

## BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

SCHOOL DISTRICT OF IOLA-SCANDINAVIA

and

IOLA-SCANDINAVIA EDUCATION ASSOCIATION

WERC Case 34, No. 63455, Int/Arb-10169  
Dec. No. 31122-A

### APPEARANCES:

For the Employer:

Lathrop & Clark, LLP, by Shana R. Lewis, Esq., 740 Regent St., Suite 400, P.O. Box 1507, Madison, WI 53701-1507

For the Association:

Mr. Timothy E. Smith, UniServ Director, Central Wisconsin UniServ Council, P.O. Box 158, Mosinee, WI 54455-0158

## ARBITRATION AWARD

The Association has represented teachers in Iola-Scandinavia for many years. The parties' most recent collective bargaining agreement expired on June 30, 2003. On March 11, 2004, the District filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to Section 111.70(4)(cm)6, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order requiring interest arbitration, dated October 22, 2004. The undersigned Arbitrator was appointed by Commission order dated November 11, 2004. A hearing was held in this matter in Iola, Wisconsin on February 1, 2005, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, briefs and reply briefs were filed by both parties, and the record was closed on April 13, 2005.

### **Statutory Criteria to be Considered by Arbitrator**

Section 111.70 (4) (cm) 7

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected

by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

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

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

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

## **The Employer's Final Offer**

### **Salaries**

2003-2004:	Base	\$29,000.00		
	Returning teachers		+	\$900.00
2004-2005:	Base	\$29,500.00		
	Returning teachers		+	\$1200.00

Health Insurance

9/1/03-2/29/04	Board	Teacher
Single	\$448.00	\$31.80
Family	\$915.48	\$167.28

3/1/04-2/28/05	Board	Teacher
Single	\$495.92	\$35.22
Family	\$1,013.70	\$185.24

3/1/05-8/31/05	Board
Single	\$525.68
Family	\$1,074.52

Dental Insurance

9/1/03 - 2/29/04	Board	Teacher
Single	\$26.96	\$0
Family	\$69.10	\$6.42

3/1/04-2/28/05	Board	Teacher
Single	\$28.04	\$0
Family	\$73.38	\$6.80

3/1/05-8/31/05	Board
Single	\$29.72
Family	\$77.76

## **The Association's Final Offer**

Item 1:

Salaries - (ISEA reserves the right to determine how increase in salaries is divided among members.)

2003-2004      Returning teachers - \$ 1500 increase.

2004-2005      Returning teachers - \$ 1800 increase.

Item 2:

Board will pay 100% of the cost of the single health and dental plans and 90% of the family health and dental plans.

Item 3:

Professional Growth

5.1      Education Advancement                      Change advancement rate to .008 times the base salary.

5.3      Educational Reimbursement      Eliminate this section.

## **The Employer's Position**

The District notes that the parties agree on the comparables, consisting of sixteen relatively small school districts in the central Wisconsin area. The District argues that the greatest weight factor strongly impacts this case, because the District meets the three tests that have customarily been applied to determine this issue.

In this respect, the District notes first that the difference between the Association's final offer and the District's final offer is substantial, at approximately \$223,000 over two years and involving an overall package amounting to 7.22% versus 4.94% in the first year and 6.14% versus 4.44% in the second year. The District further argues that because the Association seeks a change to a percentage formula for health and dental insurance contributions required of the district, future costs must also be taken into account, as they become uncontrollable. An additional factor is that the Association seeks to more than double the credit advancement rate, which is unlimited in the number of credits that can be received. Second, the District argues that because its current financial condition is bleak, the Association's final offer would have concrete and adverse effects on the District's overall operation. The District argues particularly that the arrival of two new special-education students in the last year has raised costs by over \$60,000 per year, while gas costs have increased by more than 500% since 1999 and electricity costs have increased by more than 200% since 1999. The District notes that it was forced to use over \$100,000 from its fund balance to attempt to balance its budget in 2003-2004 and that in the most recent year it eliminated the preschool program, reduced supplies, limited transportation, eliminated free towels for athletes, cut back on the aquatic facility hours, and reduced administrative salary increases, in addition to increasing fees for drivers education, reducing staff through attrition, and replacing retiring staff with less experienced and less expensive teachers. The District further argues that because of statutory revenue limitations, the Association's offer would impose further cutbacks on school services, because the District received 3.04% in additional money in 2003-2004 compared to the baseline year and 2.66% in additional money for 2004-2005, far short of the Association's demands. Also, the District's revenue limit per member (i.e. student) remains less

than the average of the comparables even after the District, in 2000, passed a voters' referendum to exceed revenue limit by \$200,000 each year in future. The District notes that it did not tax the entire allowable levy during either to 002-2003 or 2003-2004, but argues that in both cases this was because of differences between the projected enrollment and actual enrollment for the respective year, and that the total not levied, of some \$35,000 over two years, is small compared to the amount in issue between the parties. The District also argues that student enrollment has been steadily declining since 2000 and is projected to continue doing so, which because of the way state aids work, results in declining aid for the future; and that because the District has already passed one referendum seeking additional tax revenues, statewide statistics indicate that the likelihood of a successful referendum a second time is less than 30%. With respect to the fund balance, the District notes that at least one prior arbitrator has concluded that it is inappropriate to use such a fund balance for wages and benefits, because the purpose of maintaining a substantial fund balance is to keep a good bond rating and to allow for emergency repairs to old buildings without short-term borrowing, not to pay recurring costs. The District argues that the record shows that its fund balance has not increased out of proportion to the comparables and is not unreasonably high. For all of these reasons, the District argues that the third criterion customarily applied in "greatest weight" factor analyses, i.e. that the District would need to take additional economizing steps if its final offer were not selected, is also met here.

With respect to the "greater weight" factor, the District argues that the economic conditions in its county, Waupaca, are far from flourishing, with the unemployment rate having increased from 3.3% in 1998 to 5.9% in 2003. Neighboring counties have experienced similar increases. The county is significantly dependent on agriculture, which is not doing well, and per capita personal income in Waupaca County is significantly less than the average level in Wisconsin or the nation. Major private employers in Waupaca County, meanwhile, have been struggling, with employment cutbacks in area paper mills in particular, and with the District's free/reduced cost lunch applications increasing from 15.2% to 18.8% of students between 2000 and 2004. Rising equalization aids for Iola-Scandinavia also indicate that property values, upon which equalization aids are based in an inverse relationship, have been dropping relative to comparable districts. These and other indicators of financial crisis show that it is unreasonable for the Association to seek so expensive a package.

With respect the remaining criteria governing reasonableness, the District argues as follows:

Lawful authority of municipal employer: The Association's higher salaries and health insurance amounts do not imply breach of lawful authority of the District, but the qualification reserving the right to the Association "to determine how the increase in salaries is divided among members" is troubling and may lead to a grievance if the Association does not choose to distribute the salary totals equitably. For this reason alone, the Association's final offer should be considered inherently unreasonable and unacceptable. Also, the Association's failure to specify a starting date for its percentage-based insurance contributions suggests that full retroactivity is contemplated, a potential conflict with language in the 2001-2003 collective bargaining agreement providing for the District's contribution obligations through August 31, 2005.

Stipulations: These do not appear to cause difficulty.

Interests and welfare of public/financial ability of the District: The District notes its arguments have already been outlined above to demonstrate its precarious financial situation, and argues that it does not have the financial ability to meet the current costs of the Association's offer without some significant cutbacks in services, nor can it anticipate being able to meet the implied future costs of that offer. Furthermore, the citizens of the District are suffering from poor economic conditions, and it is not in their interest and welfare if a final offer is selected which includes uncontrollable salary and fringe benefit increases.

Comparison to other employees performing similar services: A change in insurance plans during 2002-2003, as a result of which a "point of service" plan was adopted, was mutually agreed by the parties in order to contain costs, but complicates determining what the status quo ante was. But in percentage terms, in 2002-2003 the District contributions, though required of it in dollar terms, amounted to 84.5% of family health premiums, 93.4% of single health premiums, 91% of family dental premiums, and 100% of single dental premiums. For 2003-2004, the District proposal amounts to 84.6% of family health premiums, 93.4% of single health premiums, 91.5% of family dental premiums, and 100% of single dental premiums. In the second year, the District proposal amounts to 84.7% of family health premiums, 93.5% of single health premiums, 93.4% of family dental premiums, and 100% of single dental premiums. Thus the District maintains the status quo with respect to health and dental contribution levels. The District acknowledges that its insurance contributions are less than those made by other school districts in the comparable pool, but contends that because of economic pressures on the other districts, those districts' contributions are decreasing, while this District and its teachers have a long-standing series of agreements which stand for the proposition that high salaries are the priority here, with a lower priority placed on health and dental insurance contributions. The District argues that unlike other districts in the comparable pool, it has no salary schedule, and does not limit the amount of money that teachers can earn. With this taken into account, the District's insurance proposal is more reasonable than the Association's. Also, without considering credit advancement (because standard costing in districts which have typical salary schedules does not include it), the District proposal amounts to a 4.71% package for 2003-2004 and a 4.02% package for 2004-2005, much closer to the average comparable settlement of 4.77% and 4.51% respectively than are the Association's packages of 6.98% and 5.21%. The Association's offer, the District points out, would make for the second-highest increase among comparable districts, and the District argues that the only higher one appears to have been the result of an anomalous, low salary increase in the preceding year. Furthermore, even assuming that the Association were to distribute salary increases resulting from an award in its favor in a uniform and consistent manner, the Association's base salary would result in the District dropping to fifth among the comparables in the second year, while under the District's proposal, it would rank fourth in that year (with both proposals resulting in the District being second-ranked among the comparables for base salaries in 2003-2004.) Under either proposal, however, teachers retain the ability to reach salaries higher than anything offered in any comparable district's salary schedule, because both credit advancement and seniority increases are unlimited in Iola-Scandinavia. And while differences in how school districts actually use ostensibly standardized schedules make comparison at the middle levels impossible (with numerous agreements freezing steps, applying half-steps, and making other alterations to suit particular bargaining years, which do not necessarily show up in the printed schedules) it is easy to see that at the top levels actually being paid, the District's proposal results in the highest-paid teacher with a bachelor's degree receiving some \$7,600 more in 2003-2004 than the conference average, and \$7,300 more in 2004-2005, while the Association's offer generates \$8,200 more in 2003-2004 and \$8,500

more in 2004-2005 at that level. Similarly, at the Masters level the top paid teacher in Iola-Scandinavia receives \$5,900 more under the District proposal than the average of the comparables' top-paid teachers in 2003-2004 and \$5,450 more in 2004-2005, while the Association's proposal escalates those figures to \$6,600 and \$7,500 above the average respectively. The District notes that in the only other interest arbitration between these parties, in 1987, Arbitrator Joseph B. Kerkman rejected the Association's then argument that middle-level teachers salaries in this district could be compared against the standard schedules of other districts, and argues that a detailed list of non-standard settlements in recent years among the comparables continue to make such comparison misleading. The District also contends that teachers in this District work fewer hours than in any other comparable districts, with a total scheduled work year of approximately 1356 hours in Iola Scandinavia compared to well over 1400 hours in most of the other districts. The District argues that for these reasons, its final offer is more reasonable than the Association's.

Comparison to other public employees: The District argues that its own support staff Association recently settled a new agreement with the same insurance package the District is offering here. This is a clear comparable, while the Administrator's salary, on which the Association appears to focus, is an absurd comparison, because of his different responsibilities and because he is required to work 260 days per school year compared to the teachers' 191. Also, comparison over five years shows that on balance, teachers have received a larger total package increase than administrative staff generally in this district. With respect to other public employers in the community, insurance varies, but two out of three public employers for which there is information in the record have lesser insurance contributions than the District, and the District's proposed wage increase is above Waupaca County's reported average wage increase of 2.5% across all industries.

Comparison to private sector: The District admits the amount of information generated in the record is small, but argues that the salary increases that are in the record, particularly when weighted by earnings expectations of farmers, show that the District's final offer is well up in this comparison.

Cost-of-living: The District argues that the total package is the appropriate test and that the CPI data is well below the District's proposal and far below the Association's.

Overall compensation: The District argues that teachers in this District received generous salaries and fringe benefits compared to teachers in the comparable districts overall, and that this favors the District's offer.

Changes during the proceedings: The District argues that with its new health and dental insurance premium rates having been received a few days after the hearing, and effective March 1 through August 31, 2005, it is appropriate to note that for that period health insurance premiums are \$1266.90 for family and \$561.04 for single, with dental at \$80.18 for family and \$28.54 for single, meaning that the District's offer amounts to 100% of the single dental premium and 97% of the family dental premium.

Other factors: The District argues that the Association has not proposed an adequate quid pro quo for a series of substantial changes it seeks as part of its final offer. The District proposal maintains the status quo by continuing to contribute the same weighted average percentage amount towards health and dental insurance premiums for most of the term of the contract, and a higher amount towards the

end of the contract. The Association's proposal, by contrast, sharply reduces teachers' obligations to contribute to the health premiums, and furthermore includes a significant change in the structure of payments by changing the formula from capped dollar amounts to express percentages that would require the District to increase payments automatically if the premium goes up and also increase payments during a hiatus, a radical change in the parties' long-standing relationship. Yet although the Association has failed to prove that any significant or unanticipated problem exists, no quid pro quo for this change is included in the Association's offer. At the same time, the Association has an existing structure of credit advancement which has generated the highest top salaries among the comparables, but it seeks to double the rate of credit advancement for the future, while its offer to drop credit reimbursement generates only about half as many dollars even if only the two immediate years of the contract are considered, a clear shortfall as a quid pro quo. Also, there is no evidence that the parties would likely have agreed to change a flat dollar premium contribution structure to a percentage structure in this era of widespread reductions in health benefits, particularly since the support staff settled without such a change, so that the Association's proposal represents an improbable calculus of what the parties might likely have agreed to have they been able to reach an agreement. Finally, the Association has demanded sole control over the distribution of the salary increase, an inherently unreasonable proposal.

In its reply brief, the District argues as follows:

The District objects to the Association's neglect of two components of its final offer in its brief — the proposal to delete the credit reimbursement provision, and the proposal to reserve the right to determine how the increase in salaries is divided. The District also argues that the Association's brief is in error concerning an alleged pattern of student enrollment, which rose till 2000 but has declined since, and concerning the history of growth of the District's reserves, which grew till 2001 but have been shrinking for the last three years. The District objects to the Association's use of the entire state as a basis for comparison of the District's Fund 10 balance, and argues that compared to other districts in the comparable pool, the District's balance is not increasing at an excessive rate. The District then compares the levy rate statewide, in arguing that the Association has focused excessively on the drop in that rate by half over the past 14 years, contending that it is appropriate to make such a statewide comparison because the Association did not provide historical levy rates for the comparable school districts. The District also argues that its levy rate declined between 1999 and 2005 by only .43% compared to an average decrease of 6.39% among the comparable pool. The District objects to the Association's characterization of the District's required employee health insurance deductibles as greater than the comparables, noting that the Association asserts that the comparable pool has "modest" deductibles ranging from \$100 to \$500, and that the deductible paid in iola-Scandinavia continues to be \$100/\$200. The District also argues that the switch to the point of service plan benefitted both parties and that in conjunction with it the District also agreed to exceptional wage increases in 2002-2003.

The District notes that its teachers paid less than the average dollar amount paid for health insurance by employees in the comparable pool from 1997 through February 28, 1999. Only in March 2003, the District asserts, did District teachers begin paying more than all other teachers in the comparable pool. This, however, was offset by the District's payment to its lowest-paid teachers of higher salaries than in the comparable pool, except in Port Edwards. With respect to the reimbursement rate, the District argues that there is no evidence to support the Association's assertion that the costs of courses have

increased greater rate the reimbursement rate. The District also argues that the Association failed to address a number of the statutory factors at all in its brief, and reviews its earlier brief with respect to arguments that the Association improperly compared salaries of teachers other than those paid at the highest and lowest salary levels, in view of Arbitrator Kerkman's 1987 award. Based on the only data permissible under that award, the District argues, its teachers are paid generously compared to all of the comparables. This is a unique salary scheme which was voluntarily agreed to over a long period of time, and which explains the somewhat lower health insurance contribution level by the district. Accordingly, and along with internal comparability to the support staff Association, there is no basis on which to find the Employer's health insurance proposal less reasonable than the Association's very expensive proposal. Finally, the District argues that there is nothing in the record to support the Association's proposal to increase the education advancement credit to more than twice as prior size, calculating that by the second year of the contract, the District proposal has the advancement credit at fifth highest among the comparable pool of 17 and more than 20% above the average, while the Association's proposal is close to triple the average and about 50% above the highest other district in the pool.

### **The Association's Position**

"Greatest weight" factor: The Association argues that the District has increased its allowable revenue limit since 1993 by over 75%, ranking the District second in its athletic conference. The Association points to increases in student membership since 1993 and also notes that among the comparables, the District had the largest per-pupil increase in total allowable revenues. The District notes record testimony by its in-house expert as characterizing this as a healthy revenue stream within the revenue control law. The Association questions the District's use of projections of enrollment, arguing that its own exhibit 3 shows actual three-year rolling average membership as used in the revenue control calculations, and arguing that this shows that the District comes in fourth out of the comparable group in terms of overall increases in members. Over the last decade, the Association argues Iola-Scandinavia has had a membership increase of 13%, exceeding the statewide average of 8.4%. With respect to District testimony indicating expected financial shortfalls, the Association argues that the District is highly stable financially, pointing to the fact that the District had 29.79% of its total budget in reserve in 2003-2004, roughly double the statewide average and eighth out of 17 among the immediate comparable group in percentage increase of Fund 10 balances. These numbers, the Association argues, demonstrate an overall healthy financial condition in which the District is in good shape to afford to implement the Association's final offer.

"Greater weight" factor: The Association argues that the levy rate is highly revealing, showing not only that the District's levy rate has decreased by one half over the last decade, but also that Iola-Scandinavia has a lower tax rate than 63% of school districts statewide.

Comparability: The Association contends that it is appropriate to calculate salary comparisons at steps other than the top and bottom of the pay range. The Association argues that an employee with a bachelor's degree, nine years of experience, and 17 credits made \$2380 less in the District than in the athletic conference average in the baseline year of 2002-2003. Under the District's proposal, by 2004-2005 that disparity has grown to \$4776. The Association similarly calculates a baseline difference of \$1009, rising by the second year of the contract to \$2152 under the District's proposal for a half-time

teacher with a bachelor's degree, 12 credits and nine years' experience; for a teacher with a master's degree, seven years' experience and 18 credits, the Association calculates a mere \$98 difference in the baseline year but a relative loss of \$3043 by the second year of the contract under the District proposal. In all of these cases, the Association also notes less severe losses, compared to the baseline year, under its own proposal. The Association argues that only at the starting rates and at the very top of the salary range do employees in this District do well compared to teachers in the comparable districts. The Association argues that this is an inequitable structure; that the District cannot show an inability to pay, merely unwillingness; and that the District is clearly able to meet the Association's offer even under limitations on expenditures imposed by the law.

With respect to health insurance, the Association argues that among the 16 other districts in the comparable pool, 11 have percentage amounts towards health premiums while two of the remaining five cap the burden on the employee with language by which the district absorbs additional costs despite expressing the total as a dollar amount. In Iola-Scandinavia, however, the teachers have been on a downward spiral due to the flat dollar payment here. The Association points out that it agreed to modify the health insurance plan to a point of service plan in the preceding contract in order to reduce costs, a voluntary change which did net a one time increase of some hundreds of dollars to each teacher's salary as some compensation, but this failed to address the ever-rising premiums or the method by which premiums were paid. The Association argues that even under its own proposal, teachers will pay approximately 175% to 194% of the average employee health insurance contribution among the comparables during this contract, while under the District's proposal, teachers here will pay between 270% and 300% of the comparables' employees' average family health insurance contribution. For single teachers, the numbers (in percentage terms) are almost as great. This represents an enormous increase in recent years that must be addressed. The Association argues that the same considerations apply to the dental premiums, in which a stated percentage contributed by the District will also help offset growing expenses on the teachers, although the amounts are not as large. The Association argues that these health and dental insurance costs required of teachers are so out of proportion to what teachers in other districts are paying that they dwarf other compensation improvements.

As to the education advancement proposal, the Association argues that because the District has no traditional salary schedule, the education advancement credit is the only mechanism teachers can use to get an increase in their salary, other than the negotiated amounts. The Association points to testimony by the Association president that costs of courses have been increasing at a far greater rate than the reimbursement was increasing.

In its reply brief, the Association argues that contrary to the thrust of the District's economic claims, the District's economic condition is enviable compared to other districts in the comparable pool and across the state. The Association argues that the District clearly has the ability to pay the Association's proposed wage and benefit increases, because the Association is using actual enrollment figures while the District is using projections, and because in the baseline year the District ranked third among the comparables in its Fund 10 balance, which was also about twice the statewide average. The Association describes the District's reserve as "ever-increasing" and argues that the cited figure was compiled even after the District had used \$100,000 to balance the budget in that year. The Association also points to the falling school district levy rate over the last decade and to evidence that Waupaca County as a whole is in no worse shape than other surrounding counties, demonstrating that

this District should be able to afford similar benefits to other districts in the comparable pool. The Association argues that the District has erred in its brief in focusing on the foundry in Waupaca County, which is expanding, and on the “downtrodden” Shawano-Gresham School District, whose Fund balance has dropped by 13% over 10 years while the District’s fund balance has increased by 83%. The Association also objects to references by the District to Waupaca School District and Stevens Point School District, neither of which is included in the comparable pool.

With respect to distribution of the salary increases, the Association undertakes that no formula other than an even distribution of the \$1500 per teacher in 2003-2004 and \$1800 per teacher in 2004-2005 will occur under the Association’s offer, characterizing the District’s argument of possible mis-distribution of funds as “ludicrous.” The Association argues that the District could have filed for a declaratory ruling if it felt that the Association’s distribution method was too vague.

The Association concedes that at the top of the salary range, and at the bottom, the District is competitive. But the Association argues that when a new teacher is hired in the District, it takes over 30 years to reach the maximum career earnings, while in other districts, this takes an average of only 15 years. The Association points to testimony by its President that “the middle is where we tend to get stagnant” and argues that with relative shortfalls in the \$3000 range (or higher) under either party’s offer for middle-earnings teachers compared to their counterparts in the comparable districts, this is a compelling argument in favor of the reasonableness of the Association’s final offer.

Concerning the health insurance proposal, the Association argues that the Districts percentage contributions have ranged widely, from 68.8% to as high as 100%, making employees victims of the fluctuation and depriving them of any consistency from year to year. The Association notes that to some extent the problem is exacerbated by this District being the only one in the athletic conference with a March 1 renewal date, the latest among the comparables and one that often results in two premium increases in the same year. The Association argues that its proposal better deals with the situation, by providing some stability for teachers, whereas under the District’s offer it will continue to be impossible for teachers to make an accurate assessment of how much they will incur in out-of-pocket costs even within the same year. The Association argues that the District’s argument that the flat dollar amount serves as an incentive to the Association to reach voluntary settlements amounts to a claim that the District is comfortable having a stranglehold on the bargaining. With respect to the District’s argument that the Association has not provided a quid pro quo, the Association argues that under its percentage approach, the teachers show willingness to pay their fair share of any increases, pointing to the 1987 award by Arbitrator Kerkman as supporting a “relatively minor” contribution by employees, and arguing that the Association’s proposal to pay 10% of the family premiums is significantly more than the District proposal effectively would have required in the prior arbitration.

Finally, with respect to the education advancement multiplier, the Association argues that the reasonableness of the .008 multiplier is demonstrated by the fact that the District had been willing to accept that formula as part of a voluntary settlement, as testified to in the hearing. The Association argues that this multiplier would help deal with the lack of a traditional salary schedule, because the multiplier is the only method open to employees to regain lost ground compared to other districts.

## **Discussion**

This analysis will first consider the impact of each statutory criterion; then evaluate all criteria together with respect to each item at issue; and then summarize each final offer as a whole relative to the other.

“Greatest weight” factor: Clearly, what is important here is the overall costs of the respective offers. Over the past 10 years, as the Association points out, some key numbers favor its position. Increases in allowable revenue limits, increases in student membership, and the declining levy rate all imply that the District is in healthy financial condition despite revenue limits. The Fund 10 balance, which the District has successfully maintained at close to 30% of its total budget for many years, is a particularly telling indicator of financial health, and one in which I believe it is appropriate to look at statewide numbers as well as the average of a comparable group which (relative to school systems statewide) appears to be conservatively managed for fiscal purposes. The District’s argument that the Fund 10 balance as a percentage of budget has fallen since 2001-02 from a high of 36.97% is noted, but in 2004-05 it still stood at 28.62%, while in 1997-98 it was 28.8%; so the most that can be said is that the fund balance has fluctuated around figures that are in all years far from alarming.

The more recent data, however, generally favor the District’s argument. While as the Association points out, the District’s student numbers reflect projections while its own reflect actual census, there is no evidence that the District’s projections have been notably off the mark, and they have shown a pattern of decline since 2000 which will, under the state aid formula, in all probability lead to continued cutbacks in aid. The unavoidable special-education costs and utility cost increases add to a picture of some recent stress. But I believe the key factor here is that the District has clearly already had to tap the fund balance in 2003-2004 even while making a number of economically-driven program decisions which cut back on the general level of services. There is nothing in the record to indicate a likely increased source of revenue with which to meet the substantially higher cost of the Association’s proposal; essentially, the Association is arguing that the District could conceivably pass another voter referendum and that it could tap the fund balance. But since the fund balance is not notably out of line with the immediate comparables, and since the nature of the difference between the Association’s proposal and the District’s is a set of continuing (and in some cases automatically-escalating) expenses rather than a one-time adjustment, drawing down the fund balance to pay for continuing expenses would merely postpone the day of reckoning, while weakening the District’s general financial position as well as, no doubt, its bond rating.

As to possible room within the levy limits for additional taxation, I note that while there is some such room in each of the last two years covering the term of this contract, it amounts to not much more than 10% of the \$223,000 at issue between the parties. Meanwhile, the District’s calculation that less than 30% of referenda statewide have succeeded, when a previous referendum to increase continuing expenses was already in effect, is uncontradicted in the record and suggests that additional funding from that source is unlikely. In consequence, it is probable that selecting the Association’s final offer would, as the District argues, result in further cutbacks in services to the public. Furthermore, in at least two respects, the Association’s proposal ratchets up the continuing level of expenditure for the future, by converting fixed dollar premium contributions by the District to percentage formulas and by more than doubling the value of educational credits. I do not believe it is consistent with the “greatest weight” statutory language to ignore the likely prognosis created by an imbalance between foreseeable revenues under the statute, and foreseeable expenses that differentiate one proposal from the other.

For all of these reasons, the “greatest weight” factor weighs quite heavily in favor of the District’s proposal and against the Association’s.

“Greater weight” factor: While unemployment rates have risen over the five years preceding this contract, they have risen from a very low base to one which, to apply some perspective, many parts of the U.S. would still be glad to see. Similarly, while equalization aids and free/reduced cost lunches have been increasing, neither figure appears to be remarkable at this time, and there are other indicators which suggest “average” economic times in the Employer’s jurisdiction, including rising property values and personal income when looked at over a slightly longer period. On balance, I find little in the record to substantiate the District’s claim that Iola-Scandinavia is a jurisdiction in which economic conditions are significantly worse than elsewhere among the comparables, or for that matter in a wider geographic area. While some categories of farming have clearly been doing badly, this affects a much broader region than the District, and the economic picture otherwise is best characterized as mixed. Overall, economic conditions in the District are not much different from its immediate comparables for purposes of this matter. I conclude that the “greater weight” factor is essentially neutral here.

Lawful authority of municipal employer: The District strains to find potential illegality, or at least a potential grievance, both in the Association’s proposal to reserve to itself the right to choose how to distribute salary increases and in a potential conflict between the Association’s final offer’s retroactivity of percentage contributions and prior contract language setting contribution levels at fixed dollar levels through August 31, 2003. I do not find that either element, or anything else in either party’s proposal, impinges on the lawful authority of the District. (It is highly improbable that a serious conflict would be found to exist between a newly set contract and post-expiration terms set in a prior contract, as such a comparison would be likely seen as an easy one in which to resolve any discrepancy in favor of finding that the newer contract modified the older one. At the same time, even if the Association triggered a statutory complaint of—for example—gender or racial discrimination by its manner of applying its proposed plenary rights of salary increase distribution, it is a “stretch” to believe that it is the employer’s authority that is thereby exercised.) I conclude that this factor is not relevant.

Stipulations: There is nothing in the record to indicate that these carry any particular implication for either party’s final offer.

Interests and welfare of public/financial ability of the District: As the District argues, these are two distinct criteria wrapped up in one statutory clause. The financial ability criterion is the classic “ability to pay” criterion, which has been routinely found by arbitrators to be a relatively stringent test of employers’ claims of hardship; as distinct from the “greatest weight” factor above, in such terms the District’s large Fund 10 balance, in comparison to the amount at issue, must inevitably play a part in finding that the District could pay the costs of the Association’s offer. I conclude that the District does have the financial ability to meet the cost of either offer. The interests and welfare of the public, however, favor the District’s proposal, as there is no evidence of a likely qualitative improvement visible from this record in recruitment or retention of qualified staff from adoption of the Association’s proposal that would offset its substantially increased cost compared to the District’s.

Comparison to other employees performing similar services: The picture here is decidedly mixed. Favoring the District's position are the facts that the starting salary remains highly competitive under either party's final offer, with the District's being the more advantageous to a new employees by the second year, and that at the top levels<sup>1</sup>, the District's teachers are markedly better paid than the average of the comparables. In 2002-03 the District ranked second in base BA salary, at \$29,000 compared to an average of \$26,665. Even under the Association's two-year freeze at that level, by the end of this contract that rate is still above the average, by then \$28,389. (See also discussion of top salaries below.)

These, furthermore, are clear numbers, as unambiguous as the calculation of the educational advancement credit, in which the District's proposal is quite obviously competitive among the comparables while the Association's proposal balloons the rate to a multiple of any of the comparables' equivalent increments. Equally clear, but favoring the Association's proposal, is the substantial shortfall in insurance contributions under the District's proposal, which is short of even the lowest of the comparables by a significant margin. In 2002-03, of the 16 comparables, only three had employer family health contribution rates (whether expressed in dollars or percentages) as low as 90% of the premiums, and the average was 96%. Even by the end of this contract, while fewer of the comparables remain at 100% for family health contributions, no additional districts have fallen below 94% and the same three remain at 90%; the average remains close to what it was, at 95%. Under the District's proposal, its family health contribution remains at 85% throughout, and even the Association's figure would move the effective rate only up to the bottom level among the comparables. For single employees, the District proposal to maintain rates at the equivalent of 93% is closer to the conference average, which declines from 98% to 97% between 2002 and 2005, while the Association proposal to move to 100% employer payment for single health plans is high but not outlandish, with seven of the comparable districts paying at that rate even in the last year of the contract. The overall picture with respect to the dental insurance proposals is thematically similar but much less significant in dollar terms.

A significant problem, succinctly put, is that while the top and bottom salaries and the health insurance figures are straightforward, the rest of the picture is decidedly murky. While the Association attempted to compare selected District employees' salaries across the middle of the pay range with specified steps, which in its view those employees would respectively be at if they worked for a constructive average of the comparable school districts, the District's argument that this simply cannot be done meaningfully carries with it the imprimatur of a highly respected prior arbitrator between these parties. All of the points that Arbitrator Kerkman made in his 1988 award continue to be valid. Clearly, the District and the Association "made their bed" many years ago by adopting a simplified salary scale that was sharply different in its structure and effects from the grid structure commonly used in school district/teacher union collective bargaining. Equally clearly, parties elsewhere have made many accommodations to bargaining exigencies since then, at one time or another, outside of what might be thought of as predictable step placement and/or movement. The Association provided comparative analyses for seven named teachers with varying amounts of education and experience, but all of these assume that the comparable schools' schedules have been

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<sup>1</sup> See below.

applied in “orthodox” fashion, and seven is a distinct minority among the 65 teachers. For these reasons, it remains near-impossible to calculate with any accuracy the relative advantage or disadvantage of most of the District’s teachers compared to counterparts with equal education and experience working for otherwise comparable districts.

Yet today, 17 years after Arbitrator Kerkman’s award and 25 years after these parties mutually went their own creative way on salaries, it hardly seems enough to dismiss the entire accumulation of differences between this District’s way of doing things, product of many successive agreements with the Association though it is, and the prevailing practices among its peers—not only because this statutory criterion explicitly requires such a comparison, but because if parties come to feel trapped in any non-standard arrangement as a result of refusal of arbitrators to make the rough comparisons that are still possible, parties are less likely to feel that they can afford at least to try a nonstandard arrangement even when both parties would like to. Mere (or more) conformity hardly seems a value that should be encouraged to that degree in public education. And if the record is not sufficient to permit any credible claim of exactitude in measurement of differences between the District’s teachers and the comparables, it is certainly sufficient to provide a general picture.

The general picture is clearly one in which the Association’s complaints have a point. Simply put, the District does, as the Association acknowledges, pay better than the average of the comparables at the starting rate and much better at the top rate. The evidence in the record is sufficient, moreover, even with all of the District’s caveats taken into account, to establish at least in general terms that the District also is in a significantly worse relative position in the middle of a teacher’s career, as well as paying significantly lesser health insurance contributions at least to employees with families. And as the Association argues, the value of the District’s healthy educational credit amount and its uncapped top salary structure take a very long time to show up in the actual pay of an employee. Simple calculation suggests that, for example, 50 credits, a larger amount than is typical of even experienced teachers, would add up to something like \$5,100 of such a teacher’s salary (if all accumulated at the current rate.) So it is evident that even the most determined scholars among the District’s teachers are making much more of their salary improvement over the years from length of service than from the educational credits. It is not surprising that the District’s argument that the uncapped educational improvement possibilities should supplant relative losses in the middle of the pay range, and that both uncapped credit advancement and higher salaries toward the end of a career should supplant expectations of more generous insurance contributions, should have fallen on deaf ears with the Association.

An Association proposal to redress these imbalances, particularly a proposal which did not seek basic and imposed modifications to the parties’ long-agreed structure of salary and benefits, would therefore have significant logic behind it. Unfortunately, the actual Association proposal that is before me exacerbates as many of the imbalances as it redresses. Admittedly, a large increase for returning teachers expressed in flat dollars, even with a starting salary frozen in both years, has a tendency to have larger percentage effects towards the starting and middle levels of the salary range than at the top. But it still has the effect of raising salaries of teachers who are already at the top by more than equivalent salary levels are going up in comparable districts. Thus the average highest salary paid to the teacher with a BA in the comparable schools in 2002-3 was \$43,759; in Iola-Scandinavia, it was \$51,475, a difference of \$7,716. With a master’s degree, the comparables’ average highest salary was \$47,590, while the District’s was \$53,822, a difference of \$6,232. These are not trivial differences.

And while the District's proposal reduces the spread slightly, to \$7,301 at the BA level by the second year of the contract and to \$5,449 at the MA level in the same year, the Association's proposal widens the spread further, to \$8,501 at the BA level and \$7,476 at the MA level. This is an unjustifiable use of dollars if a more typical balance is what is really sought. The District, meanwhile, introduced a salary table for all teachers for 2002-2003, which demonstrates that a significant number, 16 (almost a quarter) of the teachers are in this upper range of earnings, i.e. about \$44,000 or more in 2002-03; thus the number of teachers who are probably benefitting from the current arrangement compared to other school districts appears sizable, though no direct comparison can be drawn because the figures supplied do not break out which of the higher-paid teachers have how many credits.

Similarly, the extraordinary increase in educational credits sought by the Association would help teachers move up who are already employed, but because there is no cap on this element either, it too can be expected, over time, to raise top salaries even further above the comparables' rates. And the Association's proposal to delete the educational reimbursement clause is, at best, a modest quid pro quo: Not only is there unrebutted evidence that over the term of this contract the amount netted by savings on the educational reimbursement adds up to about half the amount to be expended by the education advancement improvement in the Association seeks, but the reimbursement is a one-time expense, while the education advancement, as a component of subsequent salaries, is paid again at the same rate in every succeeding year. Thus I cannot find that the Association's proposal is effective in addressing the inequities which the Association complains of—except for the insurance aspect.

In health and dental insurance, by contrast, the Association's proposal does straightforwardly seek to place the District more in line with the comparables. In recent years, the District has fallen well short of the comparables in its contribution level, particularly for family health insurance, such that a proposal by the Association which sought to preserve or even improve on the relative dollar contributions by employees would seem reasonable. Here, however, the Association has again proposed something more than that—a switch to future calculation of health insurance contributions by fixed percentages, rather than fixed dollars. This is no minor change, as vigorous contests between many employers and unions over the issue have demonstrated over the years. And here the Association has proposed no quid pro quo at all, for a structural change that is widely recognized to be of sizable proportions in an environment in which continuing health insurance cost increases are all too predictable. Thus even ignoring the significantly increased amount which the Association's percentages would require the District to expend in actual dollars in the current contract period, the structural change alone supplies a substantial weight against the Association's final offer. The District's proposal, essentially preserving the percentage value of the family health and dental insurance contributions it is making (even while teachers admittedly must pay more because the amounts have increased substantially) at least has the advantage of a recognizable claim to be maintaining the status quo.

The overall cost of the Association's proposal is also out of line with the comparables. At 8.73%<sup>2</sup>, the District's two-year package is .55% lower than the comparables' average. But the Association's proposal, at 12.9%, exceeds that average by much more.

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<sup>2</sup> Overall costs are calculated here without including the cost of credit advancement, as the standard costing practice in the comparables omits lane advancement, the closest equivalent.

The final element, minimized by the Association though it is in its arguments, deserves separate comment. The proposal by the Association that “ISEA reserves the right to determine how increase in salaries is divided among members” is not unilaterally modifiable under this statute; it cannot be waived by a brief. It is by any measure extraordinary, and invites wonder at whether the Association ever questioned how it might have reacted if it had been the District which had proposed the unilateral right to determine, within an average salary increase, who got what. This proposal is not only completely unjustified in the record, it represents the antithesis of collective bargaining.

Comparisons to other public employees, and to the private sector: The one internal comparable that matters here, namely the support staff Association’s insurance package, favors the District’s proposal, though it is often recognized that support staff unions in school districts tend to follow rather than lead in establishment of new benefits, so this is not a major factor. While the Association is clearly exercised over the Administrator’s salary and benefits, the differences in roles and responsibilities, not to mention length of work year, are such as to make that comparison relatively unimportant in this statutory scheme. Similarly, while the District offered modest levels of evidence concerning public employment of other types, the evidence is not particularly persuasive both because of the large differences between teaching employment and the other kinds the Employer is measuring, and because of the patchy quality of the evidence. The same is even more true for the comparison to the private sector.

Cost of living: It is widely recognized that the total package is what matters here, and there is no doubt that while both packages are well above the CPI for the years covered by the contract and for recent years before hand, the District’s proposal both exceeds the CPI, and is closer to it.

Overall compensation: I find that the two significant imbalances (in middle-career pay and in health insurance contributions) between what teachers in this District receive and what teachers in other districts receive would advantage the Association’s proposal if that proposal had been better targeted toward the imbalance which the Association claims to have motivated it. But because the Association’s proposal is so deficient at actually addressing the imbalance, I find that this factor is at best neutral, and even that only because the overall cost of the proposals has been taken into account elsewhere here.

Changes during the proceedings: The District notes that since the hearing its spring, 2005 premium structure is now known, and describes its offer as now adding up to a higher percentage of the current dental premiums than the Association seeks; the District is a bit less explicit in omitting to calculate similarly the percentage equivalent of its spring, 2005 health insurance premium contribution, which is 84.8% at the family level (93.7% for single employees), once again notably below the lowest of the comparables.

Other factors: As the District argues, the Association’s educational credit proposal is so much greater in value than the educational reimbursement deletion, even if only the impact during the term of the current contract were considered, that the latter constitutes only a partial attempt at a quid pro quo. Meanwhile, no quid pro quo at all is offered for the proposed change to a percentage contribution structure for health and dental insurance.

Issue by issue analysis:

Health and dental insurance: The Association has demonstrated that the District's health-insurance and dental-insurance contribution levels, at least for family plans, have fallen over the past few years from a mid-pack ranking to the lowest among the comparables by a significant margin. And while the data in the record are not sufficient to establish clearly the Association's claim that the bulk of the teachers are so placed in salary terms as to disadvantage them compared to other districts, by the same token the record also does not establish a basis for the District's claim that the teachers, except for those at the top of the range, are so highly paid that this explains sharply lower employer insurance contributions. Also, the total package of the District over two years is below the average of the comparables, which is not well justified in terms either of the District's relative finances compared to those comparables, or of its fringe benefits. The District's proposal on health insurance, viewed in isolation from the Association's, is therefore somewhat weak. The Association, however, did not simply propose higher dollar levels within the long- and mutually-established structure of contributions expressed in dollar amounts. Until relatively recently, the District had roughly kept pace with its comparables in the effective percentage level, even though (like several of those comparables) dollar levels rather than percentages were specified. A compelling need to change to a percentage structure is therefore not established. Furthermore, the Association not only made this proposal as part of an unjustifiably expensive package, in terms of the comparables' settlements and the "greatest weight" factor, but offered no quid pro quo for a proposed structural change that is customarily recognized to be of considerable advantage. As a consequence, the Association's proposal is at least as weak as the District's on health and dental insurance.

Salary increase and base pay: Both proposals preserve a structure which, based on the evidence available, is probably inequitable to the bulk of the teachers who are in the middle levels of experience and qualification. The Association's does so to a lesser degree, simply because of the effect of higher fixed dollar increases in the middle of the pay range. But it comes at a cost that is unjustified here, in overall terms compared to the District's finances; in terms of overall size of package compared to settlements among the comparables; and in terms of further increases included for those employees who are already well above the average maximum paid by comparable school districts. Furthermore, the Association's proposal includes the unexplained, let alone justified, demand for total freedom to allocate salary increases as the Association sees fit. The District's proposal thus emerges as more reasonable overall in the balance of factors required by this statute.

Education advancement and educational reimbursement: Viewed by itself, the Association's proposed educational advancement change, to a rate markedly exceeding that of any other comparable school district, might be seen as a partial answer to the distortions created by the unique structure of pay in this district, and one which gives practical effect to the District's claim to offer unusual support for continuing education of its teachers. Also, because the "new dollar" costs of such credits accumulate only slowly, the proposal is not by itself a "budget-buster." And there is at least a degree of quid pro quo offered. But the proposal does not exist by itself, only as part of an expensive package which despite its overall cost still fails to address effectively the salary inequities the Association is concerned with. And to the extent that in this unusual salary package the credit advancement item should be considered by itself in terms of comparables, which is debatable, it is clearly unjustifiable in relation to educational advancement credits offered by any of the other comparables, given that it exceeds them by a factor of two to three times while on this element the District's status-quo proposal

is already higher than most of the comparables. For these reasons, overall this issue too favors the District's proposal rather than the Association's.

Summary:

The record demonstrates that over many years of an unusual salary and benefit package, distortions compared to what teachers elsewhere receive have grown to the point where the Association can justifiably point to genuine inequities, both in the level of the District's family health insurance contributions and in salary levels of mid-career teachers. But the Association's proposed response comes off in the end as less consistent with the statute than the District's version of a status quo proposal, because of a long list of factors. Among these are overall costs that are unjustified in terms of comparables' settlements; salary amounts which (if the Association's brief is to be believed) will be allocated equally and thus raise the most highly paid teachers in the unit still further above the highest-paid teachers in comparable districts; and a health- and dental-insurance proposal which undermines a justifiable quest for better employer premium contributions with an unjustified attempt to change the structure of future contributions without any quid pro quo. It is not helped by a proposed radical increase in education advancement credits which is only partially supported by a quid pro quo, which is unjustified in terms of the comparables, and which cannot claim value under the parties' unusual salary structure, because in the context of the current proposal, it reflects not a measured choice to press the District to put greater resources where the District claims to deliver for employees on a mutual interest in encouraging continuing education, but instead a grand "something for everyone" package that becomes too expensive overall. Finally, the salary allocation demand is an act of hubris that is completely unsupported in the record or the statute. The consequence is that overall, I have no doubt that the District's proposal better fits the requirements of the statute.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the District shall be included in the 2003-2005 collective bargaining agreement.

Dated at Madison, Wisconsin this 31<sup>st</sup> day of May, 2005

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator