WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE ARBITRATOR WILLIAM EICH

IN THE MATTER OF: THE INTEREST ARBITRATION BETWEEN:

OSHKOSH AREA SCHOOL DISTRICT

AND

OSHKOSH PARAPROFESSIONAL EDUCATION ASSOCIATION

DECISION & AWARD

DECISION NO. 31279-A

CASE 57, NO. 63052
INT/ARB-10059

APPEARANCES

For the Association: Richard Kern, Fond du Lac

For the District: William Bracken, Oshkosh

INTRODUCTION

On March 22, 2005, the Commission determined that the parties, the Oshkosh Area School District and the Oshkosh Paraprofessional Education Association, had reached an impasse in bargaining within the meaning of § 111.70(4)(cm)(6), *Stats*. Accordingly, on April 6, 2004, the undersigned was appointed to arbitrate and resolve the impasse. Hearings were held in Oshkosh on July 12, 2005. Testimony was taken, and exhibits received, and a schedule was set for the exchange of principal and reply briefs. The last briefs were filed on or about September 13, 2005, and the record is now closed.[1]

[1] The parties' briefs are extensive and detailed; and the fact that some arguments or assertions are not specifically discussed in this Decision and Award, should not suggest that they have not been considered. They have, in their entirety, many times over; and they have been of inestimable assistance to the Arbitrator.

The parties—as apparently has been their long-standing practice[2]—have entered into memoranda of understanding with respect to several, usually contentious, issues such as wages, work assignments, layoffs, seniority and probationary employment. Additionally, with respect to the primary issue in this arbitration—employee health insurance—they agreed that the District's contribution to premiums could be reduced from 100% to 95% of the "point of service" or POS plan—the less expensive of the two plans then available to District employees

THE PARTIES' FINAL OFFERS

Under the prior Collective Bargaining Agreement, as modified by the memoranda of understanding, the District pays 95% of health insurance premiums for all employees working at a .5 FTE (Full-Time-Equivalent) or above. The District's Final Offer would change that "eligibility" threshold to .8 FTE or greater, effective as of the last day of the 2003-2005 contract; and it has agreed not to seek retroactive payments from employees should implementation of the proposal be delayed beyond that point. The Association's offer would maintain eligibility at the .5 FTE level, as in prior agreements.

There is also an issue involving employee work schedules. The District's Offer proposes that: [1] beginning in the 2005-2006 school year, the paraprofessionals' work year will change from a set 183 days to a number representing the student calendar (plus 14 hours of professional development); and [2] that paraprofessionals be required to make up any lost time due to inclement weather if teachers are required to make up such time. The District also proposes adding one holiday day to the paraprofessionals' work-year.

The Union's Final Offer would maintain the present .5 FTE threshold for premium contribution eligibility, as well as the existing paraprofessional work-day provisions. The Union also proposes a change in the dental insurance plan requiring the

[2] The District points out in its brief that this is the first time in the parties' long-standing collective bargaining relationship that they have gone to arbitration to resolve contract differences. (Brief, at 1)

District to pay 100%, rather than the existing 75%, of premium costs; and it would delete language in the contract relating to paraprofessional job functions, replacing it with a notice that job description information is to be maintained in the District's offices.

FACTORS TO BE CONSIDERED BY THE ARBITRATOR

Interest arbitrators are required by statute, after hearing, to "adopt without further modification the final offer of one of the parties on all disputed issues submitted for arbitration." Section 111.70(4)(cm)6d, *Stats*. The statutory factors governing the decision—and the manner in which those factors are to be applied—are set forth in § 111.70(4)(cm), *Stats.*:

> 7. "Factor given greatest weight." In making a decision under the arbitration procedures authorized by this paragraph, the arbitrator … shall consider and shall give the greatest weight to any state law or directive … which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer….
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> 7g. "Factor given greater weight." In making any decision … the arbitrator … shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. "Other factors considered." In making any decision … the arbitrator … shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> 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.
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> d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
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> e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings

with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

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

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

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

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

THE PARTIES' POSITIONS SUMMARIZED

The Union, arguing that neither the "greatest weight" nor the "greater weight" criteria of §§ 111.70(4)(cm) 7 and 7g, *Stats*., apply because of the lack of any real economic difference in the offers, and the lack of evidence of inability to pay, contends that the "other factors' set forth in the statute favor its proposal—which it says is in line with both the internal and external comparables. The Union also contends that, by unreasonably proposing to "eliminate all health insurance benefits for employees working between .5 and .8 FTE," the District is unreasonably seeking to "rewrite the Master Agreement without bargaining the issues." With respect to the job-description issue, the Union says that it is simply responding to the District's own objections to these terms in

the existing agreement. Finally, the Union argues that the District's proposal to change the paraprofessionals' work-year schedule has an economic impact on the employees for which no *quid pro quo* has been offered.

The District maintains that both the "greatest-" and "greater-weight" criteria apply and that both favor its proposal. It also contends that its offer is a reasonable response to rising health insurance costs—asserting, among other things, that providing "full-time-equivalent" health insurance benefits (which it says cost upwards of $13,000 per employee per year) to half-time employees making less than $9,000 per year in wages, defies common sense. And while the parties do not dispute the makeup of either the internal or the external comparable groups, the District argues that its offer, not the union's, finds support in both groups. It also says that no *quid pro quo* is necessary—but even if it were, its offer of a $0.81 per-hour wage increase in the second year of the contract is adequate in this regard. Finally, the District says its proposal to "align" the paraprofessionals' workdays to those of the students and teachers is both reasonable and in the public interest; and that its inclusion of an extra employee holiday constitutes an adequate *quid pro quo* for the proposal. And it says the job description dispute is a non-issue.

DISCUSSION

Introduction

I. *The "Greatest" and "Greater-" Weight Factors*

As indicated, the law requires that interest arbitrators, when considering the various statutory factors, give "greatest weight" to state laws or directives limiting the District's expenditures, and "greater weight" to "economic conditions" in the area. In this case, the parties agree that their offers do not really differ in overall cost; and, for that reason, the Union contends that neither of these factors is applicable.

The District agrees that the "greatest-weight" factor is not "significant" in this case; but it says it should be given some consideration. The District concedes that its levy is comfortably under state caps or other limitations. But it says that what Business Manager Bradley Cauffman described as "pressure from the community … to hold down … taxes" in light of recent increases, [3] justifies application of the greatest-weight factor. Cauffman also testified generally that financial pressures on the are exacerbated by drops in student enrollment—which, even though relatively modest, result in a proportional loss of per-student state revenues.[4] Beyond that, the District—pointing to the testimony of Human Resources Director John Sprangers that it is expecting a 17.4% increase in employee health insurance premiums this year (Tr. 38)—says that, though the offers cost the same, the District's offer will put it in a better position to deal with these projected increases in the future.

The Union argues that the evidence shows the District's finances to be in good order—it uses the term "robust health." (Brief, at 5) While I doubt that, in these times, the economic health of any Wisconsin school district may be accurately termed "robust," it does appear that The Oshkosh Area School District's finances are at present (and have been in the recent past) comfortably within the limitations of state levy and/or revenue caps. And while the proposition is generally-stated and unsupported by specific testimony or other evidence in the record, I don't doubt that the District—again, like any other Wisconsin school district—is loath to seek additional funding from local property taxpayers. Nor do I disagree that a wide variety of factors—from declining enrollment to the declarations and proposals regularly emanating from the State Capitol—are placing increasing fiscal pressure on the District. But the fact remains—for the purposes of the contract at issue—that the District remains well within the constraints of any and all "state law[s] or directive[s] [placing] limitations on [District] expenditures … or [on]

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[3] While, as Cauffman testified, (Tr. 107) there was a decline in the school tax levy in the 2003-04 fiscal year, the "net assessed tax rate" has increased by at least 9.2% since that time. (District. Exhibit 62)

[4] District Exhibit 59 shows a loss of 26 (out of 10,526) students—a 0.24% drop—in 2003-04; and a projected loss of between 37 and 142 students (0.36% to 1.36%) in the years 2005-2008. Actual (and projected) revenue loss associated with the declines is not shown in the exhibit.

revenues that may be collected." Section 111.70(4)(cm)7, *Stats*. As a result, I do not consider the "greatest-weight" criterion to be applicable here.

I reach the same conclusion with respect to the "greater weight" criterion of § 111.70(4)(cm) 7g. I agree with the Union when it says that the District can make no "inability to pay" argument "since the cost of the [Union's] proposals is the same as the cost of the employer proposals during the term of the agreement."[5] (Brief, at 7). Again, it may be that the 2005 increases in employee health insurance premiums will require further adjustments in work, wage and/or benefit provisions, but that is a subject which, at this stage at least, is more properly left to the bargaining process.

II. *The Health Insurance Eligibility Proposal*

A. Internal Comparables

The District argues that its proposal to change the health insurance eligibility threshold from .5 FTE to .8 FTE is supported by its settlement with the Food Service Unit (FSU), one of its three other bargaining units. The District did not propose any change in the threshold for insurance eligibility—whether measured by hours or percentages of time—for the other two units, the teachers and clerical/custodial workers, because, in its words, "the amount of money expended for part-time employees' benefits in these two groups was not as great as that found in the food service and paraprofessional bargaining units." (Brief, at 23-4).

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[5] *See*, for example, Arbitrator Torosian's comment in ***City of Wausau (City Hall Support/Technical),*** Dec. No. 29533-A, November 16, 1999):

> [A] review of the record evidence convinces the Arbitrator that the condition of the local economy can easily support either party's final offer in that the two are very close in total package cost. The dispute herein is not so much over the cost of the package as it is over where to place the money: fringes or wages. This being the case, the Arbitrator is convinced that both offers are supportable by the economic condition of the local economy .. and, for said reason, other criteria must be considered to determine which of the two final offers is most reasonable.

I believe those remarks are equally applicable here.

> For example, when looking at the percentage of all bargaining unit members between .5 and .8 FTE, the food service unit had the most employees at 18.4%. In other words, there were 14 employees out of 76 that would be affected by the move to increase the threshold from .5 to .8 FTE in order to qualify for full benefits. Furthermore, the costs of health insurance as a percent of salary was 49 percent in 2003-04—second only to the paraprofessionals.
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> The next highest group was paraprofessionals at 3.3 percent. On … May 1, 2005, 8 employees out of 244, or 3.3 percent had their full-time equivalency between .5 and .8. Actually, there are now only five employees affected or only 2 percent. (Brief, at 24, citing to District Exhibit 21).

The District says it didn't propose any changes for the teachers because, not only are they on an annual salary, rather than an hourly wage, but, as professionals, their hours are "unpredictable" and not limited by contract. (Brief, at 24) As for the clerical/custodial employees, no change was proposed because, according to the District, only one employee in that unit would be affected—and he or she is a "year-round," rather than a school-year, employee. Given these considerations, the District contends that the FSU settlement is "the best barometer of where the paraprofessional settlement should occur." (Brief, at 25)

The food service workers settled for a "total package" wage-and-benefit increase of 3.8%—including a 7.7% wage increase. (District Exhibit 20) This may be compared to the District's proposal for the paraprofessionals of a 3.7% total-package increase with a 5.5% wage increase. (Id.) According to the District, the FSU workers agreed to [a] lowering the District's premium contribution from 100% to 95%, [b] an increase in the number of hours necessary for premium payment eligibility from 3.75 to 6 hours, and [c] a fixed dollar cap on the District's premium contributions, in exchange for the heavy wage increase.

The District points to what it sees as the "many shared properties between the FSU and the paraprofessionals that warrant a symbiotic relationship as to bargaining

results." (Brief, at 25) It stresses that both groups comprise hourly, school-year employees; and that they have the "highest proportion of employees between .5 and .8 FTE that are receiving full-time benefits."

The Union takes a contrary position. It says the most important internal comparables are the teachers and the custodial/clerical units—because, in both instances, they maintained the .5 FTE insurance eligibility provisions in their settlements. (Brief, at 18) And it says that the FSU employees should be considered "the odd one out" because their wage settlement was significantly higher than all other units—including the paraprofessionals. I disagree for two reasons.

First, the District's *rationale* for not making the increased-eligibility-level proposal for the teachers and the custodians—*e.g.*, that the number of affected employees, and thus the savings to be garnered from the change, are insignificant when compared to the FSU workers (and the paraprofessionals)—is reasonable under the circumstances. As indicated above, 14 out of 76 FSU employees (18.4%) would be affected by the change—in a group where, because of the number of part-time employees, the cost of health insurance as a percentage of salary—49%—is quite high. (District Exhibit 21) In the paraprofessional group, 8 out of 244 employees (3.3%) were in the .5 to .8 FTE category. (District Exhibit 19) And while those numbers do not appear high at first glance, I note that, in the paraprofessional group, health insurance cost as a percentage of salary in the 2003-04 school year was a whopping 66%[6] (District Exhibit 21) Considering those facts in light of the District's explanation that no new threshold was established for teachers or custodial/clerical workers because [a] as professionals, teachers work uncharted hours and are salaried, rather than hourly workers, and [b] only one year-round employee in the custodial/clerical group would be affected, it was not unreasonable for the District to propose no change in the premium-payment eligibility levels for those two units.

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[6] The percentages in the other groups in 2003-04 were: teachers – 18.64%; food service workers – 49.8%; and clerical/custodial – 32.19%. The 2004-05 figures for these groups were, respectively, 19.22%, 35.47% and 30.05%—compared with 58.85% for the paraprofessionals. (District Exhibit 21)

Second, as to the FSU wage settlement, John Sprangers emphasized in his testimony that the FSU workers agreed not only to a 95% employer contribution rate and a six-hour premium payment eligibility threshold, but also to a dollar cap on total premium contributions—a benefit reduction not shared by the paraprofessionals. And he said that because the District placed such a "high value" on the totality of those concessions, it offered a higher-than-usual wage increase. (Tr. 33-4) He went on to state that the "savings" garnered by the District from the insurance eligibility provision were largely "returned" to the workers in the form of additional wages, as is the District's policy. (Tr. 37, 39) He also stated that, when comparing "total package" (*e.g.*, wage and benefit) costs, the internal settlements were quite comparable among all bargaining units.

On these facts, I conclude that the District's settlement with the food service workers is highly significant, and that consideration of this criterion favors the District's offer.

B. External Comparables

The parties agree that the appropriate set of external comparables comprises the following school districts: Appleton, Fond du Lac, Kaukauna, Kimberly, Menasha and Neenah. However, the parties approach this issue from very different standpoints. The District's position is that there is no support in the comparables for granting "full-time" insurance benefits to part-time employees—that it is the only employer in the group offering "full-time" insurance benefits for .5 to .8 FTE paraprofessionals. (Brief, at 27). The Union sees it differently: it says, in essence, that no other district requires its .5 to .8 FTE employees to pay 100% of their health insurance premiums.

Looking to the external comparables, it is true, as the District asserts, that it is the only District in the group paying 95% of a .5 FTE employee's premiums. In all other districts, the contributions are pro-rated, as may be seen in the following chart.

Group	Eligibility	% Paid by Employer
Kaukauna	29.5 Hours per Week	90% (10 months.); 75% (12 months)
Kimberly	20.0 Hours per Week	48%
Appleton	17.5 Hours per Week	Approx. 53% [50%-95%]
Neenah	600 Hours per Year	53% [4 hr. min./7.5 hrs. per day x 100]
Menasha	20.0 Hours per Week	80% (10 months); 67% (12 months)
Fond du Lac	17.5 Hours per Week	55%/57% (17.5/30 [full time]x95/97%)

(Chart 1, District's Brief, at 14).

It also may be seen from the chart that, in the comparables Kaukauna, half-time (or less) employees—*e.g.*, those working 20 hours (or, as in Appleton and Fond du Lac, 17.5 hours)—appear to be eligible for employer-paid premiums amounting to 48% to 80% of the total cost. So while the District can say, as it does, that no other district pays 95% of a half-time employee's premiums, it is also true, as the Union posits, that no other district requires its .5 to .8 FTE employees to pay 100% of their premiums—and that *is* the effect of the District's proposal in this case.[7] On this record, I cannot say that the external comparables factor favors the District's offer. If its proposal had, like those in the other districts, attempted to prorate premium payment responsibility, it may well have been possible to draw a meaningful comparison; but that is not the case here.[8]

C. The Cost of Living

[7] The District emphasizes that it has made some concessions to the affected employees on the point—such as withholding implementation of the proposal to allow them to consider "bidding" on full-time work, or making other insurance arrangements. It is also true that the number of affected employees is admittedly small. But these factors bear more on the overall reasonableness and public-interest aspects of the analysis, which will be explored in greater detail below.

[8] As I discuss briefly below, the only aspect of the external comparables that I believe has any bearing on this case is the minimum annual hours necessary for employees in the other districts to qualify for insurance benefits. Those figures show that the minimum average is 1137 hours, as opposed to the District's proposal in these proceedings of 1047.2 (.8 FTE), and the Union's offer (*e.g.*, the *status quo*) of 654.5 hours. District Exhibit 49. Because, as indicated above, essentially all of the other districts pro-rate the benefit—paying a substantial portion of their half-time employees' health insurance premiums—the comparison pales. I consider it an insufficient basis on which to conclude that the external comparables favor the District's offer.

While the District has presented some evidence and argument to the effect that wages offered and paid to the paraprofessionals have exceeded the Consumer Price Index, as I have indicated above—and as the District argued in response to the Union's "comparable wage" assertions—wages are not in dispute in this arbitration. The parties have agreed on increases in both contract years. I therefore consider this criterion to be inapplicable—indeed, under the different ways in which the external comparable data can be viewed, it is wholly unworkable—in this case.

D. Other Factors

Sections 111.70(4)(cm)7r c, *Stats*., sets forth "the interests and welfare of the public ... [and] … such other factors … normally … taken into consideration" in municipal labor arbitrations" as one of the factors to be considered.

One of the Union's primary arguments in these proceedings is that the District's insurance eligibility proposal—which it characterizes as "eliminat[ing] health and dental benefits to … members of the bargaining unit without being compelled to bargain such changes"—is unreasonable. (Brief, at 3). And it says that its own offer—which would keep the employer premium contribution—now 95%—for all .5 FTE-and-above employees, is more reasonable "based on an analysis of internal and external comparability and on the lack of a *quid pro quo* for the changes to *status quo* that the employer seeks to obtain." (Id.) I have indicated above that, in my opinion, the internal comparable criterion favors the District's proposal, and, because of the two very different ways of viewing the proposal, the externals are, for all intents and purposes, a "wash."

As to the overall reasonableness of the agreement, the arguments highlight once again the parties' different approach to the premium-payment eligibility threshold—with the District taking the position that it is a limitation on "full-time" insurance benefits for part-time workers, and the Union characterizing the proposal as a complete denial of premium contributions for employees in the .5 to .8 FTE range.

The District, pointing not only to significant past and impending premium increases, but to the overall cost of paying 95% of the premiums for half-time workers (actually, workers in the .5 to .8 FTE range), summarizes its arguments as to the reasonableness of its proposal as follows:

> The District's final offer is predicated on the principle of "logic in the face of change." There are two major forces that the District felt compelled to respond to in this round of bargaining. One is the extremely high cost of providing health and dental insurance benefits to employees. Currently, employees who work as little as 654.5 hours, or one-half of a full-time paraprofessional's 1309 hours, qualify to receive the same health and dental insurance benefits as a full-time employee.
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> Logic dictates that in the wake of a health insurance family premium that costs over $1,100 per month, or over $13,000 per year, reflecting the District's 95 percent ... contribution, this level of benefit cannot continue to be offered to employees only working 654.5 hours per year. The District can no longer afford the luxury of providing full-time health insurance benefits worth over $13,000 per year and over $755 for dental insurance to employees [who] are part-time school year employees working only 654.5 hours per year.
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> Monthly health insurance premiums for the Managed Care Plan have increased from about $414 for the family plan in 1995-96 to over $1,330 in 2005-06 – an increase of over 221 percent. (D. Ex. 15) The monthly Point-of-Service health premium has increased from $423 to $1,171 … or 176 percent since 1996-97. (D. Ex. 16) Statistics like these provide the foundation for the District's proposal. What could be afforded ten years ago at approximately $400 per month can no longer be afforded at approximately $1,100 per month today. (Brief, at 4-5)

The Union, pointing to long-standing arbitral authority, maintains that where—as it says is the situation here—the employer seeks to make "significant changes in existing language or benefits," it is incumbent on the employer to establish "[1] a compelling need for the change, [2] that its proposal reasonably addresses the need for the change, and [3] that a sufficient *quid pro quo* has been offered." *See*, ***Washington County (Social Services)***, Dec. No. 29363-A, December 11, 1988 (Torosian).

There is no question that the change being proposed by the District—moving the threshold for employer contributions to employee health insurance premiums from .5 to .8 FTE—is a significant change in existing benefits, for, without the change, the District would be paying 95% of those employees' premiums. Nor can there be any question that the need for some change exists. This record, like those in most contemporary interest arbitrations, is replete with evidence of rising health insurance costs. The question becomes whether the District's proposal reasonably addressees that need, and whether there is an adequate *quid pro quo*.

In times such as these, common sense alone dictates that municipal employers and employees must share the burden of rising health care costs; and the foregoing excerpt from the District's brief amply highlights the depth of the problem. Few would doubt, I think, the dichotomy of a municipality paying more than $13,000 per year for insurance premiums for part-time employees making less than $9,000. Arbitrator Weisberger had this to say about "sharing the burden" in ***Kenosha County (Jail Staff)***, Dec. No. 30797-A November 17, 2004:

> In this era of rapidly escalating health costs, which is producing a spreading crisis throughout our nation, it is not unreasonable to expect that all county employees, including members of this bargaining unit, will absorb some of the increases for their health care.

Indeed, it has been said that employers "would be remiss if [they] failed to explore seriously ways to contain at least some of [their] rapidly rising health care expenditures. ***Id***.

Faced with a similar health-care cost-containment issue in ***Ozaukee County (Highway Department),*** Dec. No. 30562-D, June 16, 2004, I quoted the following excerpt from Arbitrator Petrie's award in ***Village of Fox Point***, Dec. No. 30337-A, November 7, 2002:

> [T]he spiraling costs of providing health care insurance for its current employees is a *mutual problem for the Employer and the Association* … 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 modify negotiated benefits or advantageous contract language*.[9] (Emphasis in the original)

In further recognition of the problems caused by ever-rising health insurance costs, many arbitrators have said that this fact alone can "significantly reduce or even eliminate the usual burden to provide special justifications and a *quid pro quo*" for benefit changes. *See*, for example, ***Pierce County (Human Services)***, Dec. No. 28186-A, April, 1995 (Weisberger).

Here, the District, citing similar authority—and the companion notion that the need for a *quid pro quo* is lessened or eliminated where there is "overwhelming support among the comparables"—contends that no *quid pro quo* is necessary in this case. As to the comparables, the District says: "In this case not *one comparable district* provides full-time benefits to part-time paraprofessionals," and it points to ***River Falls School District (Clerical)***, Dec. No. 30960, April, 2005 (Rice), where the arbitrator stated: "When the comparables fully support the position of a party seeking a change, the need for a quid pro quo is minimized if not eliminated." While the District's premise is, as indicated above, one way of looking at its proposal; another is that "not one comparable district requires its .5 to .8 FTE employees to pay 100% of their health insurance premiums." (As I have stated, I do not consider the District's proposal to be supported by the external comparables.)

It cannot be denied that the District is suffering from rising health insurance costs, and can no longer reasonably be required to bear the full burden of those costs. And while the requirement is "significantly reduced" as a result of the well-established need

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[9] As noted above, the Union, in apparent recognition of this proposition, voluntarily agreed to a 95% contribution (based on the lower-priced plan) by the District.

for relief, I believe there must be some reasonably adequate *quid pro quo* before the District's proposal—which, while supported by one internal settlement, finds little, if any, support in the external comparables—can be accepted in arbitration. The District, while holding to its position that no *quid pro quo* is necessary, says that if one is, its wage settlement with the Union—in particular, the $0.81 second-year increase—should suffice. The District's evidence showed that that increase was slightly more than double the average of increases offered in the comparable districts in the same year. (District Exhibit, 45). And the District says that this "more than compensates the employees for the [proposed] change…" (Brief, at 38) Finally, the District notes [a] that the proposed premium eligibility change affects only five employees, or two percent, of the paraprofessional bargaining unit, and [b] that unit employees will be receiving, in exchange, a wage increase that is approximately $108,000 over and above that received by employees in the comparable districts. (District Exhibit 45)

The Union says that the second-year wage increase was a *quid pro quo* not for the premium payment eligibility proposal, but rather for the move from 100% employer premium payment to 95% of the cheaper POS insurance plan. Its argument is that "[t]he inevitable conclusion to be drawn" from its agreement to the change to 95% of the POS plan is that the wage increase "is the quid pro quo for the Union's agreement to limit the health insurance benefit." (Brief, at 13) As the District points out, however, the Union offered no testimony or other evidence as to the existence of any such agreement or understanding between the parties. The evidence is, rather, that the parties engaged in "total package" bargaining—as suggested by the fact that, despite differing wage/benefit terms, all units settled for essentially the same total-package percentage increases. As a result, it is difficult, if not impossible to isolate the *quid pro quo* as being limited to only one (or two) of the Union's three primary concessions: [a] the move to 95% payment; [b] the provision that the 95% apply to the less costly POS plan; and [c] the change in the premium-payment eligibility requirement.

As the Union suggests, the settlement with the FSU workers included a more generous wage increase. But the FSU settlement also involved—in addition to the move

to 95% and the change in the premium payment eligibility threshold—imposition of a dollar-cap on the premium payments, which is something not included in the paraprofessionals' settlement. And the District's Human Resources Director testified that those concessions—in tandem, not separately—warranted the higher second-year increase because of the "high value" the District placed on them.[10] (Sprangers, Tr. 33)

Well and good; but the inescapable fact in this case—the hundred-pound gorilla in the room—is that the District's proposal *completely excludes* certain members of the bargaining unit—those working at less than .8 FTE—from participation in the employer-paid health insurance plan. No comparable school district has a similar exclusion (as discussed above, they limit eligibility to employees working a specific number of hours per week, but offer *pro rata* premium payment). The ultimate question is thus whether the increased costs facing the District, together with the fact that one of the three other internal settlements contain the same premium-payment eligibility provisions is enough to render the District's offer the more reasonable. I believe it is for two essential reasons.

First, the great body of arbitral authority supports the proposition that, of all the "other" criteria, the internal settlements traditionally carry the most weight—although I note that, in most cases applying that rule, the internal settlements were both several in number and consistent. *See*, for example, ***City of Wausau (Support/Technical)***, Dec. No. 29533-A, November 16, 1999 (Torosian); ***Rio Community School District (Educational Support Team)***, Dec. No. 30092-A, October 30, 2001 (Torosian); ***City of Sturgeon Bay (Police Department)***, Dec. No. 31080-A, July 18, 2005 (Eich). Such deference is justified, it is said, on the basis of consistency: the belief that equity, fairness and employee morale require, to the greatest extent possible, that all employees perceive that they are being treated the same as their colleagues. *See*, ***Winnebago County***, Dec. No. 26494-A, June, 1991 (Vernon); ***City of Wausau***, *supra*; ***City of Appleton (Maintenance Divisions)***, Dec. No. 30668-A, March 15, 2004 (Torosian)

[10] Sprangers also noted that the paraprofessionals' wage increase was second only to that given the FSU workers, and was followed by the teacher and clerical/custodial units.

As I have discussed above, only one of the three other internal units—the FSU workers—settled for a .8 FTE premium-payment eligibility requirement. But the District's evidence as to the number of affected employees in the various units established that the two with the greatest number of employees in the .5 to .8 FTE range were the FSU workers (14) and the paraprofessionals (8).[11] The result is that the great majority of the District's .8 or lower FTE non-teaching employees are now subject to the new eligibility rule.[12] This consideration, coupled with the fact that the District, by setting the proposal's effective date on the last day of the contract period in order to allow affected employees to apply for positions eligible for the premium contributions,[13] and agreeing not to apply it to any employee retroactively—together with the relatively small number of employees subject to its terms—leads me, however reluctantly, to the conclusion that the District's proposal cannot be rejected as unreasonable or contrary to the public interest.

It is not a decision free of misgivings. It would have been a much easier conclusion to reach had the District, like others in the conference, softened the blow by designing a *pro rata* premium contribution plan. The law requires, however, that one of the competing offers be accepted without modification; and, for the reasons expressed above, I reluctantly conclude that the District's is the more reasonable. Acceptance of the Union's offer would not be responsive to the established needs of the District and its taxpayers in a time of rapidly rising insurance costs (and tax levies); and it would result

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[11] Now five.

[12] As indicated above, while the teachers have twelve (out of 834) employees between .5 and .8 FTE, they are professionals whose hours are not set or limited by contract, and they work for an annual salary, not an hourly wage. These are, I feel, adequate points of distinction which justify treating them differently from the paraprofessionals and FSU workers. As for the clerical/custodial employees, only one out of 158 is between .5 and .8 FTE—and that person is a .7 FTE employee working 1456 hours annually—considerably more than the 1047.2 hours contained in the District's proposal. (Tr. 44; District Exhibit 21)

[13] The Union is critical of this aspect of the proposal, arguing that, by making the change effective on the last day of the contract, the District is, in effect, removing the subject form the bargaining table. I disagree. In ***Marquette County (Highway Department)***, Dec. No. 31027-A, June 24, 2005, I noted—also in the context of health-care benefits, that "benefit changes are not solely proposed to impact current practices and benefits; proposals also address future costs and possible savings." I continue to believe that is true; and I decline the Union's suggestion that the District's offer must be rejected because of its end-of-contract-period effective date.

in a group of paraprofessional employees retaining benefits that are not available to the majority of their .5 to .8 FTE non-teaching colleagues.

III. *The Proposed Work Year Changes*

The Union argues that the District's proposal to align the paraprofessional work year with those of the teachers (and with student days) results in a 1.6% reduction in their compensation—a *de facto* loss of three days work—and that the District's offer of an additional paid holiday constitutes an inadequate *quid pro quo*.

There is little doubt that, presently, the paraprofessionals' work-day schedule—a set 183 days per year—frequently does not coincide with days the students and teachers are at school; and the District's *rationale* for the proposal to align the paraprofessionals' workdays with teacher/student days is to have the paraprofessionals at work, in the classroom, while the students are receiving instruction. The District says it makes little sense to have the paraprofessionals on the job when either the students or teachers (or both) are not present. As an example, Sprangers testified that, in 2003-04, there were approximately nine days where the students weren't present, but the paraprofessionals were at school (and being paid). The District also points out that all six comparable school districts have tied the number of paraprofessional workdays to the school calendar.[14] (District Exhibits 50, 51) The evidence also shows that 183 workdays for Oshkosh paraprofessionals under the current contract, is higher than five of the comparables and equal to the sixth. According to District Exhibit 52, Kaukauna has 178.5 workdays, Neenah, Menasha and Kimberly have 180, Fond du Lac has 182 and Appleton 183. As indicated, the District's proposal is for 181.

I agree that the other districts' alignment of paraprofessional workdays is strong evidence of the reasonableness of the District's proposal in this case. The Union

[14] The District's proposal in the case would also have the paraprofessionals make up "snow days" if teachers are required to; and it offered evidence showing that five of the six comparables have a similar requirement. (District Exhibit 51)

disagrees, however. It discounts the asserted need for paraprofessionals to be at work on days when teachers and students are present, listing many paraprofessional "duties" that, on their face at least, appear not to relate to actual teacher/student classroom time—such as occasional attendance at staff meeting, performing "clerical tasks" and other duties determined by teachers and principals, maintaining adequate records, assisting in the preparation and care of instructional materials, etc. (Reply Brief, at 11-13) These random incidental tasks do not, in my opinion, refute the reasonableness of the District's desire to align the workdays of teachers, students and paraprofessionals. And, common sense would dictate that, in light of their predominant function as teacher aides, having the paraprofessionals at school for eight or nine days during the school year when students/teachers are not, is an inefficient and costly practice.

Given the evidence—including the conformity of the District's offer in this regard to the practice in the comparable districts—and given the addition of a paid holiday to the paraprofessional work year, I conclude that the District's offer meets the test for a change in the *status quo*: the showing of a need, a reasonable response to that need, and an appropriate *quid pro quo*.

IV. *The Union Proposals*

A. Dental Insurance

The dental insurance provisions of the existing contract provide as follows:

> The employer pays 75% of the cost of actual single and family premiums in Year One of the contract. The Employer agrees to allocate monies toward payment of premium for … year Two of the contract (… $80,000); Year Three of the contract (…$88,000). Such monies shall be used for the purchase of dental insurance up to the 100% level for current positions in the bargaining unit. (Union Exhibit 1:10)

The Union's final offer in these proceedings would change the District's percentage contribution to 100%. It points out that in 2002-03 (the third year of the contract), the District actually paid 100% of the $114,790 premium costs—or

approximately $27,000 over the $88,000 contract cap; and it says that similar "overages" occurred in the two succeeding years. The District acknowledges that, in the years in question, it bargained those payments with the Union. It says that, even though the contract sets a cap, it has agreed to pay more "voluntarily and in good faith," stating that "the parties have always bargained an aggregate dollar amount so as to keep control of the costs and subject it to the give and take of bargaining." (Brief, at 61; Reply Brief, at 18) And it claims the Union's proposal to change the contract cap amounts to a change in the *status quo* for which the Union has failed to establish a "compelling need" or to provide any *quid pro quo*. The Union claims that the District—apparently by failing to agree to the contract change—is seeking to change the *status quo* (*e.g.* the District's practice in the past few years of paying the full premium costs).

I agree with the District that the contract language must be considered the *status quo*. Accepting the Union's position that its proposal to change the contractual limitation should be considered an affirmation, not an alteration, of the *status quo* would, for all intents and purposes, have me re-write the parties' contract; and that is plainly beyond an interest arbitrator's statutory authority. The District points out, correctly I think, that there is no evidence in the record that any harm to the interests of the Union's membership has occurred in this area—no evidence that the parties have been, or will in the future be, unable to bargain actual dollar amounts sufficient to capture the full amount of the dental premiums. In short, the Union has failed to establish either a need for change, or that the requested change is supported by an adequate *quid pro quo*.

B. Job Descriptions

The Union has also proposed replacing the contract language (in Article X) listing several categories of "tasks" to be performed by paraprofessionals with the following language: "The human resources department shall maintain current job descriptions for all paraprofessional positions." The Union points to the testimony of the District's human resources director (Sprangers) that complying with that requirement would not impose a burden on the District. (Tr. 59) And it says that the replacement language "mirrors language from one of the comparable collective bargaining agreements." (Brief,

at 28). The District asserts in its brief, as it did at the hearing, that job descriptions for all employees are kept in the District's offices, available to anyone wishing to see them. I agree with the District that this is a "minor issue," and does not affect the outcome of this arbitration. I do not believe it needs to be discussed further

CONCLUSION & AWARD

For the above reasons, and in consideration the applicable statutory criteria, together with the evidence, exhibits and arguments put forth by the parties, I conclude that the Final Offer of the District, Dated February 15, 2005, more closely adheres to the statutory criteria than that of the Union, and I therefore direct that that offer be incorporated into the parties' Collective Bargaining Agreement in resolution of this dispute.

Dated at Madison, Wisconsin, this 21st day of October 2005

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William Eich, Arbitrator