the difference in cost. The District argues its proposal gives employees the choice between two outstanding insurance programs. If employees stay in Level 1 of the POS plan they will not have to pay a deductible like they would under the MCP Plan and the deductibles and co-insurance costs at Levels 2 & 3 of the POS plan are not unreasonable. Also, it notes that both plans are offered by the WEAC Insurance Trust. The District claims that it seeks to reign in health insurance costs and has offered a reasonable proposal that meets the needs of employees to have good health insurance coverage and the District's concern over costs.

The District argues that the wisdom of it proposal can be found by the fact that the teacher's union voluntarily accepted it several years ago. It contends that all told over 65% of the District's employees have adopted the District' POS plan and the 10 clerical employees in this bargaining unit should not be able to resist the overwhelming settlement pattern. Furthermore, the District has offered a 1% wage increase as a *quid pro quo* as an inducement to employees to make the change to the dual choice program and this *quid pro quo* more than compensates employees for the change. Whereas, the Union offer which ignores the problem is unreasonable on its face. The District believes "the real issue in this case boils down to: can 10 employees (6% of the total) resist the Point-of-Service Plan given the fact that 104 teachers, administrators, and non-represented employees (65% of the total), have accepted the exact same offer regarding health insurance the District proposed in this case?" The District believes the Union

cannot stop the overwhelming tide of change that has been voluntarily agreed to and accepted by 2/3's of the District's employees.

The District also believes it has shown that the cost attributed to health insurance is a major contributor to the overall package increase. It argues that over the past five years health insurance cost increases have averaged 13.4%. It calculates that when step movement is taken into account its wage proposals equate to 2.7% and 2.6% in 2003-2004 and 2004-2005 respectively, and in the 2005-2006 contract year the wage increase when the 1% *quid pro quo* is taken into account is 3.6%.

The District calculates the difference between it and the Union's offer is about $1500 in 2003-2004 and again in 2004-2005 and about $11,600 in 2005-2006 with the total cost difference over the three years of $14,564. It argues that the real difference between the parties is that the Union's proposal to continue the status quo on the MCP Plan costs the District $12,650 more than its offer. The District also contends that if the Union's proposal is adopted the Districts total contribution toward the family premium would be greater than what it would spend if it paid 95% (the teacher's percentage) of the POS plan.

The District believes its dual-choice offer is a reasonable response to extraordinary health insurance increases that preserves an employees ability to select a health insurance provider, and at the same time, helps it contain costs. It believes its offer is an extremely modest way to introduce consumerism into the health insurance equation. When employees have a financial stake in the outcome they become better and more informed consumers. The MCP Plan with its paltry $100/$200 deductible can be easily overused and abused. The District believes the evidence is that its health insurance is vastly superior to that found in the public and private sector. It also contends that on an hourly basis health insurance amounted to $2.66per hour in 1992-1993 and has increased to a staggering $7.22 per hour in 2004-2005 and during the same period wage increases did not dip below 3%. And, over the three year period of the contract the District's offer maintains a 77% ratio of fringe benefits to salaries whereas the Union's offer, while maintaining the 77% ratio for the first two years of the contract, jumps to 83% in 2005-2006 as a consequence of maintaining the status quo. It notes that this ratio compares to the 52% ratio in the custodial unit.

Concerning the issue of a *quid pro quo*, the District argues that arbitrators have stated that the need for a *quid pro quo* is less imperative since rising premiums themselves alter the status quo. It states that its 1% rate increase *quid pro quo* amounts to $0.13 and $0.16 per hour for employees and is approximately $2400 for the entire bargaining unit. The District also argues that the undersigned should select the District's offer to continue the practice of covering all of its employees with the same health insurance proposal.

Regarding the statutory criteria, the District contends that its offer is in the best interest and welfare of the public because it balances the interests of the taxpayers to contain health insurance costs with the needs of its employees to have access to a valuable fringe benefit. Also, it believes its offer is preferred when measured against the comparability criteria and is supported by the cost of living and overall compensation factors. It also believes that the greatest and greater weight factors do not favor either party and are not determinative of the outcome of this case.

The Union argues that the District's health insurance proposal is not supported by the external comparables, whereas it proposal is to retain the status quo. Currently, the District contributes 90% toward the front-end deductible MCP plan, but it proposes to contribute only 90% of the POS plan. Under the District's proposal any employee selecting the status quo MCP plan option would pay 10% of the POS premium plus the dollar difference between the two plans. Among the comparables two districts have the front-end deductible plan only, two have a POS plan with a front-end deductible and one comparable in 2003-2004 has a POS plan only. In its brief it sets forth a chart that shows the total FED/MCP and POS family premium in each comparable district and the amount of that premium that the employer and employee is required to pay. It concludes that information shows that under it proposal to maintain the status quo the District's contribution is actually below the average of the other districts with front-end deductibles. Whereas, it claims that under the District's proposal its premium contribution is the lowest by far and the employee contribution is the very highest among the districts with front-end deductibles. When comparing the District's proposed point of service plan to the other three districts having a point of service plan, in dollar terms, the District's proposal is only supported by Winneconne. And, the Union argues that when

Winneconne switched to a POS plan in 2003-2004 employees received a 6% wage adjustment. That is compared to the District's proposed *quid pro quo* of only 1%. Therefore, the Union concludes that its final offer on health insurance has far greater comparable support.

The Union also insists that the internal comparables support the Union's position in this case. It states that the Maintenance/Custodial bargaining unit and the Aides/Food service bargaining unit are both in arbitration with identical wage and health insurance proposals as is proposed by the Union in this bargaining unit. And it states that while the teacher bargaining unit has accepted the POS plan with a front-end deductible those employees are higher paid and the District contributes 95% toward the family premium. It also notes that while the administrative staff will be going to the POS plan in 2005-2006 the District will be contributing 100% of the cost of the family premium. The Union believes that this shows that its proposal has far greater support in the internal comparables.

The Union also argues that the District's proposal has the effect of reducing the percentage contribution for the front-end deductible (MCP) family plan in 2003-2004 to 82.4% and for the single plan to 91.4%. This means that the lowest paid employees will be making the greatest premium contribution among the internal comparables. Thus, the Union believes its proposal is more just.

Analysis**:**

As I have stated in previous awards, health insurance has become the predominant issue in public sector collective bargaining in Wisconsin as a consequence of the ever increasing cost of this fringe benefit. All employers and Union's, including the parties in this case, are struggling to cope with this phenomenon. Here the District argues it is attempting to empower its employees to become better consumers of health care by offering them choices as to the level of care they chose by way of a point of service insurance program. Employees in this bargaining unit currently, and for some time, have been in the MCP health insurance plan which is a fee for service plan that allows them to choose their medical provider and has a $100/$200 deductible with no coinsurance requirements for the employee except for a $0/$5 drug card co-pay feature. The District currently pays 90% of the premium for this plan and the employee is responsible for 10%

of the premium cost. Under the POS plan being offered, by the same insurance company providing the MCP Plan, there are three levels of coverage available and the employee elects the level of coverage he/she desires. Level 1 has no up-front deductible nor any co-insurance provision, except for the $0/$5/$20 drug card at all three levels of coverage. At both Levels 2 and 3 there is a $100/$200 up-front deductible, and in addition there is a 10% coinsurance requirement at both levels with maximums of $600/$1200 and $1100/$2200 respectively. A significant feature of the Districts' proposal regarding health insurance is that instead of continuing to pay 90% of the MCP Plan premium the District's proposal is that it will pay 90% of the POS Plan premium starting in the 2005-2006 contract year. Because the premium for the POS Plan is less than the premium for the MCP Plan employees electing to stay with the *status quo* MCP Plan will necessarily pay a higher premium cost than they otherwise would if the Employer's final offer is selected.

There can be no doubt that employers everywhere, both public and private, are struggling to cope with the soaring cost of providing health insurance coverage for their employees and retirees. Just like the District in this case they are looking to different alternatives to both reduce their costs and, as the District argues here, make their employees better consumers of health care, which they believe will reduce the cost of the insurance. In other words, as the District comments in this case, there is a belief that low deductibles lead to overuse and abuse, and if the employee is responsible for more of the cost they will be more responsible consumers. Whether, increasing the cost to the consumer of the service will result in lower overall health care costs remains an open question. This notion presumes that some/all of the ever-increasing health insurance costs are the result of unnecessary and/or abusive consumption of health care. It is also the case, however, that once the deductible and coinsurance costs have been met by the employee the incentives that are built in to such plans are gone. Also, a worker's ability to save for the self-insurance cost he/she necessarily assumes under such plans is related to their level of income. Furthermore, most of the options being tried, like the one in this case, have as their major feature the redistribution of the cost of the insurance with the employee paying a greater percentage of the premium and the employer paying a smaller percentage. Also, in the instant POS Plan there is an incentive for the most healthy

workers to select the lowest cost Level 1 option. In other words, it encourages the process of adverse selection, which is why in cafeteria style benefit plans employees only select those benefits they are going to use, and one has to wonder if under such a system any long term cost reductions will result. As I stated earlier, the jury is still out on these questions. Obviously, it is in the public interest and welfare to find a solution to this crisis, but in the undersigned's opinion it cannot be said with any degree of assurance that the District's proposal satisfies the public interest and welfare in that matter.

However, my task is not to decide whether the District's insurance proposal will achieve the desired effect, but whether under the statutorily established system for resolving bargaining impasses, the enunciated criteria to be applied by the arbitrator in determining which offer to select supports adoption of the District's final offer or the Union's. In this regard, there are three significant issues to address. There is the question of whether a *quid pro quo* must accompany the District's proposal to change the *status quo* insurance plan, and, if so, what constitutes a sufficient *quid pro quo* in this case. Also, is there an internal comparable settlement pattern that supports the District's offer, and do the external comparables insurance benefits support adoption of the District's proposal?

Regarding the first question much has been written by other arbitrators about the need for a *quid pro quo* when a party is proposing a change in the status quo as the District has in this case. It is not necessary to do anything more than highlight the generally accepted arbitral opinion on this point. Arbitrators have concluded if there is a legitimate problem that needs to be addressed does the proposal reasonably address the problem and if those two factors are present then has the proposer of the change offered an appropriate/sufficient *quid pro quo?* Arbitrator Torosian discussed the question of what constitutes a sufficient *quid pro quo* in Oconto Unified School District, Dec. No. 30295-A (10/02),

> "... There is no set answer as to what constitutes a sufficient *quid pro quo*. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the *quid pro quo* need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the *quid pro quo*."

Other arbitrators have also addressed the issue of the sufficiency of the *quid pro quo* being offered for proposed changes in the health insurance plan provided for in the parties' collective bargaining agreement. These arbitrators have engaged in an analysis of the adequacy and reasonableness of the proffered *quid pro quo* and not surprisingly have found it to be adequate and reasonable in one circumstance and yet not so in another. Their conclusions are clearly based upon the unique facts of each case and thus no general rule regarding what constitutes a sufficient *quid quo pro* has emerged. As I have said before, after analyzing many awards any discussion of the sufficiency of and need for any *quid pro quo* is necessarily governed by the unique facts of each case.

In this case, the District has identified the problem as being the ever increasing cost of the health insurance benefit provided to employees and the need to provide alternatives that will improve the employees consumerism as it pertains to the purchasing of health care. It cannot be disputed that there is a crisis in the area of employee health insurance costs, and that the District's final offer has been made in an attempt to address that problem. The District has also offered a *quid pro quo* in the form of an additional 1% ATB wage increase to bargaining unit employees at the time the District's proposed health insurance changes become effective. The Union contends that the *quid pro quo* being offered should not be valued by the undersigned at 1%, but rather is really only ½% inasmuch as the District is only offering a 1.5% wage increase in the first year of the contract as compared to the Union's 2% ATB proposal. It also has argued that when the Winneconne School District proposed changes to the status quo employee health insurance in 2002-2003 it offered a substantially larger *quid pro quo* (6%) than is being offered by the District in this case.

The District's claimed offer of a 1% ATB wage increase *quid pro quo* is just that, and not as the Union argues a ½% wage increase *quid pro quo*. It is true that the District is only offering a 1.5% wage increase in 2003-2004, but I have already discussed the District's wage proposal. Its wage proposal stands on its own as must its *quid pro quo*. It is also true that the net effect of the District's wage proposal coupled with its *quid pro quo* amounts to 5.5% wage increase over the three year contract term, and when compared to the Union's proposal the total effective wage increase is ½% less. But, it

does not necessarily follow that the District's proffered *quid pro quo* is anything less than stated. I will treat the district's *quid pro quo* as being a 1.5% ATB wage increase

In evaluating the sufficiency of the District's *quid pro quo* it is necessary to do the math to determine its value when measured against the cost impact of the Districts' proposed change on employees who choose to retain the status quo MCP Plan. The District calculates the 2005-2006 total premium for the MCP Plan at $1389.70/ month for family and $618.13/month for single coverage. Retaining the status quo 90% family and 100% single employer contribution level on the 2005-2006 POS premium rates would mean the District would contribute $1250.73/month and $618.13/month for the family and single plans respectively. However, the District's proposal provides that unlike the status quo, it will only pay 90% and 100% of family and single plan POS total premium respectively and no longer pay 90% and 100% of the MCP Plan family and single premium. The District calculates that the 2005-2006 POS Plan family and single premiums will be $1270.77 and $654.40 respectively. Consequently, employees will be required to pay a higher percentage of the *status quo* MCP Plan premiums than before. In the case of the family plan they will have to $107.04/month more for the family plan ($1389.70 – $1143.69 = $246.01 – $138.97 = $107.04) and $53.73/month more for a single plan ($618.13 – $564.40 = $53.73). That equates to $2952.12/year more to retain the MCP family plan and $644.76/yearmore to continue the MCP single plan coverage. This means that under the District's proposal its percentage contribution toward the status quo MCP family plan will decrease from the prior 90% to 82% and from 100% for the single plan to 91%. This is also 77% increase in what an employee will pay to continue the MCP family plan over what it would cost the employee if the District continued to pay 90% of the MCP family plan premium. ($138.89 vs $246.01[1389.70 – 1143.69] or $107.12/$138.19 = 77%)

The Districts *quid pro quo* 1% ATB wage increase, on the other hand, will result in $0.163/hour wage increase for the Accounts Payable/Payroll Coordinator classification and $013.5/hour for the H.S. Administrative Secretarial/Clerical H.S. Attendance/Pupil Service Middle School Elementary School Special Education classification.[1] Depending

[1] These numbers were arrived at after applying the District's wage proposal to the 2002-2003 contractual wage rates. Secretary $12.77 x 1.5% = $12.96 x 2% = $13.22 x 2% = $13.48, and Payroll $15.41 x 1.5% = 15.64 x 2% = $15.95 x 2% = $16.27.

upon the number of hours per year worked by each employee, the value of the District's *quid pro quo* is $290.09 or $242.78 per year for the Accounts Payable/Payroll Coordinator classification and $235.91 or $197.44 per year for the H.S. Administrative Secretarial/Clerical H.S. Attendance/Pupil Service Middle School Elementary School Special Education classification.

When juxtaposing those wage increases resulting from the *quid pro quo* against the cost to employees to retain the *status quo* health insurance it can be seen that the *quid pro quo* covers less than a quarter of the cost to stay with the *status quo* MCP family plan which 9 of 11 employees chose - more that 82% of the bargaining unit.

I think the above numbers graphically portray the extend of cost shifting that occurs under the District's proposal and the extend of the *quid pro quo* being offered. I agree that a if a *quid pro quo* is necessary it does not have be a dollar for dollar *quid pro quo* in order to be sufficient. In this case, based upon all of the circumstances present, I do not believe the District's proposed 1% *quid pro quo* is sufficient at this time. As I have concluded and stated before, each case is unique and what might be sufficient in one case will not be so in another, just as in one case a *quid pro quo* may be necessary and in the next it will not be.

Also, as most arbitrators have concluded, including this one, an employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes it persuasive value.[2] See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 25499-A(1/89); arbitrator 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). In this case, the District argues it did just that. It achieved a voluntary

[2] I stated in City of Marshfield, Dec. No. 30726-A "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".

settlement with its teacher bargaining unit on the same health insurance proposal that it is making in this case. The Union argues that there is a significant difference in the collective bargaining laws applicable to the teacher bargaining unit that in the above words diminishes the value of that settlement in terms of establishing a significant internal comparable pattern. It notes that the QEO law governs the teachers bargaining.

The undersigned agrees that the QEO law in these times can bring about changes in fringe benefits in order to make money available for salary increases that otherwise would not be available if the District made a qualified economic offer. Consequently, while I do agree that internal comparability should be accorded significant, if not controlling weight, that principle assumes that the bargaining units being compared are operating under the same or similar collective bargaining statutory framework. That is not the case here, and is a distinguishing circumstance that diminishes the persuasive value of the settlement the District has achieved with its teachers regarding health insurance from what it might otherwise have in this case.

The Union has also pointed out that the District contributes 95% toward the cost of the family premium in the teacher bargaining unit whereas it only contributes 90% in this bargaining unit. The District counters that this has been the historical relationship in these two bargaining units, and therefore should not be a consideration in evaluating the District's proposal. The undersigned disagrees. While it is not new that the District is contributing 95% in the teacher bargaining unit it is the case that a higher percentage contribution toward the family premium means the additional cost to a teacher selecting the MCP Plan over the POS plan is less ($182.47 vs $246.01). This is a substantial difference and another circumstance that distinguishes the teacher bargaining unit settlement from this bargaining unit thereby diminishing that settlement's persuasive value in affecting the outcome in this case.

There also are two other unionized support staff units in the District. They both are also in interest arbitration. Subsequent to the receipt of briefs in this case, the Union unilaterally submitted an award from an arbitrator in one of the other two support staff units. The District objected to the undersigned's consideration of that award as it believed it was submitted after the record in this case was closed. The undersigned ruled that neither party had asked to keep the record open in this case to receive an award, if

one was issued in one or both of those cases prior to undersigned issuing his award in this case. I ruled that because I normally advise the parties at the time of hearing that the record in the matter will be closed upon receipt of briefs, although I had no specific recollection or notes that I did so in this case, and because there had not been a request to keep the record open I would not consider the Union's post brief submission.

Last, both parties argue that their proposal enjoys the support of the external comparables. Of the appropriate external comparables that I identified earlier two offer their employees only the MCP or equivalent plan, two offer both the MCP and POS plans, and one offers only a POS plan. And, its not clear to the undersigned from the exhibits what health insurance plan(s) is/are available in Waupaca. Thus, obviously, no pattern has emerged that clearly supports one or the other party's offer in this case.

The undersigned is persuaded that in this case the Union's proposal to retain the status quo regarding employee health insurance is the more reasonable.

I also concur with the District's conclusion that that the greatest and greater weight factors do not favor either party and therefore do not impact the outcome in this case.

Thus, because I have concluded the Union's wage and health insurance proposals are more reasonable than that offered by the District, the Union's final offer should necessarily be adopted. In conclusion, based upon the evidence, testimony, and argument presented, and consideration and application of the statutory criteria contained in Section 111.70 (4) (cm) the undersigned selects the Union's final offer. Therefore, it is my

AWARD

That the Union's final offer is selected and it along with the stipulations of the parties shall be incorporated into the parties' 2003-2005 collective bargaining agreement.

Entered this 1st day of June 2005.

Thomas L. Yaeger
Arbitrator