ARBITRATION DECISION AND AWARD

In the Matter of Arbitration	)	
Between	)	
OMRO SCHOOL DISTRICT (Aides/Food Service)	)	Case 43 No. 63462 INT/ARB-10172 Decision No. 31070-A
And	)	
OMRO AIDES/FOOD SERVICE ASSOCIATION WEAC, NEA	)	

Impartial Arbitrator

William W. Petrie
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Hearing Held

March 3, 2005
Omro, Wisconsin

Appearances

For the Employer

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For the Union

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Omro School District and the Omro Aides/Food Service Association, WEAC, NEA, with the matter in dispute the terms of a three year renewal labor agreement covering July 1, 2003, through June 30, 2006. They principally disagree in two respects: *first*, the number and amount of deferred wage increases applicable during the term of the renewal agreement; and, *second*, the District's proposed changes in health insurance.

After their contract renewal negotiations had failed to result in full agreement, the District on March 15, 2004, filed a petition with the Wisconsin Employment Relations Commission alleging the existence of an impasse and seeking final and binding arbitration of the matter. Following an investigation by a member of its staff the Commission, on September 9, 2004, issued findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration, and on October 26, 2004, it appointed the undersigned to hear and decide the matter.

A hearing took place in Omro, Wisconsin on March 3, 2005, during which both parties received full opportunities to present evidence and argument in support of their respective positions, and both thereafter closed with the submission of very comprehensive briefs and reply briefs, after the receipt and distribution of which the record was closed by the undersigned.

Relying upon Section 111.70(4)(cm)(7r)(i) of the Wisconsin Statutes, the Union, on May 14, 2005, thereafter sought agreement of the District to allow the submission of an arbitral decision rendered after the record had been closed, and, alternatively, asked the undersigned to re-open the hearing to permit the introduction of such additional evidence. The Employer did not agree to the Union's request, and since the parties had agreed at the hearing that the decision would be accepted into the record *only if rendered on or before April 4, 2005*, and since it was not rendered until May 5, 2005, the request of the Union was denied by the undersigned on May 16, 2005.

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference into this decision, the parties propose as follows:

(1) On August 27, 2004, the District published a final offer providing in principal part as follows:

(a) Modification of Article XIV, by the addition of the following language to Section A, entitled **Health Insurance**:

"As soon as administratively feasible after an 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 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."

(b) The following across-the-board wage increases: "7/1/2003 - 1.5%; 7/1/2004 - 2.0%; and 7/1/2005 - 2.0%. An additional 1% wage increase shall be effective at the same time the health insurance changes above become effective."

(2) On August 27, 2004, the Association published a final offer providing in principal part as follows:

"Wages: Per cell increases:
7/1/2003 - 2%
7/1/2004 - 2%
7/1/2005 - 2%"

THE ARBITRAL CRITERIA

Section 111.70(4)(cm) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an 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 legislature to administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
>
> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
>
> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
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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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
>
> e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
>
> f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
>
> g. The average consumer prices for goods and services, commonly known as the cost-of-living.
>
> h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 hearing.

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 POSITION OF THE DISTRICT

In support of the contention that its final offer is the more appropriate of the two offers before the undersigned, the District emphasized the following principal considerations and arguments.

(1) The case at hand can be summarized as follows.

(a) The parties principally disagree on two issues, wages and health insurance, as described in their respective final offers.

(b) The role of the Arbitrator is to attempt to put the parties into the same position they would have reached at the bargaining table, had they been able to do so.

(i) The District's final offer matches the pattern established by other represented and non-represented employees in the District.

(ii) The Association's offer, as a whole, is unreasonable because it does not follow the lead set by the organized teacher bargaining unit in making the insurance change sought by the District.

(c) The District will show that its offer mirrors the voluntary settlement reached in the teacher bargaining unit, and is consistent with the changes adopted for its administrators and non-represented employees.

(i) The District has always had one health insurance arrangement covering all employees.

(ii) By not addressing the health insurance issue, the Union is attempting to reverse the health insurance status quo in the District.

(d) The District will also show that its wage rates compare very favorably with other comparable school districts.

(i) The Arbitrator should not overlook the tremendous wage rates offered in the District.

(ii) While other school districts' employees are making concessions on health insurance, the Union refuses to deal with the matter, and seeks the easy way out by seeking continuation of the existing, high-priced MCP plan.

(e) The District's dual-choice proposal gives employees the choice to maintain the existing MCP plan or to migrate to the Point-of-Service Plan, both of which are excellent programs. The District is seeking to rein in health insurance costs, and has offered a reasonable proposal which both meets the needs of its employees and addresses its concern over costs.

(f) The wisdom of the District's dual-choice proposal is apparent from the fact that the teachers' union voluntarily accepted it several years ago, it has been adopted for administrators and non-union employees, and it has been adopted for over 65% of the District's employees.

(g) The District has offered a one percent (1%) wage increase *quid pro quo* to the Union, which more than compensates employees for the change.

(h) There can be no dispute that health insurance is the number one issue currently affecting public and private employers and the Union's offer, by ignoring the problem, is unreasonable on its face.

(i) Can 32 employees (20% 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 same health insurance offer proposed by the District in these proceedings?

(j) When viewed in its totality, the final offer of the District best matches the statutory criteria and should thus be selected by the Arbitrator.

(2) The cost of both offers is shown in several exhibits offered by the District.

(a) The District has presented several exhibits which show the cost of both final offers.[1]

(i) Over the last five years, health insurance cost increases have averaged 13.4%, and the District used a 13% figure to estimate cost increases under the MCP plan. It used an estimated 9% figure in making projections under the POS plan, based upon its recent experience with this plan.[2]

(ii) In 2003-2004, 2004-2005 and 2005-2006, the District's offer, including its proposed wage increases, represents total package cost increases of 4.9%, 2.76% and 4.2%, respectively.[3]

(b) The costs of the Union's final offer are also shown in various exhibits. In 2003-2004, 2004-2005 and 2005-2006, the Union's offer, represent total package cost increases of 5.2%, 2.8% and 5.7%, respectively.[4]

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[1] Citing the contents of Employer Exhibits 7-9.

[2] Citing the contents of Employer Exhibit 12.

[3] Citing the contents of Employers Exhibit 7, pages 2, 3 & 5.

[4] Citing the contents of Employer Exhibit 8, page 2, 3 and 4.

(c) Overall, the parties are approximately $2,500 apart in 2003-2004 and in 2004-2005, and approximately $13,900 apart in 2005-2006; over the term of the agreement, therefore, the Union's final offer would cost the District an extra $19,030, with $16,550 of this total attributable to the Union proposed continuation of the status quo on the MCP health insurance plan.[5]

(3) The Union's proposed comparables should be rejected by the Arbitrator.

(a) Arbitrator Dichter's previous award defined the relevant comparables for support staff employees in the District, and his decision should be followed in these proceedings.[6]

(b) Arbitrators generally reject attempts by either party to manipulate comparables.[7]

(c) The Union did not produce any evidence to prove that Omro was comparable to the districts which it selected.

(i) A review of its exhibits show that the only information presented on these comparables dealt with budgetary information which, standing alone, hardly qualifies them as comparable to Omro.[8]

(ii) The only factor relied upon by the Union in presenting its school districts, is that they are in a new athletic conference which, standing alone, cannot be used to negate the comparables previously established in arbitration.

(iii) Various and sundry other considerations detract from the Union proposed comparables.

(d) The Union's sole reliance upon organized districts runs counter to the express language of the statute.

(i) Arbitrator Dichter previously included both represented and non-represented districts in the comparables, and with the greater weight accorded the represented districts.

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[5] Citing the contents of Employer Exhibit 9.

[6] Citing the contents of Employer Exhibit 26, page 22.

[7] Citing the decision of *Arbitrator Jay Grenig* in City of Marshfield (Firefighters), Dec. No. 29027-A (10/97), wherein he noted arbitral preference for stability and predictability in the arbitration process which resulted in their normal reluctance to upset previously established comparability groups; in support of this proposition, he cited the following decisions of other Wisconsin interest arbitrators: *Arbitrator Kerkman* in Kenosha Unified School Dist., Dec. No. 19916-A (1983; *Arbitrator Malamud* in Sheboygan County (Highway Dept.), Dec. No. 27719-A (1994); *Arbitrator Grenig* in Janesville School Dist., Dec. No. 22823-A (1986); *Arbitrator Griggs* in Luxemburg-Casco Educ. Ass'n., Dec. No. 27168-A (1992); *Arbitrator Miller* in Winneconne Community School Dist., Dec. No. 23202-A (1986); and *Arbitrator Vernon* in Rosendale-Brandon School Dist., Dec No. 23261-A (1986).

[8] Citing the contents of Union Exhibits 2-1 to 2-5 and 2-7 to 2-9.

(ii) While the District believes that all comparable districts should receive equal weight, it accepts Arbitrator Dichter's ruling.

(iii) Should the Arbitrator accept the Union's view of comparables, it will severely undermine the future collective bargaining process.

(4) The District's offer best matches the internal settlement pattern and should be selected on this basis alone.

(a) The teachers, administrators and non-represented employees of the District have accepted the District's offer to base its health insurance contribution on the lower priced, point of service plan.

(i) The teachers bargaining unit numbers 94 employees, and the administrative and non-supervisory employees are 10 in number, thus comprising 104 of 159 or 65% of the District's employees.

(ii) To accept the position of the Union in these proceedings would create a "tail wagging the dog" situation.

(iii) The position of the District in this respect, has been recognized by various arbitrators.[9]

(b) At no time in the history of the Omro School District has there been a deviation among employees regarding an insurance plan, and the Arbitrator should support the District's offer that brings all its employees under the same insurance program.

(c) The Union has already recognized that the teachers will be the leaders in changing health insurance and it will follow.[10] The status quo represented in the agreement is for the Union to follow the teachers' lead in the area of health insurance.

(d) The District's dual-choice offer is a reasonable response to extraordinary health insurance increases, that preserves employee ability to select a provider, and at the same time controls costs.

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[9] Citing the following arbitral decisions: *Arbitrator Yaeger* in City of Tomah, Dec. No. 31083-A (2/18/85); *Arbitrator Petrie* in Mellen School District, Dec. No. 30408-A (3/21/03); *Arbitrator Malamud* in Greendale School District, Dec. No. 25499-A (1989); *Arbitrator Nielsen* in Manitowoc Public Schools, Dec. No. 26263-A (6/90); *Arbitrator Michelstetter* in Janesville School District, Dec. No. 25853-A (10/89); *Arbitrator Slavney* in Bloomer School District, Dec. No. 27407 (4/93); *Arbitrator Kerkman* in City of Madison (Police), Dec. No. 16034-A (7/78); *Arbitrators Imes, Petrie and Stern*, Dairyland Power Cooperative, A/P P-02-002 (7/02); and *Arbitrator Yaeger* and arbitrators cited by him, in City of Marshfield, Dec. No. 39726-A, page 12 (7/17/04).

[10] Citing the contents of Employer Exhibit 2, pages 2 and 16.

(i) There can be no dispute that health insurance costs are creating havoc among employers' budgets, and many have responded by cutting back benefits, requiring employees to pay more of the premiums, or foregoing insurance altogether.[11]

(ii) The District is attempting to achieve the same results with fewer changes to the insurance plans in the cases cited immediately above.[12]

(iii) The District's costs of health insurance have increased 142% from 1992 through 2005, a 12% compounded rate, and its premium increases over the past five years have averaged 13%; health insurance costs of $2.66 per hour in 1992-1993 increased to a staggering $7.22 per hour in 2004-2005; the District's offer maintains a 70% ratio of fringe benefits to salaries, which would jump to 75% in the third year under the Union's final offer.[13]

(iv) The District's health insurance offer is a win-win solution to the escalating costs of coverage and, importantly, it maintains a large measure of employee choice.[14]

(v) There is no "magic bullet" to kill the double-digit increases in health insurance, and both parties must recognize and jointly deal with it.

(e) The additional one percent wage increase offered by the District fairly compensates employees and provides a *quid pro quo* for its "dual choice" option between the POA and MCP plan.

(i) Various arbitrators have recognized a lesser quid pro quo requirement in connection with health insurance changes, in that the rising premiums alter the status quo.[15]

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[11] Citing the decisions of *Arbitrator Petrie* in Mellen School District, Dec. No. 30408-A, page 43 (3/21/03), and *Arbitrator Dichter* in Waukesha County, Dec. No. 30468-A (5/12/03.

[12] Citing the contents of Employer Exhibits 29 & 30.

[13] Citing the contents of Employer Exhibits 9 & 12.

[14] Citing the contents of Employer Exhibits 6, 30 & 32.

[15] Citing the following arbitral decisions: *Arbitrator Rice* in Walworth Co., Handicapped Children's Educ. Bd., Dec. No. 27422-A (5/93); *Arbitrator Vernon* in Cumberland School District, Dec. No. 29938-A (12/00); and *Arbitrator Petrie* in Mellen School District, Dec. No. 30408-A (3/21/03), and in Village of Fox Point, Dec. No. 30337-A (11/02).

(ii) That the additional one percent is worth between $0.10 and $0.13 per hour for those in the bargaining unit, a wage increase of approximately $6,300. If all move to the POS plan, they will pay only about $560 more in 2005-2006 than they are now paying. If the Union's offer prevails and employees remain in the existing MCP plan, with a 13% increase they would pay an additional $2,200 in 2005-2006 to remain in the MCP plan.[16]

(iii) The Union's final offer would have employees pay $2,200 out of their own pockets, and is not in their best interest; the District's offer gives them a choice between two excellent health plans and saves them money in doing so.

(iv) The District's offer serves the dual purpose of having employees move to a plan with more incentives for them to utilize a network of providers with built-in discounts that save money and still provide them with the high level of coverage to which they have grown accustomed. Because of it Section 125 Plan, employees can also shelter premiums contributions and other non-reimbursed medical expenses on a tax advantaged basis.

(f) The Arbitrator should select the District's offer so as to continue the significantly accepted practice of covering all employees of the District with the same health insurance program.[17]

(g) The District's offer satisfies the *criteria governing a change in the status quo*.

(i) Many arbitrators have held that the moving party must meet the following criteria to justify a change in the status quo: (1) establish a need; (2) prove that the proposed solution satisfies the need; and (3) provide a quid pro quo.

(ii) It urges that the District has met all three criteria in the case at hand.

(5) The District's offer is in *the best interest and welfare of the public*, because it balances the interests of the taxpayers to contain health care costs with the needs of employees to have access to a valuable fringe benefit.

(a) The interest and welfare of the public is best supported by the District's offer which embodies the concept of trying to contain health care costs while also providing employee choices between two excellent health insurance programs.

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[16] Citing the contents of Employer Exhibit 14.

[17] Citing the following arbitral decisions: *Arbitrator Oestreicher* in Mount Horeb School District (Auxiliary Personnel), Dec. No. 7301 (12/06/95); *Arbitrator Rice* in Green Co., (Highway), Dec. No. 26879-A (3/20/92); *Arbitrator Johnson* in City of Chippewa Falls (Police), Dec., No. 28334 (8/8/95); and *Arbitrator Torosian* in City of Appleton, Dec. No. 39668-A (3/04).

(b) It is in the interest and welfare of the public to build incentives so that the District does not overpay for health insurance for its employees.

(c) The Arbitrator should select the District's offer as being in the best interest and welfare of the public by providing employees with a cost-effective insurance plan and at the same time allowing the District to achieve a savings that will also build in future cost saving efficiencies.

(6) The District's offer is preferred when measured against *the comparability criterion*.

(a) The District provides extremely competitive and above-average wages for the special education assistants and the food service positions.[18]

(i) The District had had only two teacher aide resignations in the past several years, and while it has had five food service department resignations, none have occurred over the past two years.[19]

(ii) Low turnover is an indicator of adequate wages.[20] When the one percent additional quid pro quo is factored in, the District's wage rates will exceed the Union's offer.

(b) The District's contribution to health and dental insurance reflects the pattern found among comparable districts.[21] While the Union may argue that it pays ninety-five percent of the teacher's health premium and one hundred percent of the administrator's premium, it is free to negotiate a level of contribution in the bargaining unit, and the parties do not know what tradeoffs were made when the teachers moved to the ninety-five percent contribution level.

(c) The three tiered drug co-pays are the norm among comparable districts.[22] The Union's offer, by retaining the status quo, runs counter to the overwhelming trend among the comparables and ignores the need to realize cost savings on prescription drugs.

(7) The District's offer exceeds *cost of living* increases, and should be preferred on the basis of this statutory criterion.

(a) The District's offer will amount to actual wage increases of 2.5%, 2.9% and 3.9% in the three year of the agreement, as compared with national CPI increases of 1.6%, 2.3% and 2.7% for 2002, 2003 and 2004.[23]

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[18] Citing the contents of Employer Exhibit 27.

[19] Citing the contents of Employer Exhibit 10.

[20] Citing the *decision of Arbitrator Miller-Weisberger* in City of Princeton, Dec. No. 30700-A (3/04).

[21] Citing the contents of Employer Exhibit 27, page 7.

[22] Citing the contents of Employer Exhibit 27, page 6.

[23] Citing the contents of Employer Exhibit 28.

(b) The District proposed total package increases amount to 4.9%, 2.8% and 4.2% increases in 2003-2004, 2004-2005 and 2005-2006, respectively. Clearly, therefore, the wage and benefit package increases exceed increases in the CPI under its final offer.

(c) The Union's offer creates excessive total package costs of 5.2%, 2.8% and 5.7% during the three years of the agreement, which clearly exceed CPI increases.

(8) The *overall compensation criterion* strongly supports the District's final offer.

(a) The District bargains on a total package basis, which requires taking total package costs into consideration while negotiating wages and fringe benefits.[24]

(b) The Union is reluctant to even present costing on a total package basis, and merely seeks to increase wages by two percent per year; it make no mention of the roll up costs associated with its proposed wage increases.

(c) Comparison of the total package costs of the two final offers clearly supports selection of the final offer of the District.

(9) The *greatest and greater weight* criteria do not favor the position of either party and are not determinative of the outcome of these proceedings.

In summary and conclusion, that the parties are fairly close on wages; over the term of the three year contract they are only one-half of one percent apart. On the issue of health insurance the Union seeks maintenance of the status quo, while the District proposes what has already been bargained with the teachers and accepted by the administrators and non-represented employees. The fact that 59% of employees are covered by the POS plan compels its adoption in a unit of only 32 people, and despite the Union hopes that the problem will go away, it will not do so. It urges that the Arbitrator should find the District's offer the more reasonable when measured against the statutory criteria, and that he will select its final offer.

In its *reply brief* the District reemphasized and expanded upon its original arguments as summarized below.

(1) It reiterated its position that the *Union proposed comparables are inconsistent with a previous decision* involving the parties, principally urging as follows: that the changing of athletic conferences, in and of itself, is not enough to justify a change in the prior comparables; that the Union is guilty of "cherry

[24] Citing the decisions of *Arbitrator Vernon* in Marion School District, Dec. No. 19418-A (7/29/83), and *Arbitrator Yaffe* in Kenosha Service Employees, Dec. No. 19882-A (5/18/83), wherein they accepted and considered evidence of *total package costs*.

picking" or comparability shopping"; that there is no delineation in the Statute for making wage comparisons solely with represented employees; and that the majority of arbitrators now support the view that both organized and non-organized employees should be considered, particularly on the economic issues of wages and health insurance.

(2) It submitted that *the Union's comparisons to wage rate increases does not tell the full story*, principally urging as follows: that percentage increases are not the relevant factor here, and that comparisons should be based upon the absolute levels of wages paid to employees; that the Union simply miscalculated some of the percentage wage increases relied upon by it, and that it also failed to properly determine weighted averages in arriving at some comparison data; and that it cannot escape the fact that the two final wage offers are not that different, with the District's offer one-half of one percent higher than that of the Union over the three year term of the agreement.

(3) The *Union's own evidence proves that the front-end-deductible plan is waning and there is a movement toward the point-of-service plans*, principally urging as follows: that among the Union's comparables four have a front-end-deductible, two have a point-of-service plan with a front-end-deductible (exactly the proposal made by the District), and one has only a point-of-service plan; that there is a clear trend toward offering a point-of-service plan in place of or to supplement the MCP or front-end-deductible plan; that the District's proposal, with its many different options, is an attempt to instill a degree of "consumer driven" healthcare into the system; that the state health insurance plan, used by the City of Omro, is predicated on the same theory being proposed by the Omro School District; that the concept of pegging an employer's contribution to the lower-priced plan has long been recognized as a fair way to introduce "consumerism" into health insurance; that the Union has failed to recognize the link between health insurance changes and cost experience, and wage increases among some comparables, thus distorting some of its wage comparisons; that while the Union cited the District's 95% insurance contribution for teachers, its 100% contribution for administrators, and the 90% contribution level in the bargaining unit, it failed to show what trade-offs had occurred when the higher contribution levels had been established; and that while it is true that physicians may leave the Tier 1 network, the Union presented no evidence of an unreasonable number of such changes and any resulting hardships.

(4) That the District's offer *meets the normal criteria covering changes in the status quo*, principally urging as follows: that it has met the criteria established and widely followed by Wisconsin interest arbitrators; that the Union's argument that the District can "*afford*" to maintain the status quo ignores the underlying problem; that the Union cannot *place its head in the sand* and merely hope that the underlying problem will go away; and that the District's offer provides a one percent wage increase as an added inducement and quid pro quo for making the change to the point-of-service plan; that the three support-staff unions have apparently banded together to resist the disputed health insurance change, ignoring the fact that 65% of the District's employees are already operating under the point-of-service plan; that arbitrators frequently do not require a quid pro quo when dealing with a significant unanticipated and mutual problem; that the District understands that those who wish to remain on the MCP plan will have to pay additional dollars to do so, but believes that the freedom to choose the higher priced plan should be borne by

those making the choice; and that the District's offer meets the status quo test and should be preferred by the Arbitrator as best addressing a problem that the Union has refused to acknowledge even exists.

(5) That the *point-of-service plan design will save costs in the long run*, principally urging as follows: that some instability in the point-of-service plan, which may have been due to litigation between the providers, has stabilized; that whatever the cost differential is between the point-of-service and the MCP plan, it makes economic sense to move to the lower cost point-of-service plan, which still provides excellent coverage and savings to the District; that the Union's offer, by maintaining its $0/$5 prescription drug co-pay, is also out of step with the realities of the drug market, and the three-tiered drug card will held the District moderate its exposure to ever-increasing drug costs.

On the above described bases and those covered in its initial brief, the District reiterates its request for arbitral adoption of its final offer in these proceedings.

POSITION OF THE ASSOCIATION

In support of the contention that its final offer is the more appropriate of the two offers before the undersigned, the Association emphasized the following principal considerations and arguments.

(1) That the Union proposed external comparables of districts with unionized support staff employees, should be selected by the Arbitrator.

(a) The Union urges the districts of Horicon, North Fond du Lac, Waupun, Wautoma and Winneconne, as comparables with organized food service employees; it urges the districts of Berlin, Horicon, North Fond du Lac, Waupaca, Waupun, Wautoma and Winneconne as comparables with organized teacher aide staffs.[25] Thus the Union urges that the primary external comparables include only unionized support staff personnel.

(b) The District proposes the Districts of Hortonville, Little Chute and Ripon, with non-organized staff, and Berlin, Waupaca, Wautoma and Winneconne with organized staffs. It is important to note that while Hortonville and Little Chute had previously been in the East Central Athletic Conference, they are not now in the re-organized East Central Flyway Conference.

(c) In the parties 1998 arbitration, the Arbitrator concluded, due to the small number of unionized comparables, that he would rely primarily on the represented units and would give less weight to the non-represented units.[26]

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[25] Citing the contents of Union Exhibits 1-11 and 1-12.

[26] Citing the decision of *Arbitrator Frederic R. Dichter* in School District of Omro -and- Omro Aides/Food Service Association, WEAC/NEA, Decision No. 29313-A. (October 3, 1998)

(d) All of the comparables in the previous arbitration were members of the East Central Athletic Conference, and all of the Union proposed comparables are now members of the East Central Flyway Conference, six of which have represented Food Service Staffs and eight of which have represented Teacher Aide staffs.[27]

(i) In light of the larger numbers of represented employees in the conference districts, reasonable comparisons can thus be made with these districts.

(ii) The non-unionized districts should thus be given even less weight in these proceedings.

(iii) The athletic conference was the factor used in the prior arbitration to determine the comparables, and it should be the factor similarly used in these proceedings.

[27] Citing the contents of Union Exhibits 1-8 and 1-10.

(iv) Arbitrators have frequently found athletic conferences to appropriately define sets of comparables, and/or to exclude consideration of non-represented comparables.[28]

- Athletic conference members are usually equivalent in size and economic base.[29]

- Three of the districts in dispute are closer in average adjusted gross income, than three of the comparables already agreed upon.[30]

(v) The District has offered no reason to maintain the current set of comparables other than that it is the set of comparables established in the prior arbitration.

- The prior Arbitrator found that the unionized members of the athletic conference were the then best comparables.

- The Union has established that its proposed comparables meet the previously used criteria, as well as providing additional evidence to support their selection on economic and demographic bases.

(e) It urges consideration of the fact that all of the Union proposed comparables not previously considered, are now engaged in bargaining under Section 111.70 of the Wisconsin Statutes.

(2) That the Union's final offer is favored by the settlement pattern of the comparables, and should be selected by the Arbitrator.

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[28] Citing the following arbitral decisions: *Arbitrator Engmann* in Weyauwega-Fremont School District (Educational Support Personnel Association), Dec. No. 30449-A (7/03); *Arbitrator Johnson* in Potosi School District, Dec. No. 19997-A (4/8/03); *Arbitrator Kessler* in Webster School District, Dec. No. 23333-A (11/15/86); and *Arbitrator Kerkman* in Washburn School District, Dec. No. 24278-A (9/9/87).

[29] Citing the content of Union Exhibit 2-2.

[30] Citing the content of Union Exhibit 2-8.

(a) The average wages in the comparables more than support selection of the Union's final offer.[31] The Union's offer of 2.0% increases in each of the three years is well below the settlement pattern of the comparables; coming in dead last is the District's first year offer of 1.5%.

(b) The Union's final offer to maintain current health insurance is also more in line with the external comparable settlements.

(i) The Aides/Food Service employees currently contribute 10% towards the cost of the FED health insurance plan, which is greater than the 6.8% average contribution among the comparables.[32]

(ii) Under the District proposal, an employee choosing to remain in the FED plan would pay 10% of the POS plan premium PLUS the dollar differences between the cost of the two plans; using projected rates for 2005, such employee would pay $376.96 for the family plan and $177.72 for the single plan.[33]

(iii) Among the comparables, four districts have a FED plan only, two have a POS plan with a FED option, and one has a POS plan only that went into effect in July, 2001.[34]

- Under the Union's offer, the amount of employee contribution is actually below that of the comparable districts with FED plans.[35]

- Three districts have POS plans, but only Winneconne, which adopted the plan on July 1, 2001, and switched to a three-tiered drug card on July 1, 2003, has dollar amounts similar to Omro; Winneconne, however, had 6.0% wage increases in each year of its 2002-2004 agreement.[36] The District thus falls short of offering an appropriate quid pro quo for its proposed change in health insurance.

(c) The local settlement pattern also supports the position of the Union in these proceedings. The City of Omro bargaining unit which includes employees in the Department of Public Works, Water and Sewer and City Hall, received wage increases of 3.25% in 2003, $0.57 per hour in 2004, and 2.0% each year for 2005 and 2006; throughout this period, the Employer health insurance contribution remained unchanged at

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[31] Citing the contents of Union Exhibits 4-2 & 4-4.

[32] Citing the contents of Union Exhibit 5-10.

[33] Citing the content of Union Exhibits 5-24 & 5-25.

[34] Citing the content of Union Exhibit 5-9.

[35] Citing the content of Union Exhibits 5-9, 5-10 & 5-12.

[36] Citing the content of Union Exhibits 5-9, 5-10 & 5-12.

105% of the lowest option under the State health insurance plan.[37]

(d) The internal comparables also favor selection of the Union's final offer.

[37] Citing the content of Union Exhibits 4-19.

(i) This bargaining unit, as well as the Custodial/Maintenance division and the Secretarial division are all in arbitration and have identical proposals for wage adjustments and health insurance.[38]

(ii) The Professional Staff have a POS plan with a FED option, just as proposed by the District in the other three bargaining units; for these higher paid employees, however, the District contributes 95% toward the family health premium.[39]

(iii) The Administrative Staff enjoys 100% paid health insurance for the FED plan through at least 2004-2005.[40] According to the District the Administrative Staff will change to the POS plan, however the District will contribute 100% of the premium. It is unclear why the District has thus created a disparity within its internal bargaining units, whereby other employees will be provided with a much more palatable contribution level.[41]

(3) The District, as the proponent of change, must establish a compelling need for the change, the reasonableness of the proposed change, and a sufficient quid pro quo for the change.[42]

(a) No compelling need for change has been established. In order to do so, the District would need to establish that it could not afford maintaining the status quo of the Union's offer; no such claim has been made, however, and the District is in a fair position in terms of its financial status.

(b) The Union's offer would pose no threat to the financial stability of the District, or its ability to provide quality education to its students.

(i) It is noteworthy that the District's Fund 10 balance figure of $1,599,318, reflects an increase of 10.52% over the last three years, the highest among the comparables.[43]

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[38] Citing the contents of Union Exhibits 5-4 & 5-6.

[39] Citing the content of Union Exhibit 5-20.

[40] Citing the content of Union Exhibit 5-20.

[41] Citing the content of Union Exhibits 5-13, 5-18, 5-20 & 5-22.

[42] Citing the *decision of Arbitrator Torosian* in Washington County, Dec. No. 29636-A (12/11/98).

[43] Citing the content of Union Exhibit 2-5.

(ii) The District's membership has increased by an average of 1.86% over the last three years, while all other comparables have experienced decreasing enrollment, which has a direct impact upon its revenue.[44]

(iii) Omro's revenue per member of $10,160 is above that of the comparable average of $9,782.[45] It has also fared well in the increase to revenue per member, which at a 7.82% increase placed it in the middle of the comparables.

(iv) The District has not entered any evidence in the record to demonstrate that any state-imposed expenditure or revenue restrictions would prohibit it from meeting the Union's offer. Accordingly, neither the greatest weight factor nor ability to pay are in issue in these proceedings.

(c) The District's final offer is completely lacking in any *quid pro quo*.

(i) In exchange for switching to a POS plan, for example, the Winneconne unit received a 6.0% wage increase for each year of its 2002-2004 agreement.

(ii) The District proposes a 1.0% wage increase upon implementation of the health insurance switch, in conjunction with a three year wage package which is the lowest among the external comparables; it clearly wants a lot in exchange for very little.

(iii) The amount of the annual wage buy-out under the District's final offer, also does not come close to meeting the additional cost to the employees who choose the option of retaining their FED plans. The District is thus offering less than one-fourth of the additional cost of retaining the family plan, to its lowest paid group of employees.[46]

(iv) The Union, in an effort to retain a valuable benefit, has proposed a moderate wage increase, but the District seeks both a lower cost health insurance package with decreased benefits for some, in conjunction with a moderate wage increase.

(4) The Union's offer is preferred when the converging costs of the Front End Deductible and the Point of Service plans are considered.

(a) The stability and scope of the FED plan has provided the District employees with a great sense of security over the years.

(b) A switch to a POS plan would decrease employee's sense of security.

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[44] Citing the content of Union Exhibit 2-2.

[45] Citing the content of Union Exhibit 2-1.

[46] Citing the contents of Union Exhibit 5-24 & 5-25.

(i) Over the last four years, providers reimbursed at Level 1 of the POS plan have changed three times.[47]

(ii) An employee with a physician in the Aurora Health Care group may have switched to Affinity Health in 2002, in order to stay at a Level 1 reimbursement level; in 2003, the same employee would again find him/herself faced with the need to switch when Affinity was no longer a Level 1 provider, but Aurora was again a provider.

(iii) There is no guarantee that the relationship of the current providers within the POS plan and the WEA Trust have stabilized, thus leaving employees in a constant sense of insecurity.

(iv) That Aides/Food Service employees prefer to avoid the pitfalls of the POS plan and to stay within the tried and true FED plan.

(v) The POS plan also does not live up to cost expectations. The costs of the POS and the FED plans are converging, making this argument almost moot.[48]

- In 2002, when the District first adopted the POS plan, the cost differential between the two plans was $110.94 for family coverage and $49.44 for single coverage.
- Three years later, the differential had decreased to $35.08 for family coverage and $16.47 for single coverage.

(vi) The minuscule savings referenced above would hardly seem worthy of the ordeal employees may experience when switching to new physicians in the POS plan and then living with the erratic relationship between providers and the WEA trust.

In summary and conclusion, it urges examination of each party's final offer in light of the pertinent facts, the statutory criteria, and an analysis of the facts supporting the Union's final offer.

(1) The Union's comparability pool is the most reliable in this dispute, while the District's comparables, which include non-unionized groups, is inappropriate and must be rejected.

(2) The District has the ability to pay the difference between the Union's and the District's final offers; there is no evidence indicating that the District is in any level of hardship, and the record indicates otherwise.

(3) The Aides and Food Service employees should not have to accept a major change in health insurance for the paltry quid pro quo offered by a District with a healthy financial status.

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[47] Citing the contents of U Post-Hearing Exhibit 2.

[48] Citing the content of Union Exhibit 5-26.

On the basis of all of the above, it seeks arbitral adoption of the final offer of the Union in these proceedings.

In *its reply brief* the Union reemphasized and expanded upon its original arguments as summarized below.

(1) It reiterated its position that the District's arguments concerning the *identity of the intraindustry comparables* were unpersuasive, principally urging as follows: that its proposed intraindustry comparables were actually supported by the underlying rationale in Arbitrator Dichter's decision; that arbitral decisions cited by the District are distinguishable from the dispute at hand; that a recent arbitral decision supports the position of the Union relative to the practice of considering athletic conference membership to define the primary intraindustry comparables; and it emphasized its earlier arguments relating to arbitral utilization of represented and non-represented units as primary intraindustry comparables.

(2) It submitted that the District's argument in support of *following the internal comparables* was flawed, principally urging as follows: that the District's arguments relating to the Memorandum of Understanding contained in Appendix B of parties 2001-2003 agreement are flawed; that the District has not shown that having differing insurance plans for different employee units creates an undue hardship for it; that various arbitral decisions cited by the District in support of the alleged need for such internal uniformity are distinguishable; and, that agreeing to a 95% premium contribution for one unit, providing a 100% contribution in another, and proposing a 90% contribution in these proceedings detracts from its argument for uniformity.

(2) It argued that the District's *estimated health insurance costs were no longer accurate*, thus "*illegitimatizing*" the data, and principally urging as follows: that the additional cost of the Union's offer over the three year term of the agreement should thus be adjusted to $8,145.00; and that if the data relating to health insurance are not recalculated, the District's argument relating thereto must be rejected.

(3) It emphasized its arguments that *the comparability criterion* supports selection of its final offer, principally urging as follows: that no change in wage ranking occurred due to the 1/2 of one percent difference between the wage components of the two final offers; and, accordingly, that the Union's offer should be selected simply on the basis of the District's apparent failure to offer a sufficient quid pro quo.

(4) It expanded upon its arguments that *the cost-of-living criterion* supported selection of its final offer, principally urging as follows: that cost of living determinations should be based upon consideration of the wage increases rather than upon the total of the package; and that the most recent CPI data shows increases of 3.6% to 3.7% over the past twelve months, well above the 2% wage adjustments proposed by the parties.

(5) It argued that *the overall compensation criterion* does not support the final offer of the Employer, principally urging as follows: that the District's arguments based upon total package costs are not applicable to the application of this criterion; and, even if such costs did relate to the application of this criterion, their

consideration would support the final offer of the Union in these proceedings.

(6) It suggested that the District's insurance proposal did not offer *a fundamental solution to the rising costs of health insurance*, principally urging as follows: that the District's proposed change does not offer a fundamental, long-lasting solution to the rising health insurance costs; and that no evidence has been presented demonstrating that the implementation of the District proposed change in the teacher's bargaining unit in 2002, had resulted in cost savings.

On the above described bases and those covered in its initial brief, the Union reiterates its request for arbitral adoption of its final offer in these proceedings.

FINDINGS AND CONCLUSIONS

It is initially emphasized that the parties differ on only two impasse items, ***first***, the *Employer proposed modification of the employee health insurance program*; and, ***second***, their *respective wage increase proposals applicable during the renewal labor agreement*. In arguing their cases they principally differ relative to *the composition of the primary intraindustry comparables*,[49] whether the District had established the normal prerequisites for its *proposed modification of the status quo ante,* the application of the *statutory comparison criteria*, the *interests and welfare of the public criterion*, the *cost of living criterion*, the *overall compensation criterion*, and the *bargaining history criterion*.[50] All of these considerations will be addressed by the undersigned prior to reaching a decision and rendering an award in these proceedings.

The Composition of the Primary Intraindustry Comparables

Interest arbitrators are extensions of the contract negotiations process, and their normal goal is to attempt, to the extent possible, to put parties into the same position they might have reached at the bargaining

[49] While the *intraindustry comparisons* terminology obviously derives from its long use in the private sector, the same underlying principles of comparison are used in public sector interest impasses; in such applications, *the so-called intraindustry comparison groups normally consist of other similar units of employees employed by comparable governmental units*.

[50] While the *bargaining history criterion* and the *normal prerequisites for arbitral handling of proposed changes in the status quo ante* are not specifically addressed in the statutory arbitral criteria, they fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

table. In seeking to achieve this goal, it has been widely and generally recognized by arbitrators that the *comparison criteria* are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria, and that the most persuasive of these is typically the so-called *intraindustry comparison criterion*, which normally takes precedence when it comes into conflict with other arbitral criteria. These considerations are well described, as follows, in the still highly respected and authoritative book by the late Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparisons, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> * * * * *
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> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[51]

The application of the intraindustry comparison criterion in the case at hand is complicated by the disagreement of the parties relative to the composition of the primary intraindustry comparables, with each arguing the significance of the parties' only prior interest arbitration covering the same bargaining unit.[52]

(1) *The District urges* arbitral utilization in these proceedings of the same primary intraindustry comparisons determined to be

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[51] See Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pg. 54, 56, and 57. (footnotes omitted)

[52] See the decision of *Arbitrator Frederic R. Dichter* in School District of Omro -and- Omro Aides/Food Service Association, WEAC/NEA, Decision No. 29313-A. (October 3, 1998)

applicable in the previous arbitration, *i.e.*, the *organized districts* of Berlin - aides, Waupaca - aides, Wautoma and Winneconne, and the *non-organized districts* of Berlin - food service, Hortonville, Little Chute, Ripon, and Waupaca - food service. It urges that the Union is proposing a whole new set of comparables without justification, which, if accepted, would lead to disastrous results, and it notes significant arbitral rejection of attempts by either party to thus manipulate comparables.

(2) *The Association Urges* that the primary intraindustry comparables should include *only* districts with unionized support staff personnel: *first*, the districts of Horicon, North Fond du Lac, Waupun, Wautoma and Winneconne, which have *organized food service employees*; and, *second*, the districts of Berlin, Horicon, North Fond du Lac, Waupaca, Waupun, Wautoma and Winneconne, which have *organized teacher aide staffs*.

(a) It notes the following excerpt from Arbitrator Dichter's prior decision and award, which referred to districts in the then East Central Athletic Conference.

> "The problem that now faces this arbitrator is that there are only three comparables on the list. As Arbitrator Hafenbecker stated in School District of Bruce, 'To use only the Union (sic) three unionized comparables...would be too limited.' I agree. Therefore I shall follow the lead of Arbitrator Rice and consider the Unionized list as a list of primary comparables. The list of non-unionized districts shall be considered, but given less weight than the primary list."[53]

(b) It notes that while Hortonville and Little Chute were previously members of the East Central Conference, they are not members of the re-organized East Central Flyway Conference, and further submits that the larger current number of districts obviates the need to include non-organized districts among the primary comparables.

(c) It urges that limiting its proposed comparables to union organized members of the same athletic conference, is both consistent with the decision in the prior interest arbitration, and with the decisions of various other Wisconsin interest arbitrators.

The District is quite correct in noting arbitral reluctance to modify intraindustry comparables previously relied upon by parties in their past contract negotiations, including those established in previous interest arbitration proceedings. While persuasive bases may arise for changes in the composition of such primary external comparables, such changes should at the very least be preliminarily discussed in face-to-face negotiations between the parties, rather than initially presented for arbitral determination. The degree of arbitral reluctance to modify intraindustry comparison groups

[53] *Ibid*, at page 22.

previously established and used by parties, is described in the following additional excerpts from Bernstein's book:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. ... 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.
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> * * * * *
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> The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[54]

The above principles were also briefly addressed, as follows, in the authoritative book originally authored by Elkouri and Elkouri:

> "**A. Prevailing Practice**
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> * * * * *
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> In many cases, strong reason exists for using the prevailing practice of the same class of employers within the locality or area for the comparison. Indeed, 'precedent' may be accorded arbitral stare decisis treatment and found to be the determinative factor in the selection of an appropriate comparability group."[55]

In applying the above described principles to the case at hand, the Arbitrator notes that neither party to a dispute can normally expect to convince an interest neutral that the intraindustry comparables previously used by them should be abandoned or minimized merely on the basis of one party's preference for an alternative set of comparisons, which it simply feels might more persuasively support its final offer. While it may be appropriate, in unusual cases, for an arbitrator to adopt different intraindustry comparisons than those historically used by the parties, *the proponent of change must normally produce extremely persuasive evidence and argument to justify such a change!*

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[54] See The Arbitration of Wages, pages 63, 66. (footnotes omitted)

[55] See Ruben, Allan Miles, Editor in Chief, *Elkouri & Elkouri* HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1407-1408. (footnotes omitted)

(1) If parties mutually or individually disagree with arbitrally identified primary comparables, they can thereafter either mutually select and utilize another group of intraindustry comparables, or may at least enter into negotiations in an attempt to agree on an alternative set of such comparables.

(2) Some arbitrators, if they feel that the choice of comparables before them are not fully appropriate for future use by the parties will identify intraindustry comparables solely for use in the single case before them.

(3) Apart from the above situations, and even if arbitrators feel that a modified set of intraindustry comparables would be an improvement over what the parties have utilized in the past, they have no basis for directing the parties to change such comparables in the absence of *the requisite extremely persuasive and highly unusual evidence to support such action*!

The above described principles were previously applied by the undersigned in a context where a school district had proposed arbitral modification of a *very unusual past practice of the parties*, pursuant to which they had historically based their past salary adjustments solely on those adopted in the Madison School District; the District had proposed selection of its final salary offer based upon comparison with member districts in its athletic conference, while the Union had urged arbitral selection of its final salary offer based upon continued comparison with the Madison School District. While the athletic conference based intraindustry comparisons urged by the district were both logical, typical and workable, the undersigned opined as follows:

> "What of the District's position that it should not be required to consider in its negotiations, the patterns established in the Madison District, and that the quite common practice of utilizing athletic conference comparisons should be endorsed by the Arbitrator? It may very well be found appropriate in isolated cases for an arbitrator to adopt different intraindustry comparisons than those historically used by the parties, but *the proponent of change must produce very persuasive evidence and argument to justify such a change!* Neither party to a dispute can normally expect to convince an interest neutral that the historical intraindustry comparison(s) previously used by the parties, should be abandoned or minimized on the basis of one party's subjective preference for an alternative set of comparisons, which it feels might more persuasively support its final offer.
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> Without belaboring the point further, the Arbitrator finds nothing in the record to persuasively support the conclusion that the Badger Athletic Conference school districts should be utilized as the principal intraindustry comparison group for the Monona Grove District, rather than the Madison and Monona Grove comparisons which have been extensively used by the parties in the past."[56]

[56] See the *decision of the undersigned* in Monona Grove School District -and- Monona Grove Education Association, Case 42, No. 39312, INT/ARB-4538, pages 16-17 (July 23, 1988).

In the case at hand the parties' 1998 interest arbitration decision and award were not arbitrally limited in its intended scope, the parties apparently utilized the comparables established therein in their subsequent contract renewal negotiations, there is nothing in the record to indicate that the composition of these primary intraindustry comparables had been the product of face-to-face negotiations between the parties prior to these proceedings, and the evidence and arguments advanced by the Association fall considerably short of the requisite very persuasive evidence necessary to justify arbitral modification of the primary intraindustry comparables utilized by the parties in the past. While they may very well decide to jointly address and modify this situation in their future negotiations, no proper basis exists for its modification by the undersigned in these proceedings.

On the above bases, the primary intraindustry comparables in these proceedings will continue to consist of *the organized districts* of Berlin - aides, Waupaca - aides, Wautoma and Winneconne, and the *non-organized districts* of Berlin - food service, Hortonville, Little Chute, Ripon and Waupaca - food service, which comparables were established and followed by the parties since their 1998 interest arbitration.

The Normal Prerequisites for Adopting Proposed Modifications of the Status Quo Ante

The requirement for a so-called *quid pro quo* in certain situations, with particular reference to those involving employer proposed changes in the health care, was recently described by the undersigned as follows:

> "If an employer, for example, has proposed elimination or reduction of a previously negotiated benefit, its arbitral approval is generally conditioned upon three determinative prerequisites: *first*, that a significant and unanticipated problem exists; *second*, that the proposed change reasonably addresses the underlying problem; and, *third*, that the proposed change is normally, *but not always*, accompanied by an otherwise appropriate *quid pro quo*.
>
> In addressing the disagreement of the parties relative to the presence of an adequate *quid pro quo* in the case at hand, the undersigned notes recognition by certain Wisconsin interest arbitrators, including the undersigned, that some types of proposed changes in the *status quo ante* directed toward the resolution of *mutual problems*, may require either none or a substantially reduced *quid pro quo*.

(1) A *reduced quid pro quo* has been required by the undersigned, as follows, in some situations involving medical insurance premium sharing:

> 'What next of the disagreement of the parties relative to the sufficiency of the Employer proposed quid pro quos? In this connection, it is noted that *certain long term and unanticipated changes in the underlying character* of previously negotiated practices or benefits *may constitute significant mutual problems of the parties which do not require traditional levels of quid pro quos to justify change*. In the case at hand, the spiraling costs of providing health care insurance for its current employees is a *mutual problem for the Employer and the Association,* and the trend has been ongoing, foreseeable, anticipated, and open to bargaining by the parties during their periodic contract renewal negotiations. In light of the *mutuality of the underlying problem*, the requisite *quid pro quo* would normally be somewhat less than would be required to justify a *traditional arms length proposal to eliminate or to modify negotiated benefits or advantageous contract language*.' [Citing *decisions of the undersigned* in Village of Fox Point, Dec. No. 30337-A (11/7/02) pp. 21-22, and in Mellen School District, Dec. No. 30408-A (3/21/02), pp. 39-40.]

(2) A situation where *no quid pro quo* was required, arose in connection with a proposed future reduction in the period within which a school district would continue to pay full health insurance premiums for early retirees:

> 'What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. ...
>
> The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes.' [Citing the *decision of the undersigned* in Algoma School District, Case 18, No. 46716, INT/ARB-6278 (11/19/92), pg. 25.]

(3) Two decisions in which employer proposed medical insurance changes were determined to require an appropriate *quid pro quo*, indicated in part as follows:

> 'In applying the above described principles to the situation at hand, it must be recognized that while there have been continuing increases in the cost of medical insurance since the parties earlier negotiations, this trend was ongoing, foreseeable, anticipated and bargained upon by the parties in reaching the predecessor agreement covering January 1, 1998 through December 31, 2000; indeed, the letter of agreement and the medical insurance reopener clauses were the *quid pro quos* for the medical insurance changes then agreed upon by the parties, which the Employer is now seeking to eliminate. While it is entirely proper for the Employer to have continued to pursue this goal in these proceedings, the record falls far short of establishing that its current final offer falls within the category of proposals which need not be accompanied by appropriate quid pro quos.'
> [Citing the *decisions of the undersigned* in Town of Beloit, Dec. Nos. 30219-A and 30220-A (4/25/02), pp. 13-14.]"[57]

In applying the above described principles, which are equally applicable to the case at hand, the following factors are quite clear: *first*, those in the bargaining unit have enjoyed excellent, employer paid health insurance for an extended period of years; *second*, the current and projected costs of such health insurance have escalated far in excess of what might have been originally anticipated by the parties, thus creating the requisite *very significant and unanticipated problem*;[58] *third*, the Employer proposed changes *reasonably address the underlying problem*; and, *fourth*, the *nature and mutuality of the underlying problem*, as described above, bring the proposed change well within the category of proposed unilateral changes which require either a significantly reduced *quid pro quo* or none at all.

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[57] See the *decision of the undersigned* in City of Marinette (Police Patrolmen and Sergeants), Dec. No. 30872-A (11/27/04), pages 15-18.

[58] Despite Union arguments to the contrary, a compelling need for change in the status quo need not be predicated upon the inability of an employer to continue to pay the costs of continuation of the status quo. In other words, the escalating costs of employee health insurance premiums is widely recognized as *a very significant problem*, and there is no requirement precluding an employer from recognizing the existence of and reasonably addressing such a problem *before* it is bereft of the financial ability to continue to pay such premiums.

On the above described bases the undersigned has concluded that the Employer proposed health insurance changes meet the normal prerequisites justifying such proposed changes, and that its proposed additional one percent wage increase as a *quid pro quo* for such changes is at least adequate.[59]

The Application of the Comparison Criteria

In comparing the wage increase and group insurance components of the final offers of the parties with *the above identified intraindustry comparables*, the following considerations are material and relevant.

(1) The *Aide 1 classification* wage comparisons with the intraindustry comparables are as follows.[60]

(a) The Union's final offer is .05¢ to .06¢ per hour higher than that of the District in various steps over the three year term of the renewal agreement.

(b) Both parties' final offers are somewhat below the *average minimum* for the classification, and somewhat above both the *average maximum* and the *average maximum with longevity*, for the first two years of the renewal agreement, and, in the absence of comparables for the third year of the agreement, their offers are .04¢ or .05¢ per hour apart.

(2) The *Special Education Aide Classification* wage comparisons with the intraindustry comparables are as follows:[61]

(a) The Union's final offer is .05¢ to .06¢ per hour higher than that of the District in various steps over the three year term of the renewal agreement.

(b) Both parties' final offers are somewhat below the *average minimum* for the classification, and somewhat above both the *average maximum* and the *average maximum with longevity* for the first two years of the renewal agreement, and, in the absence of comparables for the third year of the agreement, their offers are .05¢ or .06¢ per hour apart.

(3) The *Head Cook Classification* wage comparisons with the intraindustry comparables are as follows:[62]

(a) The Union's final offer is .04¢ to .07¢ per hour higher than that of the District in various steps over the three year term of the renewal agreement.

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[59] As described in *the final offer selection process*, below, when final offers differ significantly the adequacy of a *quid pro quo* in Wisconsin's interest arbitration process, can differ quite significantly from what might have been achieved at the bargaining table.

[60] See the contents of Employer Exhibit 27, page 1.

[61] See the contents of Employer Exhibit 27, page 2.

[62] See the contents of Employer Exhibit 27, page 3.

(b) Both parties' final offers are somewhat below the *average minimum* for the classification, and somewhat above both the *average maximum* and the *average maximum with longevity* for the first two years of the renewal agreement, and, in the absence of comparables for the third year of the agreement, their offers are .05¢ or .06¢ per hour apart.

(4) The *Assistant Cook Classification* wage comparisons with the intraindustry comparables are as follows:[63]

(a) The Union's final offer is .04¢ to .06¢ per hour higher than that of the District in various steps over the three year term of the renewal agreement.

(b) Both parties' final offers are somewhat below the *average minimum* for the classification, and somewhat above both the *average maximum* and the *average maximum with longevity* for the first two years of the renewal agreement, and, in the absence of comparables for the third year of the agreement, their offers are .04¢ or .06¢ per hour apart.

(5) The *Server Classification* wage comparisons with the intraindustry comparables are as follows:[64]

(a) The Union's final offer is .03¢ to .05¢ per hour higher than that of the District in various steps over the three year term of the renewal agreement.

(b) Both parties' final offers are somewhat below the *average minimum* for the classification, and somewhat above both the *average maximum* and the *average maximum with longevity* for the first two years of the renewal agreement, and, in the absence of comparables for the third year of the agreement, their offers are .04¢ or .05¢ per hour apart.

(6) The above figures included both organized and unorganized members of the primary intraindustry comparables due to the fact that *only* Wautoma and Winneconne, of the organized districts, had settlements, and only in 2003-2004 and 2004-2005; while the limited available information thus limited its weight in these proceedings, the following data is material and relevant.[65]

(a) At the *Aide 1* classification level, Omro and Winneconne historically ranked first or second, with Wautoma, Berlin and Waupaca ranking third to fifth; in 2003-2004 and 2004-2005 Omro and Winneconne continued to rank first or second, and Wautoma third.[66]

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[63] See the contents of Employer Exhibit 27, page 4.

[64] See the contents of Employer Exhibit 27, page 5.

[65] The summarized rankings for 2003-2004 and 2004-2005 are the same under either of the final offers in these proceedings.

[66] See the contents of Employer Exhibit 27, page 1.

(b) At the *Special Education Aide* classification level, Omro had historically ranked first, Winneconne second, with Wautoma, Waupaca and Berlin ranking third to fifth; in 2003-2004 and 2004-2005, Winneconne ranked first, Omro second, and Wautoma third.[67]

(c) At the *Head Cook* classification level, Omro and Winneconne had historically ranked first or second, with Wautoma and Waupaca ranking third or fourth; in 2003-2004 and 2004-2005, Omro and Winneconne continued to rank first or second, and Wautoma third.[68]

(d) At the *Assistant Cook* classification level, Winneconne had historically ranked first, Omro second, Wautoma third and Waupaca fourth; in 2003-2004 and 2004-2005, Winneconne ranked first, Omro second, and Wautoma third.[69]

(e) At the *Server* classification level, Omro historically ranked fourth at the minimum and first at the maximum levels; in 2003-2004 and 2004-2005, Winneconne ranked first, Wautoma second and Omro third at the minimums, and Omro first, Wautoma second and Winneconne third at the maximums.[70]

(7) As urged by the District, when the one percent additional wage increase contained in the Employer's final offer as a so-called *quid pro quo* for the health insurance component of its final offer is factored into the above figures, it also somewhat additionally favors selection of the wage component of its final offer.[71]

(8) The health care component of the Employer's final offer proposes continued payment of the 90% of the family plan and 100% of the single plan, pegged, however, to the proposed, lower cost Point-of-Service (POS) plan; employees who elect to remain in the Managed Care Plan (MCP), would thus pay the cost differential. Both its health insurance *premium contribution level* and its proposed *three tiered drug co-pay proposal* are competitive with the practices of the primary intraindustry comparables.[72]

To the extent described above, arbitral consideration of the *intraindustry comparison criterion* favors selection of the final offer of the District.

While the intraindustry comparison criterion is normally the most important arbitral criterion, in certain types of impasses employers have very

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[67] See the contents of Employer Exhibit 27, page 2.

[68] See the contents of Employer Exhibit 27, page 3.

[69] See the contents of Employer Exhibit 27, page 4.

[70] See the contents of Employer Exhibit 27, page 5.

[71] The District's final offer would provide for a 6.5% lift in wage rates over the term of the agreement as compared with the 6.0% lift proposed by the Union, despite timing differences in the implementation of the individual wage increases.

[72] See the content of Employer Exhibit 27, pages 6-7.

significant and justified interests in internal uniformity, in which cases the *internal comparison criterion* may be entitled to enhanced weight. This is frequently the case in such non-wage areas as *operating and working schedules*, *paid or unpaid leaves of absence*, *vacation eligibility and scheduling*, the *numbers and identity of paid holidays*, and, perhaps most importantly, in *group insurance impasses*, where the obvious importance of consistency justifies *internal comparisons* being accorded very significant weight in the final offer selection process.

When the *internal comparison criterion* is applied in the case at hand, it clearly favors the position of the District, in that the teachers' bargaining unit of 94 employees accepted the Employer proposed insurance change as of January 2, 2002, and, effective January 1, 2005, it was adopted for its administrators and non-represented employees, ten in number, which, together with the teachers, comprise 65% of its employees. Three smaller bargaining units, representing a total of 55 employees or 35% of the work force are at arbitration, including the case at hand, and in each case the Employer has made the same insurance proposal.

On the above described bases the undersigned has determined that the internal comparison criterion clearly favors selection of the insurance component of the final offer of the District in these proceedings.

The Interest and Welfare of the Public Criterion and the Ability to Pay Criteria

While it is quite clear that qualified, effective and properly compensated public employees serve the interest and welfare of the public, the qualifications and performance of those in the bargaining unit have not been challenged, and only issues relating to their *wage levels* and their *health insurance* are before the undersigned in these proceedings. Under such circumstances, this criterion is normally entitled to either significant or determinative weight in the final offer selection process, only in the event of *impaired ability or inability to pay*, neither of which is present in the case at hand. Accordingly, the interest and welfare of the public and the ability to pay criteria cannot be assigned significant weight in the final offer selection process.

The Cost-of-Living Criterion

The weight normally placed upon this criterion varies greatly with economic conditions and the differences in the final offers of the parties. Its application typically requires *arbitral consideration of the increase in the cost-of-living* within an appropriate period, and *arbitral determination of whether such increase favors selection of the final offer of either party*. If two final offers are identical or substantially equivalent, the application of this criterion cannot be assigned significant weight in the final offer selection process.

In light of the *similarity in size and cost impact of the wage increase components of the two final offers*, the undersigned has determined that this criterion is not entitled to significant weight in the final offer selection process in these proceedings.

The Overall Compensation Criterion

In this area the Arbitrator is directed to consider "The overall compensation presently received by employees, including direct wage compensation, vacation, holiday and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received." As discussed by the undersigned in various prior interest arbitration proceedings, this criterion may be used to initially justify or to maintain differential wages or benefits, in the event, for example, that the parties' negotiations history reflects negotiated trade-offs among benefits and/or between benefits and wages; it normally has little to do, however, with the application of general wage increases thereafter, which principle is well described in the following additional excerpt from Bernstein's book:

> "...Such 'fringes' as vacations, holiday, and welfare plans may vary among firms in the same industry and thereby complicate the wage comparison. This question, too, is treated below.
>
> * * * * *
>
> ...In the Reading Street Railway case, for example, the company argued strenuously that its fringes were superior to those on comparable properties and should be credited against wage rates.
>
> Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differentials between jobs, should not influence

> a general wage movement. As a consequence, in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should be charged off against wage rates; that offensive odors in a fish-reduction plant merited a differential; that weight should be given the fact that employees of a utility, generally speaking, were more skilled than workers in the community at large; that merit and experience deserved special recognition; and that regularity of employment should bar an otherwise justified increase...
>
> The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates."[73]

Since the overall compensation criterion cannot excuse arbitral disregard of an otherwise justified level of wages or an otherwise justified level of benefits, this criterion cannot be assigned significant weight in the final offer selection process in these proceedings.

The Bargaining History Criterion

The application of this criterion which, as noted earlier, clearly falls within the scope of Section 111.70(4)(cm)(7r)j. of the statute, is not independently applied; to the contrary, it is normally considered and applied in conjunction with application of other, more specifically described arbitral criteria. Bargaining history considerations were discussed and applied in conjunction with the application of other criteria, as described earlier, and, except to the extent so indicated, this criterion cannot *alone* be assigned significant *additional weight* in the final offer selection process in these proceedings.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The parties differ on only two impasse items, ***first***, the *Employer proposed modification of the employee health insurance program*; and, ***second***, their *respective wage increase proposals applicable during the term of the renewal labor agreement*.

(2) In arguing their cases, the parties principally differ relative to *the composition of the primary intraindustry comparables*, whether the District had established the normal prerequisites for its *proposed modification of the status quo ante,* the application of the *statutory comparison criteria*, the *interests and welfare of the public criterion*, the *cost of living criterion*, the *overall compensation criterion*, and the *bargaining history criterion*, all of which were separately addressed above.

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[73] See The Arbitration of Wages, pages 65-66 and 90. (footnotes omitted)

(3) In connection with *the composition of the primary intraindustry comparables* the undersigned has determined that it will continue to consist of *the organized districts* of Berlin-aides, Waupaca-aides, Wautoma and Winneconne, and the *non-organized districts* of Berlin-food service, Hortonville, Little Chute, Ripon and Waupaca -food service, which comparables were established and had been followed by the parties since their 1998 interest arbitration.

(4) In connection with the *normal prerequisites for adopting proposedmodifications of the status quo ante*, the undersigned determined that the Employer proposed health insurance changes meet the normal prerequisites justifying such proposed changes, and that its proposed additional one percent wage increase as a *quid pro quo* for such changes is both reasonable and sufficient.

(5) In applying the *statutory comparison criteria*, the undersigned determined as follows:

(a) To the extent described earlier, arbitral consideration of the *intraindustry comparison criterion* favors selection of the final offer of the District.

(b) To the extent described earlier, arbitral consideration of the *internal comparison criterion* favors selection of the final offer of the district.

(6) The *interests and welfare of the public and ability to pay criterion* cannot be assigned significant or determinative weight in the final offer selection process in these proceedings.

(7) The *cost-of-living criterion* cannot be assigned significant weight in the final offer selection process in these proceedings.

(8) The *overall compensation criterion* cannot be assigned significant weight in the final offer selection process in these proceedings.

(9) The *bargaining history criterion* is normally applied in conjunction with application of various other arbitral criteria, and cannot alone be assigned significant weight in the final offer selection process in these proceedings.

Selection of Final Offer

Prior to selecting the final offer in these proceedings, the undersigned will offer a few preliminary observations relating to Wisconsin's *final offer arbitral selection process*, and the parties' *bargaining history* in these proceedings.

(1) In limiting an interest arbitrator to the selection of the final offer of either party *in toto*, the Wisconsin Legislature intended to encourage parties' negotiations to move as close as possible to the position they might have reached at the bargaining table, if they had been able to do so.

(a) If *one party refrains from realistically bargaining* on an item or items, it runs the risk of arbitral selection of the other party's final offer which may be below, above, or significantly different from what might have been the end product of real preliminary bargaining followed by interest arbitration. This is not only true of mandatory items of bargaining, *under the law*, but also true, *from a practical*

standpoint, when dealing with peripheral but important items such as identification of primary intraindustry comparables.

(b) If *both parties remain significantly apart* from one another and from the position(s) they might realistically have reached at the bargaining table, they run the risk inherent in an arbitrator being forced to choose between two final offers, neither of which approximates the position they might reasonably have reached at the bargaining table.

(2) In examining the *bargaining history of the parties* in light of the above considerations, the undersigned is struck by the apparent lack of significant preliminary bargaining on two items of significant importance: *first*, the composition of the *primary intraindustry comparables*, as addressed and determined above; and, *second*, the specific terms of the *Employer proposed changes in employee health insurance*.

(a) In connection with *arbitral determination of the composition of the primary intraindustry comparables* in these proceedings, the undersigned was faced with the following considerations.

(i) The intraindustry comparables established in Arbitrator Dichter's 1998 decision and award, were at least tacitly accepted and used in the parties' 2001-2003 contract renewal negotiations.

(ii) The Employer proposed continued use of the same comparables in these proceedings, and the Union proposed a new set of comparables, based significantly upon the fact that all six are organized and are now members of the East Central Flyway Athletic Conference.

(iii) By way of contrast with its position in these proceedings, the Union in 1998 had decried the use of an athletic conference in determining intraindustry comparables, and had then proposed that the Winneconne, Waupaca, Wautoma and Weyauwega-Freemont districts should comprise the *primary intraindustry comparables*, the latter of which was not then a member of the East Central Athletic Conference, is not now a member of the East Central Flyway Athletic Conference, and was not proposed as a comparable by in these proceedings.[74]

(iv) While the undersigned believes the parties could mutually have identified a broader group of intraindustry comparables for their ongoing and continued use, no proper basis has been established for the undersigned to do so, in derogation of their apparent continued use of the 1998 comparables until the Union proposed changes during these proceedings.

(b) In connection with the *Employer proposed changes in health insurance*, it is clear that the Union has taken a "stand pat position" and resisted any changes.

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[74] See the contents of Union Exhibits 1-5, page 21, and Union Exhibits 1-9 and 1-10.

(i) While it argues in its brief a lack of internal consistency in the District having agreed to an employer contribution level of 95% in the teacher's bargaining unit, while offering only a contribution level of 90% in its final offer in these proceedings,[75] its failure to address changes in health insurance in its prior bargaining or in its final offer has limited the undersigned to acceptance of the final offer of either party *in toto*.

(ii) While lack of internal consistency might have been a significant consideration if the Union had counter-proposed for a higher employer contribution level, it failed to negotiate on this issue and to make such a proposal.

(iii) In other words, and as noted above, the failure of a party to realistically bargain on a mandatory item of bargaining may generate significant risk in any subsequent final offer selection process.

Based upon careful consideration of the entire record in these proceedings, including consideration of all of the statutory criteria contained in Section 111.70(4)(cm) of the Wisconsin Statutes, in addition to those emphasized by the parties and elaborated upon earlier, the undersigned has concluded that the final offer of the District is the more appropriate of the two final offers and it will be ordered implemented by the parties.

[75] See the contents of Union Exhibit 5-20.

AWARD

Based upon careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the District is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the District, herein incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

July 9, 2005