In the Matter of the Final and Binding
Interest Arbitration of a Dispute Between

MANITOWOC PUBLIC SCHOOL DISTRICT

and

MANITOWOC PUBLIC SCHOOL DISTRICT EMPLOYEES (CUSTODIAL/ MAINTENANCE), LOCAL 731, WI COUNCIL 40, AFSCME, AFL-CIO

Case 57
No. 62658
INT/ARB-9990

Decision No. 31314-A

Arbitrator: James W. Engmann

Appearances:

Mr. William G. Bracken, Labor Relations Coordinator, Davis & Kuelthau, S.C., P.O. Box 1278, 219 Washington Avenue, Oshkosh, WI 54903-1278, appearing on behalf of the Manitowoc Public School District.

Mr. Neil Rainford, Staff Representative, AFSCME Council 40, AFL-CIO, 1311 Michigan Avenue, Manitowoc, WI 54220, appearing on behalf of Manitowoc School District Employees, Local 731, AFSCME, AFL-CIO.

ARBITRATION AWARD

The Manitowoc Public School District (District or Employer) is a municipal employer which, via the Manitowoc Board of Education (Board), operates the Manitowoc Public School System. Local 731, WI Council 40, AFSCME, AFL-CIO (Union), is a labor organization which is the exclusive collective bargaining representative "for all regular full-time employees and regular part-time employees who work a minimum of twenty (20) hours per week for the Manitowoc Board of Education employed in its Buildings and Grounds Department, excluding the Director of Buildings and Grounds, supply manager, maintenance foreman, and custodial supervisor – Lincoln High School."

The Employer and the Union have been parties to a series of collective bargaining agreements, including one covering the 2002-2003 term. The parties exchanged their initial proposal and bargained on matters to be included in a 2004-2005 successor collective bargaining agreement. In August of 2003, a petition was filed by the Employer with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. An investigation was conducted by a member of the WERC staff which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the Investigator, as well as a stipulation on matters agreed upon, after which the Investigator notified the parties that the investigation was closed and

the Commission that the parties remained at impasse. The Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission. The parties selected the undersigned to issue a final and binding award to resolve said impasse by selecting either the total final offer of the Employer or the Union. Hearing was held on August 17, 2005, in Manitowoc, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS

Employer:

Wages – 2005: 3.25% across the board increase effective January 1, 2005.

Union:

Wages – 2005: 3.0% increase across the board effective January 1, 2005, and 1.0% increase across the board effective July 1, 2005.

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

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:

1. The lawful authority of the municipal employer.

2. Stipulations of the parties.

3. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

4. 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.

5. 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.

6. 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.

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

8. 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.

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

10. 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.

POSITIONS OF THE PARTIES

Employer on Brief

The Employer argues that its offer is preferred under the Greatest Weight Criterion that imposes revenue controls on the District; that while the District technically has the ability to pay the Union's final offer, given the settlements and the Union's deferred compensation demand of $18,000 that will be realized in the next budget, the District's offer emerges as the more reasonable one given the prospect of trying to live within revenue control; that the Union is asking the District to cut about $24,000 from its budget to pay for its wage proposal; that because the Union has failed to justify its demand, the District declines to do so; that the District's offer is preferred under the Greater Weight Criterion of local economic conditions; that the City's unemployment rate is high compared to the rest of the state; that the average per capita personal income is almost $3000 less in Manitowoc County than the Wisconsin average; that Manitowoc County has lost a great deal of manufacturing jobs over the past several years; that the local economy is suffering; that the District's ability to provide wage increases of 3% and 3.25% in this contract speaks highly of the District's attempt to compensate its employees well; that, on balance, the District's final offer emerges as the most reasonable one on the Greater Weight factor of local economic conditions; and that its offer should be supported by the arbitrator.

The District also argues that its wage offer is more reasonable than the Union's; that its offer exceeds the prevailing settlement rate among comparable districts; that no other district has negotiation a 3%/1% split as the Union has proposed; that the Union has not sustained its burden of proof to justify a split wage increase amounting to 4% in 2005-06; that no district has settled that high; that there is no reason for the District to do so; that as the District's offer clearly emerges as one of the highest over the past two years, the arbitrator can select its offer knowing it is above the prevailing wage settlement pattern; that the District's wage rate exceeds the comparable average at every benchmark, sometimes by a significant amount; that there is no reason to award the Union's higher offer in this case; that the evidence certainly refutes any notion that a 3%/1% split is necessary for catch-up; that the District's wages rank competitively among the comparables; that employees in this bargaining unit have a lucrative longevity program that rewards employees for their continued employment; that because there is no reason to grant an extraordinary wage increase in this round of negotiations, the District's wage offer emerges as the most reasonable when measured against settlement rate, average wage rate, and ranking among external schools; and that, for this reason, the arbitrator should select the District's offer as being the most reasonable.

In addition, the District argues that there is no reason for a split wage increase, as the Union has proposed; that, typically, unions and employers agree to split wage increases when there is a need for "catch-up"; that employers utilize a split wage increase so that the employer achieves the cost of the proposed wage increase at a more reasonable level; that unions utilize a split wage increase to get the wage 'lift" that they seek; that the "lift" defers some of the costs to the next contract;

that, in short, both parties compromise under the split arrangement to achieve their respective goals; that the Union has not proven a need for a split wage increase; and that the evidence clearly refutes any attempt by the Union to claim "catch-up".

In terms of internal comparables, the District argues that the internal comparisons support the District's offer; that this unit is following the lead set by the other units in the District; that the District did not provide a split wage increase to secure the new health plan for any of the other units; that because none of the other bargaining units adopted a split wage increase for making the health insurance change, there is no justification for the Union's split wage proposal; that none of the other internal bargaining units received a *quid pro quo* for modifying the insurance plan; that as the Union's own witness testified, the new plan, all things considered, is an improvement over the previous plan; that no other internal bargaining unit received a *quid pro quo* for changing to the new health plan; that the relatively high wage settlement in the paraprofessional and clerical bargaining units was due to comparisons, both internal and external; that the parties never negotiated nor mentioned any *quid pro quo* for changing the insurance plan; that the wage increase in those two units was "catch-up"; that no "catch-up" needs are present for this bargaining unit; that it would be disingenuous for this unit to piggyback on the settlements in the two units where the wages were entitled to "catch-up"; that the evidence shows that in this bargaining unit, the wages are above the comparable average; that there is no need for "catch-up"; that the District's final offer finds overwhelming support among the internal bargaining units; that these units show that no *quid pro quo* was negotiated for the new health plan; that there is no support for a split wage increase to justify the Union's offer; that the insurance contribution increase is lowered by the Section 125 plan offered in the District; that the overall net effect of the health insurance change is beneficial to most employees; and that, thus, there is no reason to supply a *quid pro quo* for making the change.

In terms of health insurance, the District argues that many arbitrators support the internal settlement pattern, especially on fringe benefits, for ensuring a uniform application among all employees; that it makes sense that all employees are covered by the same health plan; that the Union has finally agreed to join all of the other employees who made the switch one and one-half to two and one-half years ago; that the parties have agreed to make the health insurance change on December 31, 2005, the last day of the contract; that there is no reason for a July 1, 2005, implementation of the Union's addition 1% wage increase; that the Union's timing of the 1% wage increase does not coincide with the insurance change; and that the Union's attempt to link its 1% wage increase on July 1, 2005, to the December 31, 2005, implementation date of the new health plan must fail.

The District argues further that a *quid pro quo* to change insurance plans is not necessary; that the high cost of health insurance is a mutual problem; that the parties have witnessed an unparalleled increase in health insurance premiums that warrants a measured response in order for the District to contain its costs to be able to provide wage increases to its employees and fund the rest of its budget; that arbitral holdings diminish or eliminate the need for a *quid pro quo* when confronting increases in health insurance; that the need for a *quid pro quo* diminishes in the face of universal

support in external comparables; that arbitrators typically do not require a *quid pro quo* when faced with overwhelming support among the internal comparables, especially for a unit that has only grudgingly accepted the internal change accepted by all other employees; that in this case, the internal comparables fully support the move to the new health plan with no *quid pro quo* and no split wage increase; that there is no change in the status quo regarding employees' contributions to the health insurance premium; that these employees have contributed to the health insurance premium before; that having these employees pay a portion of the premium is not anything new; that since employees have contributed a portion of the premium in the past, the move to guarantee a 5% contribution is not a radical shift in the status quo; that, rather, it embodies the fact that employees have paid a health insurance contribution in the past; and that, thus, no *quid pro quo* should be extracted from the District since there is no significant change in the status quo.

The District continues its rational by arguing that comparisons to internal and external comparables support the improved health plan and the employee's 5% contribution to it; that all other employees in the District contribute 5% to the premium and have adopted the new health insurance plan; that this unit is the last one to do so; that because of the overwhelming trend among all other employees in the District who have adopted the 5% employee contribution to the new health insurance plane, this unit should not expect any *quid pro quo* when the other employees did not receive one for making this change; that because of the improved benefits for most employees under the plan, no *quid pro quo* is required; that the District is offering a more valuable health plan and, in exchange, is asking that employees pay 5% of the premium to support it; that this is a reasonable compromise that all other employees in the District agreed to; that now it is this unit's turn; that most of the relevant external comparables require an employee contribution; that the overwhelming facts show that both the internal and external comparables have made changes to health insurance plans and have required employees in a majority of comparable districts to contribute to maintaining those levels of benefits; that the District believes that the internal settlement pattern compels adoption of its offer; and that, therefore, the arbitrator must find that the District's final offer is more reasonable.

Finally, the District argues that even though a *quid pro quo* is not necessary nor required, the District's offer provides it by providing a wage increase higher than that found among the comparables; that the District's offer is above the cost of living and should be preferred on this factor; that the overall compensation factor is best met by the District's offer; that the District's proposed wage and fringe benefit increase is 4.8% in the second year; that this is extremely competitive; that the Union has not produced any information to justify its 5% package in the second year; that the District provides an extremely benefit-rich environment for employees to work; that the District's offer best matches the overall compensation criterion in the statute; that the District's offer is in the best interest and welfare of the public because it takes into account the fiscal, economic and political realities of the day; that the stipulation of the parties must be viewed in the District's favor; and that, for all these reasons, the arbitrator should select its final offer.

Union on Brief

In terms of the Greatest Weight Factor, the Union argues that this factor favors its offer; that the District did not show that selection of the Union's final offer would significantly affect the District's ability to meet State imposed restrictions; that the District is more than able to pay the Union's offer; that it adds very little additional expense; that the District has paid cash for major capital projects that many districts must routinely bond to complete; that the District's 2004-2005 budget actually decreased by nearly $6,500,000 from the previous budget; that the District continues to have the lowest tax rate in this part of the state; that the District will tax almost $700,000 less than the maximum amount allowed under the State imposed revenue cap; that this is not a District whose revenue caps will be even remotely threatened if the unit employees concede only $5,500 in insurance benefits instead of $10,500; that the difference in cost between the two offers is approximately $5000 for 2004-2005; that doubling the District's one year 2004-2005 school-year budget to approximate the two year period covered by the disputed collective bargaining agreement represents 0.00004% of the budget; that such an incredibly small and insignificant amount of the District's total expenditures in no way threatens the District's ability to pay or brings the District anywhere near its revenue caps; that, in short, the difference in the offers is far too small and insignificant to trigger the greatest weight factor; that the extraordinary fund balance accumulated by the District favor's the Union's position; that the District has the second highest 2004 Fund 10 balance among the comparables; that its ending balance is $3 million greater than the average of the comparable school districts; that its percentage of end balance to expenditures is more that 8% greater than the average of the comparables; that it is two to three times greater than three out of the four comparable districts; that the District will no doubt argue that the Board should not be second guessed when it comes to deciding how to spend the District's monies and determining its priorities; that the District can and should be second guessed if it is paying cash for long term facility improvements and parking lots and paying unfunded liabilities, such as the Wisconsin retirement prior service credits, and then claims hardship when it comes to employee wages and benefits; that the District voluntarily spent millions from its Fund 10 balance which could have been funded by more traditional means; that the District enjoys a relatively low mill rate that has decreased in recent years; that the District's financial well being has steadily and substantially increased over the past four years; that in light of the minimal difference in the offers, the substantial Fund 10 Balance of the District, the favorable mill rate, and the District's spending habits over the majority of the period in dispute, the District cannot credibly claim that it is unable to pay the Union's offer to maintain the wage/premium pattern; and that the evidence clearly indicates that the greatest weight factor supports the selection of the Union's final offer.

In terms of the factor give "greater weight" to the "economic conditions in the jurisdiction of the municipal employer " than is given to the criteria in section 7r, the Union argues that Manitowoc's economy compares quite favorably to the comparable local economies; that it has the highest level of property value per member of the five comparable communities; that its property values have increased faster than all but one of the comparable communities over the period 200-2004; that Manitowoc's equalized value per member exceeds the average of all of the comparable districts by more than 14%; that there can be no doubt that Manitowoc has a diverse and growing economy as buoyed by strong and rising property values; that the local economy is diverse enough to maintain a level of property values that provide for a comparatively low levy rate and a high fund balance in

comparison to the comparables; and that, considering the commonly accepted indices of the local economy as a whole, the greater weight factor favors the Union's offer.

Regarding the other factors, the Union argues that the stipulations of the parties favor the Union's offer; that the unit conceded over $15,700 worth of health insurance benefits to the District in voluntarily agreeing to accept the 5% premium concession pattern established by the other three bargaining units; that both parties agree to return some portion of the concession; that this dispute is only a question of how the return will be structures; that the willingness of the Union to concede the benefit in the first instance clearly favors the Union's offer under the statutory criteria; that the employees must be recognized for their concession and be granted the upper hand in determining how to structure the return in wages; and that the employees' concession should favor their offer in this dispute.

In addition, the Union argues that the comparability group is well established; that the group is composed of the school districts of Fond du Lac, Plymouth, Sheboygan, and Two Rivers; that the internal settlements support the Union's offer; that the District offered substantial wage increased to the other units to persuade them to accept the new health insurance arrangement; that in the case of the clerical employees, the District also offered much greater increases than it is offering this unit to secure the concession through interest arbitration; that the District granted the clerical employees 5% average wage increase over the three year contract when the 5% premium concession was enacted; that the para-professionals agreed to pay 5% of the premium for two 5.5% wage increases; that the teachers accepted the 5% premium payment for 1%-2% additional wages; that, in short, the pattern of internal settlements clearly supports the Union's offer in this dispute; that the District's offer of an additional .25% over the typical 3% across the Board increase in exchange for 5% employment payment of health insurance premium share is woefully inadequate given the clear internal settlement pattern of paying well in excess of 2.0%-2.5% in multiple years to support staff units and at least 1% in additional wages to the teacher unit; that external settlements continue to support the Union's offer; that external settlements do not require employees to pay premium share; that employee health costs are higher than comparable districts; that the Manitowoc employee health plan is compromised by self funding; that it is the sole self funded plan among comparables; that the majority of comparable districts do not require employee premium payment; that the District enjoys lower health insurance premium costs than comparable districts; and that the cost of living criterium supports the Union's offer.

In terms of costing the proposals, the Union argues that total package costing is unsupportable and irrelevant; that the District's proposal to convert to total package costing is a major change; that the District has not demonstrated a need for total package costing; that the District has not provided a *quid pro quo* for total package costing; and that there is no support among the comparables for total package costing.

District on Reply Brief

The District offers nine arguments regarding the *quid pro quo* and health insurance changes in this

matter; that no *quid pro quo* is required 1. given the huge increase in health insurance costs over the past several years; 2. since the new health plans's benefits are better than the previous plan's benefits; 3. since the other three internal bargaining units have accepted the same deal; 4. since the employee contribution to the health insurance premium has already occurred in this and other units prior to this contract; 5. since none of the other bargaining units achieved one; 6. given the overwhelming and undeniable trend in the public and private sector to require employees to pay a portion of the health insurance premium; 7. given the practice found among external comparables; 8. given the opinion of many arbitrators; and 9. since the parties already agreed upon the changes to the health plan.

The District argues that in terms of the statutory criteria, the "greatest weight" factor supports the District's offer; that the Union's final offer is affordable but it is unreasonable; that the Union has not met its burden of proof in justifying its final offer; that the "greater weight" factor of local economic conditions favor's the District's offer; that there is no question that Manitowoc's economy has suffered a tremendous blow with the loss of key employers in the area; that with its resident's income below that of the state and nation, the local economic factor must be viewed in the District's favor; that the stipulations of the parties shows that the health insurance issue has been resolved voluntarily; that among the primary comparables, Plymouth is not settled for either year in dispute and Two Rivers is not settled for 2005-2006; that, given the paucity of school districts that have settled in the primary comparables, it is certainly worthwhile for the Arbitrator to consider the secondary comparables; that all of the other internal bargaining units have accepted the health insurance plan change without any specific *quid pro quo*; that it is not true that the District granted clerical employees a 5% average wage increase to obtain a 5% premium concession; that the District and clerical unit were bargaining a first contract; that the clericals were low in the comparables; that the para-professionals' wage increase was never linked to the health insurance concession; that the teacher bargain was based on an overall package and not the insurance concession; that the District's offer is above the primary settlement pattern; that there is no rational that would warrant a 3%/1% split, as the Union proposed; that this unit is not in a "catch-up" situation; that this bargaining unit is the lone holdout; that it will be moving to the new insurance plan December 31, 2005; that this is significantly later than all of the other employee groups in the District; that, therefore, the District's 3.25% offer emerges as the most reasonable before the Arbitrator; that clearly the trend among comparable school districts is for employees to pay a portion of the health insurance premium; that while some of the other districts may still pay the full premium, the wage rates are not as high as found in Manitowoc; that the District has always used total package costing; that the statutory criterial requires the arbitrator to consider the overall compensation received by employees; that the District is not making a proposal to accept total package costing; that the District is simply trying to capture the full range of wages and benefits that both parties have bargained; and that, for all of these reasons, the District respectfully requests that the Arbitrator select its offer in these proceedings.

Union on Reply Brief

The Union argues that the District's argument that the Union's split wage increase defers

additional costs into the 2006 agreement is specious; that the employees' 5% premium concession is also split in exactly the same way as the wages are split; that the value of the employees' premium concession will result in a credit to the District of $31,484 in 2006; that the District must also budget for this $31,484 reduction in funds allotted to its custodial employees; that, in short, both the 5% employee premium share increase and the corresponding 1% wage increase are split; that the 5% premium share concession is considerably greater than the 1% wage increase; that, therefore, the District will need to budget for $11,377 less in 2006 as a result of this exchange, if the Union's offer is selected; that the unit employees are annually conceding over $11,000 more in premium dollars than they are seeking in the 1% incentive; that this concession by the employees is an extremely good deal for the District; that it is not surprising that the District offered the other two support bargaining units substantially more than 1% to accept the premium share liability, nor is it surprising that the District offered the higher paid teachers at least 1% in additional wages to take this 5% premium share concession; that the District offer requiring each family plan holder to concede over $450 each year after its 1/4% wage increase is unreasonable and asks too much of its employees; that it is not supported by the comparable settlements inside or outside of the District; that the ability of the employees to pay their 5% premium share on a pre-tax basis provides more savings to the District by reducing the taxable income of each employee on which the District must pay FICA, Social Security taxes and WRS pension contributions; and that, in sum, the District's claim that the Union's offer defers costs into the 2006 contract is nor accurate nor honest accounting because the District is well aware that the savings to the District from the Union's 5% premium concession will be greater than the Union's 1% wage increase in 2006 and every year thereafter, even without consideration of the additional tax and pension savings the District will enjoy.

The Union notes that the District argues that the health insurance plan design changes were traded for the additional 5% premium share; there are several serious problems with the District's arguments which render them untenable; that, first, this bargaining unit has no access to the new insurance plan, even if it could be considered better from the employees' perspective, until after this contract expires; that this unit recognized the potential for even higher out of pocket costs associated with the new plan and has reluctantly agreed to make the transition at the start of the next contract cycle; that under these circumstances, this change cannot constitute the incentive for accepting the 5% premium share on July 1, 2005; that, second, the clerical bargaining unit began paying 5% of the premium on July 1, 2000, at which time it received wage increases ranging from 4.8%-6.1%; that the clerical bargaining unit did not move into the new plan until July 1, 2004, four years after its members began paying 5% of the insurance premiums; that the District's claim that the new plan was the incentive to accept the payment of 5% of premiums by the clerical employees is utterly false; that there is absolutely no relationship between the two changes; that, three, the other three bargaining units were granted both the substantial wage incentives and the plan design changes; that only this unit is being denied the wage incentive; that even if the District believes it offered the new plan in exchange for the 5% premium share, the evidence clearly indicates that it required both the new plan and the wage incentive to secure voluntary settlements with the other units; that, four, the new health insurance plan is not better overall from the employee's perspective; and that although the new plan tends to place a lower limit on the major

medical costs an employee can pay in a year, the new plan separates out the drug costs and subjects the employees to even higher total out of pocket costs when drugs and deductibles are taken into consideration.

In addition, the Union argues that it does not assert that the other bargaining units received a *quid pro quo* for moving to the insurance plan; that the Union seeks nothing in exchange for moving to the new insurance plan design; that it has some beneficial features and some negative features; that to the extent that the new plan is better, however, it brings the District into the comparable mainstream of health insurance plans among the five comparable districts; that, as such, no *quid pro quo* is required either way for this change; that there can be not doubt that the other units accepted the premium share obligations because the District offered a wage incentive for doing so that would cover the new costs associated with the premiums share in addition to their typical wage increase; that this is no different than the Union's offer in the instant dispute; and that the internal settlement pattern strongly favors the Union's offer.

The District also argues that the external wage settlement pattern supports its offer because it offer meets or exceeds every other offer; that the main problem with the District's claim is that no other district has secured a 5% premium share payment from its employees during this round of negotiations; that, overall, the external wage settlement pattern clearly supports the Union's offer because it indicates that other districts are reaching voluntary settlements with wage increases equal to or greater than the Union's basic wage increase while offering additional dollar-for-dollar compensation for any health insurance concessions that are voluntarily agreed upon between the parties; that the District's wage comparisons are flawed because they average in the secondary comparable schools which have never been used by the parties; that the District compares lower paid positions in the other districts to higher paid positions in Manitowoc with no explanation or evidence of how their comparisons were structured; that these comparisons should be set aside; that three out of the four comparable districts provide longevity increases that far outpace the longevity increased offered to employees in this unit; that, combined, the additional benefits offered in comparable districts and not enjoyed by this unit suggest that the overall compensation factor is best met by the Union's offer; and that, in short, the external wage settlement pattern clearly indicates that the District is seeking through arbitration what it could never have expected to achieve at the bargaining table.

In terms of the split increase, the Union argues that there is no substance to the District's argument that the only reason for split increase is for wage catch-up; that split increases are frequently used, as in this case, where the parties are removing an existing benefit mid-year and adding a partial wage benefit at the same time; that under the Union's offer, the employees concede the 5% premium concession on July 1, 2005 and they require the 1% wage incentive on the same date; that the Union could have asked for a wage incentive on January 1, 2005, but there would have been a six month wage advantage without a corresponding concession has the Union insisted on such an arrangement; that there is a precedent for such a wage advantage in the settlements, specifically, the teachers; that this unit's willingness to split their wage increase to avoid a wage advantage, in spite of the teacher's precedent, is good reason to support the Union's offer because

it is evidence that the Union has moderated its demands as much as possible; that there is nothing mysterious or unusual about this type of split arrangement; and that it is quite common.

DISCUSSION

Introduction

This is one of those cases where one can switch from one side to the other, depending on whose brief one is reading at the time. The only issue involves the wage increase in the second year of a 2004-2005 two year contract. The District offers a 3.25% wage increase across the board on January 1[1] and the Union offers across the board increases of 3.0% on January 1 and 1.0% on July 1, which results in a 4.0% lift and a 3.5% cost. The amount of money in dispute for 2005 is approximately $5,800.[2] This is not much, in the scheme of things, including the District's budget, but both sides have argued vehemently for its offer.

The District is concerned that the full impact of the Union's split wage offer will not be truly felt until 2006, and then it will be felt every year after that. The District argues that the Union's wage offer will cost the District an additional $17,852 for wages and benefits in 2006 alone. The Union is concerned that it has already agreed to changes in the health insurance that costs it members over $5000 in total income in 2005. The Union argues that the District's offer will cost the unit's members an additional $5000 plus in total income in 2005.

So while this arbitration is about wages only, the changes in the health insurance plan and contribution rate directly relates to the resolution of this dispute. Prior to this contract, the parties' collective bargaining agreement called for the District to pay a negotiated dollar amount toward the health insurance premium or 95%, whichever was greater. This meant that the most a unit member would contribute to the health insurance premium was capped at 5% of the premium cost.

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[1]All dates are 2005, unless otherwise specified.

[2]The parties cost their proposals differently, with the District using a total package with cast forward and the Union attempting to determine actual cost. The Union argues the parties have never used total package cast forward costing, that the Union does not agree with the District's use of said costing, and that the District has not provided a *quid pro quo* for the change to said costing. But the District is only costing its package, not attempting to have said costing methodology incorporated into the party's collective bargaining agreement, so there is no need for a *quid pro quo*. While there is some benefit when parties cost packages the same way in that comparisons are easier to make, the Union is free to cost its proposal as it wishes, as is the District.

The parties have a long history of setting that dollar amount at 100% in the first year of the contract and guessing, as best they could, as to the dollar amount for the second year. Up until recently, the dollar amount was always less than 95% of the premium, so the District paid the entire amount of the health insurance premium.

But insurance rates have increased dramatically in the last few years. The District has responded by negotiating with its three other bargaining units a straight 5% contribution for the health insurance premium. No longer is the 5% a cap on the employees' health insurance contribution; instead, it is the cost of the premium for each bargaining unit member.

As part of the change in contribution, the insurance plan itself was also changed. There is a dispute as to whether the new health plan benefits the employees, or whether the positives and negatives of the new plan just even out. It appears to depend on the individual circumstances of each employee. In any case, the record is insufficient to allow this arbitrator to make a determination on this point.

This unit was the last of the District's units to agree to the changes in the health insurance, both in terms of the plan and in terms of the 5% contribution. In the contract in dispute in this matter, the Union agreed to implement the changes in the health insurance plan on the last day of the contract, December 31. The Union also agreed to begin paying the straight 5% contribution effective July 1.

Factor Given Greatest Weight

Section 111.70(4)(cm)7 of MERA states that the arbitrator shall consider and shall give the greatest weight to any enactment which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.

The District noted that it is experiencing pains in trying to comply with the state's revenue controls and that, with health insurance costs projected to rise about 22%, the strain on the budget becomes increasingly pronounced. These factors require a tax levy increase of 7.54%. Finally, the District argues that, because of the deferred costs of about $18,000 that accrue under the Union's offer, the continuing escalation of health insurance costs above the consumer price index, and severely restricted revenue available from the state, the District's budget will be under increasing pressure.

And so it is. In fact, the basics of the District's arguments are true for almost all if not all school districts in the state. The revenue controls pains many districts, especially compounded with the ever escalating costs of health insurance. In this case, the Union, reluctantly and later, rather than sooner, has begun to play its part in the health insurance battle by agreeing to pay a straight 5% of the premium. There is no showing by the District that acceptance of the Union's offer will significantly affect the District's ability to comply with the state mandated revenue caps. In fact, the District notes on brief that, technically, it has the ability to pay the Union's final offer but that its offer is more reasonable given the prospect of trying to live within revenue control. This is true

also. Every offer that is lower than the other offer makes living within the revenue caps easier. That, in and of itself, is not enough to find for the District.

The Union, on the other hand, asserts that the District enjoys a relatively low mill rate that has decreased in recent years. It also points to a comparatively large Fund 10 balance. The District objects to this argument, stating that arbitrators should not second guess how District's allocate it Fund 10. I agree. I also agree that Fund 10 reserves should not, under normal circumstances, be used for on-going expenses, such as wage increases. But that does not mean that the Fund 10 balance plays no part in determining the choice of a final offer, because the fact that a District is able to maintain and add to its Fund 10 balance indicates a certain level of financial good health.

So, in sum, the factor given greatest weight does not clearly support either party's final offer and will not play into the final determination.

Factor Given Greater Weight

Section 111.70(4)(cm)7g of MERA requires the arbitrator to consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors specified in the statute, other than the Factor Given Greatest Weight.

The District points to the City of Manitowoc's high unemployment rate and its lower per capita personal income and Manitowoc County's lower population growth, among other statistics, to show that the local economy in Manitowoc is suffering. The Union, on the other hand, points to Manitowoc's high level of property value, it fast increase in property values in the past four years, and its high level of equalized value, among other statistics, to show that the local economy of Manitowoc is diverse and growing. Each parties have done a good job of picking the statistics that support its position; but neither party is clearly able to show that this factor favors its final offer, so it will not be a part of the final determination in this matter.

Other Factors Considered

No evidence or arguments were offered by either party regarding the lawful authority of the municipal employer, so that factor is not considered. Both sides argue and support its position that the interests and welfare of the public favors its final offer, but they are, in essence, a wash and do not play a part in this determination. There is no argument that the District does not have the financial ability to meet the costs of either offer, so this factor is not considered. Neither party brought forth any changes that occurred during the pendency of these proceedings which impact on the final decision, so this factor is excluded from consideration. Let us review the other factors.

External Comparables

The primary and secondary comparables are not in dispute in this case. Indeed, the comparables

are almost set in stone, as they have been established in one arbitration between these parties,[3] affirmed in another arbitration between these parties,[4] and affirmed in arbitration between the District and one of its other support units.[5]

Yet, the District asserts that the arbitrator can utilize the list of secondary comparables to make valid external comparisons. At times in its exhibits and its briefs, the District includes the secondary comparables when, it argues, there are not enough primary comparables available because of a lack of settlements. This, surely, is what a secondary list of comparables is suppose to do: fill in when, for whatever reason, the primary comparables are insufficient in whatever way to be of assistance in deciding the issue. Yet the District in several other instances blends the two lists, especially when it ranks comparables and determines average wages, even when the primary comparables are fully available.

Let us be clear that the list of primary comparables are the school districts of Fond du Lac, Plymouth, Sheboygan and Two Rivers, as other arbitrators before me have held. I will use them to review the comparables. I will only use the secondary comparables of the school districts of Green Bay, Kiel, and Sheboygan Falls when the primary comparables do not resolve the issue.

[3] **Manitowoc Public Employees Local 731**, Dec. No. 53616 (Tyson, 8/14/97)

[4] **Madison School District Employees Local 731**, Dec. No. 30473-A (Eich, 5/22/03).

[5] **Manitowoc Educational Paraprofessionals**, Decision No. 56149 (Weisberger, 5/6/99)

In terms of the external comparables, there is no doubt that, on average, this unit is the wage leader.[6] These are paid between $15.42 - $20.31 per hour in the base year of 2004. The comparables range from $11.56 to $20.16 per hour. The District argues that the unit has a lucrative longevity program. This is far from correct. Whereas three of the comparables have longevity payments ranging from 2.5% to 13% of the base, this unit has rates that range from 3¢ (cents, not percent) to 30¢ above the base. The fourth comparable has no longevity. And there is also no doubt that this unit's out-of-pocket health insurance costs are higher than any of the comparables. The comparables have out of pocket plus premium share that ranges from $100 to $600 per year, while the out of pocket and annual premium payment for this unit can be as much as $1730 per year.

In 2003-2004, the settlements among the comparables ranged from 3.0% to 3.33% with the average at 3.2%. In 2004-2005, the settlements ranged from 2.25% to 3.4%, with one comparable not settled, for an average of 2.88%. So the party's 2004 settlement of 3.0% is a little low compared to the 2003-2004 settlements and a little high for the 2004-2005 settlements; in fact, it is almost the average of those two years of settlements. Looking at 2005, the comparables average for 2004-2005 is 2.88%, as noted above. In 2005-2006, the three settlements range from 2.0% to 3.25%. Indeed one settlement is at 2.0% and the other two are at 3.25%. As two of the settlements are at the 3.25% rate, the District's offer for 2005 falls right in line.

But, the Union argues, there was no change in the structure or contribution rate of the health insurance in three of the units. That makes the settlement in Two Rivers one of particular interest, as the parties did restructure their insurance plan. The restructuring of the insurance plan provided for a greater payment of the health insurance costs by the employees in exchange for settlements of 3.33% in 2003-2004, 3.4% in 2004-2005, and 3.25% in 2005-2006. These settlements matched dollar for dollar the increase cost of health insurance to the employees. Even with the Union's offer in this matter, there is no matching dollar for dollar the health insurance premium increase. This most comparable settle of all the comparable external settlements slightly favors the Union's offer.

But no where in the comparables do we find a wage split of any sort. All of the settlements appear to be straight forward yearly raises. As the District points out, splits are used many times to help underpaid units to catch up with wage rates without the total cost of such catch-up being covered

[6]Comparing the numbers are an apple and oranges comparison in the sense that the comparables all operate on a July 1-June 30 year while this unit bargains on a calendar year basis. So this unit is looking at 2005, while the other units have figures for the 2004-2005 and 2005-2006 years but not specifically the 2005 year.

by the employer. That is not the situation here. The Union has no catch-up argument, none whatsoever. But, the Union argues, splits can also be used when the parties are removing an existing benefit mid-year and adding a partial wage benefit at the same time.

This brings up a puzzling part of this case, one not explained in the record. The Union will not switch to the new insurance plan until December 31, so it will not receive any of the possible benefits of this plan during the second half of 2005; yet, the parties agreed that the Union would pay the 5% health insurance premium contribution effective July 1, six months prior to its implementation. On its face, this health insurance premium split and analogous wage split slightly favor the Union's offer.

Internal Comparables

The District has three other bargaining units: Teacher, Paraprofessional and Secretarial/Clerical. The evidence about several points is in conflict, but it is clear that all three units accepted the 5% health insurance premium contribution effective on or before October 1, 2004. But in terms of the Paraprofessional and Secretarial/Clerical units, the evidence shows that each unit received a sizable increase in the year in which it accepted the insurance change. The District argues that the increases were for catch-up which was supported, in one instance, by an earlier arbitration decision. The employees in these two units make in the $8-9 an hour range, $8-9 an hour less than the employees in this dispute. Based on what I have seen in other districts, catch-up for the Paraprofessional and the Secretarial/Clerical units is a reasonable goal. For the Secretarial/Clerical unit, as this was a first contract, it makes even more sense.

But the Union argues that the raises covered the insurance increase for these two units. It also did so for the Teacher unit which received a higher than usual increase the year it made the move to 5% insurance contribution. Indeed, at hearing the bargaining representative for the teacher unit testified that any settlement the teacher unit would agree to would have to at least match the insurance increase. The Union argues if the District's offer is accepted, it receives little if anything to make the change.

But the District argues that none of the internal comparables received a wage split to accept the insurance changes. Indeed, the District argues again and again, both in terms of the external comparables discussed above and the internal comparables, that there are no split wage increase nor is there any reason for one in this case. But, the Union argues, there is such a reason because the insurance payment is also split with the 5% payment starting July 1, the same time the Union's addition 1% in wages begins. The District is correct that none of the other internal comparables received a split wage increase to accept the change in health insurance plan and premium contribution, but none of the internal comparables began paying the 5% insurance premium six months before they received the benefit of the new insurance plan, either. Again, ever so slightly, this favors the Union's offer.

Stipulations of the Parties

The Union argues that the stipulations of the parties, specifically, the stipulation that the Unit would contribute a straight 5% to the health insurance premium, favors its offer. The Union costs this stipulation at over $15,700 and that, therefore, the Union must be granted the upper hand in determining how to structure the return in wages. This sounds, in essence, like that the Union is seeking a *quid pro quo* for what it calls its concession on health insurance. The District offers many, many arguments about why a *quid pro quo* is not necessary in this situation. Ultimately, the Union asserts it is not seeking a *quid pro quo* for this change. Therefore, I will not go through a *quid pro quo* analysis because the Union is not couching its argument in those terms. Instead, the Union puts forth a total package argument. But, viewed in isolation, the stipulations of the parties favors the Union's offer.

Overall compensation

The District's wage offer for the second year of this two year contract is a 3.25% increase across the board. It costs its package at 3.46% wage increase plus 7.79% benefit increase for a total package increase of 4.83%. The Union's offer for the second year of this two year contract is an across the board increase of 3.00% January 1 and 1.00% July 1. The District costs the Union's wage increase at 3.7% with a 7.89% benefit increase for a total package increase of 5.03%. In terms of actual dollars, the difference between the two packages is costed by the District as $5,804.

The District argues long and hard that this arbitrator must consider the hidden cost of a Union's split increase because it gives the unit members a 1% bump, only part of which is costed in the year it occurs. The District costs that bump at $17,852 for year 2006 and thereafter, and argues that this is, in essence, part of the Union's offer and increase. What the District does not cost is the savings it will receive from the Union's agreement to contribute a straight 5% of the health insurance premium. Combined, the District will show a profit from its exchange of which ever wage offer is accepted and the 5% health insurance premium contribution.

The Union costs the increase in health insurance premium paid by the Unit in the second half of the year and compares it to the 1% increase in wages that occurs at the same time. For the six unit members who take the single plan, the additional cost in health insurance per month is $25 for a six month total of about $150. The additional wages they will take home for the six months is $193. Thus, each of these six employees will make $42 more than the insurance change will cost. The total for the six unit members is $252 more received in wages than paid out in health insurance.

For the 46 unit members who take family coverage, however, they will see an monthly increase of $54 in health insurance premium for a total of increase of $322 for the sixth months. The additional 1% increase in wages equals an increase of $193 for the same sixth months. This is $129 less than they will pay out in health insurance premiums. Costing this for all 46 unit members taking the family plan brings the total to $5,941. the additional cost of the health

insurance even with the 1% wage increase effective July 1. Combining the costs of both the single and family plans gives a net loss of take home pay for the unit and a net gain for the District of $5,689. Under the District's offer, the amount increases to $10,713. So if the arbitrator accepts the District's offer, the unit members experience a difference in take home pay and the District experiences a gain of $10,713. If the arbitrator selects the Union's offer, the unit members still lose $5,689.[7]

Cost of Living

The District asserts that the cost of living was 2.3% in 2003 and 2.7% in 2004, which it argues goes favorably to its 3.0% offer for 2004 and 3.25% in 2005. These offers are even more generous when all the wage roll-ups are considered, according to the District. The Union asserts that the cost of living for the first six months of 2005 ranged from 3.2% to 3.7% with an average of 3.4%. It notes that this is higher than the Union's 3.0 offer for this time period and the 3.25 offer of the District. The Union's 3.5% cost of its wage offer in the second half of 2005 measures the cost of living closely. Again, pick your statistics. There is no doubt, however, that as this case was coming forward, the inflation rate had increased. I believe this gives the Union's offer a slight edge.

Summary and Conclusion

This unit is highly paid unit, in comparison to both the external and internal comparables. For that reason, alone, it does not arouse a lot of sympathy in the battle of the dollars. But in terms of the external comparables, this higher wage schedule is somewhat equalized by the higher out-of-pocket health insurance costs this unit incurs. It appears that, over the years, this unit sought wage increases at the cost of higher insurance pay-outs while the external comparables focused more on preserving a modest health insurance cost while giving up possible higher wage rates. For the internal comparables, sympathy is even less available for this unit as both the Paraprofessional and the Secretarial/Clerical units appear to have legitimate arguments for catch-up in the area of wages.

The one point that sticks out for me, the one that separates this unit from the other internal units, is the fact that the Union agreed to pay the 5% contribution six months prior to the implementation of the insurance changes. Basically, it is paying for something it is not getting. This is not something that any of the other internal units experienced. And with the Two Rivers settlement appearing more analogous to this unit's situation than any of the other units, external and internal, it falls favorably for the Union's offer. I do not like the split in this case but, contrary to the

[7]The District correctly notes that its Section 125 Plan will save unit members some money so the loss in income is less than projected by the Union.

District's argument, there is reasonable support for it.
For these reasons, based upon the foregoing discussion, the Arbitrator issues the following

AWARD

That the final offer of the Union shall be incorporated into the collective bargaining agreement between the parties for the 2004-05 term.

Dated at Madison, Wisconsin, this 07th day of March 2006.

By _____
James W. Engmann, Arbitrator