
In the Matter of the Interest Arbitration Proceeding Between

RIVER VALLEY SCHOOL DISTRICT

And

RIVER VALLEY EDUCATIONAL SUPPORT TEAM

Case 17

No. 64933

INT/ARB-10488

Decision No. 31539-A

Appearances:

Ms. Eileen A. Browlee, Kramer & Brownlee, LLC, 1038 Lincoln Avenue, PO Box 87, Fennimore, Wisconsin, appearing on behalf of the District.

Ms. Ellen La Luzerne, UniServ Director, Capital Area UniServ South, 4800 Ivywood Trail, McFarland, Wisconsin, appearing on behalf of the Union.

ARBITRATION AWARD

This is a matter of final and binding interest arbitration pursuant to Section 111.77(6) of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a collective bargaining impasse between River Valley School District (Support Staff), hereinafter referred to as the District and River Valley Educational Support Team, hereinafter referred to as the Union. On July 5, 2005 the Union filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged an impasse existed between it and the District. On November 22, 2005 the Commission certified the parties' final offers. On January 9, 2006 the Commission issued an Order appointing the undersigned, Edmond J. Bielarczyk, Jr., as the Arbitrator in the matter. Hearing on the matter was held in Spring Green, Wisconsin on February 21, 2006. Post hearing written arguments and reply briefs were received by the Arbitrator by April 12, 2006.

FINAL OFFERS

In their respective final offers, hereby incorporated by reference into this decision, the parties disagreed on the following issues:

The Unions Final Offer:

Article 3 – Management Rights, Section 3.02 No bargaining unit positions will be reduced or eliminated due to subcontracting of bargaining unit work.

Health Insurance: Prorated on the basis of a 35 hour work week.

Dental Insurance: Prorated on the basis of a 35 hour work week.

Duration: July 1, 2005 to June 30, 2006.

Memorandum of Understanding: Maintain open enrollment for Health and Dental Insurance.

Memorandum of Understanding: Delete No Layoffs Due to Subcontracting memorandum of understanding.

Wages: 2005-2006. \$0.28 applied to each cell; 2006-2007, \$0.25 applied to each cell.

District's Final Offer:

Duration: July 1, 2006 to June 30 2007.

Memorandum of Understanding: Delete open enrollment for Health and Dental Insurance.

Memorandum of Understanding: Maintain No Layoffs Due to Subcontracting memorandum of understanding for duration of the collective bargaining agreement.

Wages: 2005-2006. \$0.32 applied to each cell; 2006-2007, \$0.30 applied to each cell.

Agreed upon items:

Article 5 – Job Descriptions and Seniority, Section C.: District will provide a seniority list to the Union by October 5 of each year.

Article 7 – Grievance Procedure, Step 1, Section B (new and re-letter remainder of the provision): The grievant(s) shall state that s/he is initiating the grievance procedure, and shall indicate the event(s) upon which the grievance is based.

Article 10 – Paid Vacation, Section 10.04: Vacation accrued on a prorated basis and to be reimbursed if employee uses vacation and leaves the District's employ prior to their anniversary date.

Article 14 – Sick Leave, Section 14.02: Up to 24 hours, by FTE, may be used for the illness of an employee's spouse, child or parent.

Article 16 – Personal Leave, Section 16.02: Two days, with two days notice, except in the case of emergency and subject to Section 16.03.

Article 20 – Wage Compensation and Expenses, Section 20.04, paragraph C: voluntarily transfer to a lower paying classification receive pay closest to their rate of pay, paragraph D: promoted to a higher classification placed at the step that provides the smallest wage increase.

Article 24 – Evaluation change to Employment Records and re-letter paragraph.

Memorandum of Understanding – Grandparenting Insurance Payments: Delete.

Dental: Change to self-funded plan after issuance of arbitrator’s award.

Duration: January 1, 2005 through December 31, 2007.

Section 125 Plan (not in collective bargaining agreement): Increase maximum available to be deposited to \$2,000.

STATUORY CRITERIA

7 ‘Factor given greatest weight.’ In making any decision under the arbitration procedures authorized by the 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 arbitrator panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in 7r.

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

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of 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 performing similar services.
- 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 performing 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.

PARTY'S POSITIONS

The following is intended to be a brief general overview of the comprehensive initial and reply briefs filed by the parties. The Arbitrator has reviewed their briefs and the cases cited therein in detail and the Arbitrator has given full consideration to the statute, evidence, testimony and arguments presented in rendering this Award.

UNION'S POSITION

The Union points out this is the first instance where the parties have been unable to achieve a voluntary settlement and thus the Arbitrator must establish the appropriate comparables. The Union acknowledges that geographic proximity is often used to establish the labor market unless the district in question significantly differs from its surrounding communities. The Union contends the eligibility standard is the significant issue herein and asserts the District's unilateral reduction of the standard workweek as the factor that warrants a change in the collective bargaining agreement to reflect current working conditions. The Union avers that the District is in the same position as other school districts in the area and that the District has the second healthiest fund balance of the Union's comparability group. The Union also stresses its wage rates, overall, are a bit

lower than many of school districts and asserts its wage proposal will not change this standing. The Union also argues the standard for recognition as a full-time employee for benefit levels proposed by the Union is not inconsistent for the area.

The Union points to the statutory criteria's greatest weight factor and argues that the District has a healthy Fund Ten balance. The Union acknowledges the District's presentation concerning projected budget deficits due to declining enrollments but asserts the District is in no different situation than other school districts in the area. The Union points out the District has used the layoff procedure to reduce costs by reducing staff. However, the Union argues manipulating the layoff language to hide a cut in health and dental insurance benefits is an inappropriate method of negotiating with the Union. The Union stresses the District has a 25.29% fund balance, is carrying over \$3.3 million dollars almost twice more than other school districts in the area and that the District has almost 10% more carryover than other area school districts. The Union concludes the District is no better or worse than other school districts in the area and points out those school districts continue to provide wages and benefits that are averagely better than those provided to employees represent by the Union.

The Union next points to the statutory criteria's greater weight factor and argues a review of local economic conditions demonstrates the District is in an area of the state that is seeing an increase in population and income. In support of its position the Union points out the following statistical growth:

	Population Growth	Per Capital Income Increase
Dane	7.4%	3.5%
Iowa	4.4%	2.9%
Richland	0.8%	5.4%
Sauk	7.3%	5.0%
Wisconsin	4.0%	CPI 3.42%

The Union argues its wage proposal results in a schedule increase of 2.05% - 3% in the first year and 1.79% - 2.61% in the second year. The Union asserts the District's overall offer results in a 3.86% increase in the first year but a reduction of 1.32% in the second year. The Union argues its final offer more closely reflects the increase in the consumer price index and further argues the District's offer would result in a net decrease in pay in the second year of the collective bargaining agreement. The Union concludes the Union's offer would not burden the District, avers the District has the ability to pay and that pay and benefits should be in line with other school districts.

The Union contends the comparables should consist of the SW Wisconsin Athletic Conference; Dodgeville, Lancaster, Platteville, Prairie du Chien and Richland Center school districts as well as the non-unionized school districts of Barneveld, Sauk Prairie and Reedsburg school districts. However, the Union concludes the Athletic

Conference School Districts as well as geographically proximate school districts of Mount Horeb, Riverdale and Wisconsin Heights should be used as comparables.

Turning to the issue of subcontracting, the Union argues its proposal reflects the comparable contracts that contain a subcontracting proposal. The Union contends its proposal does not prevent the District from laying off employees but does require the District to use represented employees to perform the work traditionally needed to conduct business in the District. The Union points out the District's offer provides a similar level of protection but expires at a certain date.

On the issue of health and dental insurance, the Union argues internal comparables support its position and that external comparables support the Union's position in both percentage paid toward premium and the standard used to determine full benefit contribution. The Union also stresses the District has unilaterally changed the work schedule to reduce the health and dental insurance benefit for school year employees. The Union points out the District, using the lay off procedure, reduced employees work schedules from 37.5 hours per week to 35 hours per week. The Union argues the original standard for benefit eligibility was set based upon what was viewed as a full-time educational assistant, 7.5 hours per day and 37.5 hours per week for school year staff. The Union argues that as a result of the District's actions only 24% of the education assistants receive the 95% benefit and none of the food service employees receive the benefit. The Union contends that although insurance rates are slightly above average for the comparables, the percent the District pays towards insurances are about average for the area and do not warrant the level of take-back implemented by the District's work schedule change. The Union acknowledges the issue in dispute herein is not the percentage contribution towards insurance premiums but the number of hours worked to be eligible for the benefits. The Union concludes its offer is closer to the comparables than the District's offer.

On the issue of open enrollment, the Union argues its offer is necessary to accommodate employees if the Union's offer is selected by the arbitrator. The Union points out the insurance carrier would accommodate such an open enrollment.

The Union also contends its wage offer is more reasonable providing for a modest increase in the second year of the collective bargaining agreement. The Union argues that if the District's offer is selected with a 4.6% package cap and a 17% increase in health insurance rates occur employees will have a net decrease in wages of \$0.24 per hour. The Union further argues its offer better reflects external comparables. The Union notes that although the area has a slightly above average median income, starting rates for three out of four job categories are lower than the average and the educational assistants remain below average at the top of the schedule. The Union also points out that it takes 22 years to reach the top of the wage schedule.

The Union asserts the District has used the layoff provision to deal with potential

budget shortfalls, staff were laid off and the educational assistants had their hours reduced. However, the Union points out the educational assistants still receive their two breaks because the breaks are based upon a 7 hour day or 35 hour work week.

DISTRICT'S POSITION

The District contends the comparables should consist of the Southwest Wisconsin Athletic Conference (Dodgeville, Lancaster, Platteville, Prairie du Chien and Richland school districts) plus the unionized school districts of Boscobel, Darlington, Iowa-Grant, Mount Horeb, Mineral Point, Riverdale, and Wisconsin Heights. The District contends that the proposed non-conference comparables all are within 600 students of the District and are within 40 miles of the District. The District acknowledges factors used in determining comparables have been geographic proximity, student population, equalized value, and a 50% variation criteria.

The District contends, based upon the statutory criteria, the District's offer should be selected by the arbitrator. The District points out neither wage offer exceeds the wage increase of comparable school districts. The District acknowledges the difference between the two offers in the first year is only \$4,500, an inconsequential amount. The District asserts its offer most closely maintains the status quo, maintains a cap on the package increase in the second year that is in keeping with the previous two collective bargaining agreements. The District argues the Union must justify its proposed change to the status quo by demonstrating that a significant and unanticipated problem exists and offer an appropriate quid pro quo.

The District also argues both parties must take ownership of the problem of rising health insurance costs, noting the costs have doubled since 1998. The District points out the parties have done this in the past by either placing a cap on the District's contribution to health insurance premiums or a cap on the total package. The District argues the Union's response of eliminating a cap is wholly unreasonable. The District points out the trend is that of increasing the employee's contribution to health insurance premiums to a reasonable level to offset the escalating health insurance costs. The District concludes that the Union's second year wage offer is not a reasonable quid pro quo for the elimination of the cap language.

The District contends its offer, with respect to health and dental insurance, is the more reasonable as it conforms to the status quo and to the comparables. The District points out the Union proposes to reduce the level of hours worked to establish eligibility for full benefits. The District stresses the Union is seeking a change in the status quo and therefore must justify the change. The District points out there are only five employees that received a prorated benefit as a result of the schedule change. The District argues that under its proposal it would pay for health insurance premiums \$663,127 in 2005-06 and \$729,547 in 2006-07. The Union's proposal would have it pay \$692,248 in 2005-06 and \$753,159 in 2006-07. The District asserts this difference is exacerbated if insurance

costs rise more than 10% in 2006-07. The District again argues the Union must offer a quid pro quo for the desired change.

The District also argues that the Union's proposal with respect to health and dental insurance open enrollment lacks comparable support. The District acknowledges that the current memorandum of understanding on open enrollment lapses with the former collective bargaining agreement but points out it cannot be used as precedent or establish the status quo. The District avers it desires to allow the provision to lapse. The District points out no other contracts contain similar language. The District points out there are 78 employees in the bargaining unit, 12 did not work at least 20 hours per week and are not eligible to participate in the health or dental plan, 51 employees participate in the health plan and 50 participate in the dental plan. 5 employees who did not participate work 7.5 hours per day and 5 worked 7 hours per day. The District contends there is no evidence to request a deviation from the open enrollment language in the insurance contracts. The District concludes the Union must demonstrate a compelling need for continuing to require the District to seek an open enrollment.

The District also contends the Union proposal for subcontracting lacks comparable support and is a substantial deviation from the status quo. The District argues the Union is attempting to expand the provisions of the existing agreement by protecting not only employees but also positions. The District argues such a change requires a quid pro quo. The District points out the record demonstrates that the District has not subcontracted out work nor is it seeking to do so. The District stresses that none of the comparables, with the exception of Prairie du Chien, limit or prohibit subcontracting (with Prairie du Chien having an exception for food service). The District acknowledges that in certain circumstances a quid pro quo is not required if the party can demonstrate that a benefit or working condition is so prevalent that a quid pro quo should not be required (Rice, Dec. No. 30960, 4/05). The District points out there is no commonality and therefore the Union needs to provide a quid pro quo and has failed to do so.

The District also contends it lacks the ability to pay for the Union's proposal. The District stresses it is caught in the vise of declining enrollment and reduced state aid. The District points out over the last three years its revenue limit has increased by almost \$1,000,000.00 but budgeted expenses have increased by \$3,000,000.00. Enrollment has decreased by 200 students while spending per student has increased by almost \$2,400.00 per student. The District asserts even if a proposed referendum to exceed its revenue cap is passed it will exhaust its exhaust the fund balance by 2009. The District argues in light of these circumstances the removal of cost containment language will increase the District's share of benefit costs and would result in wages and benefits exceeding 12% over the next two years. The District concludes revenue caps and declining enrollment have combined to create a situation in which the District is unable to afford the Union's offer and given the greater weight factor of Wis. Stat. sec. 111.70(4)(cm)7g., the final offer of the District should be incorporated into the parties' collective bargaining

agreement.

The District argues cost of living factor supports the District's proposal. The District argues its proposed offer includes package cost of 4.57% the first year and 4.66% the second year. By contrast, the District argues, the package costs of the Union's offer is 5.23% the first year and between 4.37% and 7.72% the second year (depending on the rise in insurance premiums). The District points out the consumer price index in December 2005 was 3.4%. The District concludes this factor favors selection of the District's final offer.

UNION'S REPLY BRIEF

The Union contends its offer is more reasonable and asserts the District's offer would result in a net loss of pay and benefits and therefore is an unreasonable offer. The Union also argues the following school districts offered as comparables have the following enrollment:

Boscobel Area	977
Darlington Community	857
Iowa-Grant	919
Mineral Point	804

River Valley 1458

The Union acknowledges these school districts are near River Valley, but asserts their inclusion reduces the average size of the schools from, as proposed by the Union's list of comparables, 1,346 to 1,214. The Union argues the size and composition of a work force will vary the terms of hours worked and benefits. The Union points out it has acknowledged non-union and larger districts should not be included as comparables.

The Union again argues the District offer will result in a net loss of pay of \$0.24 on the pay schedule. The Union points out that strict adherence to total package costs has not occurred in the past when the result would have resulted in pay cuts. The Union argues this is the problem with total package costing; employees paid slightly below average go backwards and the District's offer would further suppress wage rates. The Union concludes its wage increase is the more reasonable.

The Union also argues that its health and dental insurance proposal more closely matches the comparable groups and further maintains the status quo with regard to benefits for full-time school year staff. The Union also points out that benefit attainment in the comparables is based upon hours worked per day or week (the exception being Mount Horeb wherein employees who work 1440 hours or more per year are eligible for benefits).

The Union also asserts its open enrollment provision would allow employees a

chance to change their health and dental enrollment status, necessary because the District unilaterally reduced benefit eligibility. The Union points out open enrollment is not barred by the provider and that the last open enrollment was May 2004.

The Union also asserts the subcontracting proposal allows the District flexibility regarding subcontracting non-bargaining unit work.

The Union also stresses the District was successful in passing a referendum to exceed revenue limits and that the difference between the two offers, \$58,503.00 over two years with a 17% increase in the health insurance premium and the District's fund carryover balance the District has the resources to meet the costs of the Union's proposal.

The Union also points out the cost of living index does not include increases in health insurance premiums. The Union concludes the District's offer results in a 0.7% wage increase over two years and asserts this is significantly lower than the 3.4% CPI. The Union further points out this cut is on top of the cuts employees suffered as a result of the reduction of hours. The Union argues this change resulted in net losses to food service workers of \$2,133.35 and education assistants between \$1,096.31 to \$1,116.71. Plus these employees increased co-payment for insurances and lost Wisconsin Retirement contributions. The Union concludes its offer is more reasonable.

The Union would have the Arbitrator select the Union's final offer for inclusion into the collective bargaining agreement as being the most reasonable.

DISTRICT'S REPLY BRIEF

The District argues that even with passage of the referendum (passed by a margin of 36 votes and is pending a recount) the District still expects revenue shortfalls commencing in 2007. The District argues the Union is contending that the District can respond to budget shortfalls and declining enrollments by laying off employees rather than requesting a reasonable wage and benefit increase.

The District also argues the consumer price index uses an indirect method for determining price changes for health insurance premiums, out of pocket expenses and cost of administering policies, maintaining reserves and profits. The District concludes its offer more appropriately meets the consumer price index.

The District argues the statutory criteria support its final offer with respect to wages. The District does not dispute that if health insurance increases more than 10% in the second year, wages will be reduced. However, the District points out, it will be paying almost \$105,000.00 more for health insurance. The District argues, using the Union's own figures, it will be paying over the two years of the collective bargaining agreement \$166,000.00 in additional insurance premiums and \$30,000.00 in additional wages (excluding step increases). The District argues the Union's proposal would require

it to pay an additional \$80,000.00 in wages. The District stresses the parties have historically placed cost controls in the collective bargaining agreement to address the issue of rising health insurance costs. The District avers that under its proposal it will bear the majority of the increase in health insurance costs.

The District also points out the value of the benefits package as a part of total compensation is approximately 54% for employees working 7.5 hours a day, 56% for employees working 7 hours per day under the District's offer and 58% for employees working 7 hours per under the Union's offer. If there is an 18% health insurance increase the value of benefits can reach 60% for some employees.

The District also contends the District's offer on health and dental insurance is more reasonable as it conforms to the status quo and the comparables. The District asserts there is no internal comparable as the distinction between teachers and support staff, different school year length and different work hours, to conclude that 35 hours is the threshold for full benefits. In effect teachers are expected to work 8 hours per day, 40 hours per week to receive full benefits and the support staff, at 37 ½ hours per week is already more favorable.

The District notes the following:

- 2003-04 Educational Assistants (41) 19 @ 7.5 hours, 12 @ 7 hours
Food Service – None over 5 hours
Cooks (9) 2 @ 7.5 hours
- 2002-03 Educational Assistants (42) 19 @ 7.5 hours, 15 @ 7 hours
Food Service – 2 @ 5 hours
Cooks (9) 2 @ 7.5 hours
- 2005-06 Educational Assistants (35) 8 @ 7.5 hours, 21 @ 7 hours
Food Service – None over 5 hours
Cooks (6) 2 @ 7.5 hours

The District points out only six more educational assistants work a 7 hour day with the remaining being unaffected by the change. The District asserts to achieve its offer the Union must offer a quid pro quo but has failed to do so. The District also asserts the Union's comparable numbers are incorrect and does not justify the change the Union seeks.

The District also argues the open enrollment sought by the Union cannot be performed under the District's dental plan and the open enrollment lacks comparable support. The District argues that an open enrollment for dental can only occur if a group of employees move from a partial to a full benefit and for health insurance not until May 2007 and not more frequently than annually at the employer's request. The District points out only three of the 15 eligible employees work 7 hours per day.

The District also contends the Union subcontracting proposal is a substantial deviation from the status quo and lacks comparable support. The District points out again the Union proposal protects not only people but positions.

The District contends its offer reflects its ability to pay, is closer to the CPI and addresses costs and benefits as the parties have done it the past. The District would have the Arbitrator include the District's final offer in the parties' collective bargaining agreement.

DISCUSSION

The Municipal Employment Relations Act states arbitrators shall consider and give the greatest weight to any enactment that places limitations on expenditures that may be made or revenues that may be collected by the municipal employer. The District has pointed to the State imposed levy limit, declining enrollment and budget shortfalls and has argued the greatest weight factor supports the District's position. However, these same problems are faced by every school district in the State that has a declining student population. The total difference between the two offers, as costed by the District, is approximately \$110,000. As the District has pointed out, this is a significant sum. However, there has been no showing by the City that acceptance of the Union's final offer will significantly effect the City's ability to comply with the State's levy limits. The District has in the past reduced its workforce to maintain its budget and continue to provide services. It can continue to do so. However, it must still recruit and retain employees. The record also demonstrates it has an above average fund balance and recently received approval through referendum to exceed levy limits. Therefore the Arbitrator finds that the "greatest weight" factor does not clearly support either final offer.

The Municipal Employment Relations Act also states the Arbitrator shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors. The record demonstrates that the District has increasing medium income per family and that three of the four counties in its jurisdiction are increasing faster than the state average in population growth. Neither of the parties presented any evidence that would demonstrate economic conditions are greater or worse than the comparable districts. The arbitrator therefore concludes this factor favors neither the City's final offer or the Union's final offer.

The Arbitrator finds that there is no dispute that the District has the lawful authority to implement either offer (Factor a). The Arbitrator also finds that while the parties were in agreement on many of the issues, there were no stipulations with respect to any of the issues (Factor b). However, at the hearing the parties did acknowledge there was a pending referendum to exceed levy limits and during briefing this referendum was passed, pending a recount.

The District has raised an ability to pay argument (Factor c). Any increase in wages and benefits increases the financial burden on taxpayers, however, in order to provide appropriate educational services the District must be able to recruit and retain competent employees. Thus, the interest and welfare of the public is met when the District can maintain a competitive position and treat its employees fairly. Determining what is fair treatment is established by applying the statutory criteria. While the District did present evidence concerning the levy limit, declining student enrollment and budget shortfalls no evidence was presented that would lead to a conclusion that economic conditions in the River Valley School District are such that the District does not have the financial resources to meet either offer. Declining enrollments and the levy limit are requiring the District to further reduce staff. While selection of the Union final offer may hasten the reduction of staff, under either offer the continuing decline of student enrollment does not lead to a conclusion that employees in the bargaining unit should receive lesser pay and/or benefits than their counterparts amongst the comparables.

External comparables are used to obtain guidance in comparing wages, hours and conditions of employment (Factors d, e, and f). This is a comparison of employees performing similar services in public and private employment in comparable communities. Herein, the parties have agreed on the use of several external public sector employers as comparables. These are the school districts contained in the Southwest Wisconsin Athletic Conference (Dodgeville, Lancaster, Platteville, Prairie du Chien and Richland). The enrollment of these school districts and their distance from the River Valley School District are as follows:

Dodgeville	1330	18 miles
Lancaster	1053	55 miles
Platteville	1521	46 miles
Prairie du Chein	1287	65 miles
Richland	1468	23 miles
River Valley	1445	

The Union would also include the following school districts:

Mount Horeb	2099	27 miles
Wisconsin Heights	1030	15 miles
Riverdale	848	23 miles

The District would include the above school districts as well as the following school districts:

Boscobel	962	37 miles
Darlington	845	40 miles
Iowa-Grant	923	36 miles

The Union in its reply brief argued against the inclusion of Boscobel, Darlington, Iowa-Grant and Mineral Point because they are significantly smaller than the River Valley School District. This same argument would apply to Riverdale, however, the parties are in agreement it should be included as a comparable. Given that the above four school districts are one third (1/3) or smaller in student enrollment than River Valley and given the eight agreed upon comparables the Arbitrator selects the first eight as comparables.

Tuning to the issue of health insurance and package caps the comparables are as follows:

- Dodgeville: 25 or more hours per week, 94.71% family, 100% single
- Lancaster: 1040 hours to 2080 hours, 10/12s (83.33%) of family plan, 10/12s (83.33%) of single plan; 2080 hours or more, 95% family, 100% single
- Platteville: 100% of family and single premium, one-half time (1/2) to three-fourth time (3/4) 75% of the full time benefit (total package 2006-07 4.67%)
- Prairie du Chien: Minimum 25 hours per week; (two plans)
 - Plan 1, full-time, 92% family, nine month, 90% family, single 100%
 - Plan 2, full-time, 94% family, nine month 92%, single 100%
- Richland: 6.5 to 8 hours per day, 90% family, 100% single, 4 hours per day to 6.5 hours per day 75% of the full time benefit: custodial employees, 6 to 8 hours per day, 90% family, 100% single, 4 to 6 hours per day 75% of the full-time benefit
- Mount Horeb: 1440 hours or more, 90% family, 100% single (cap of 14% health insurance increase)
- Riverdale: 1040 hours to 1200 hours, 77% family, 92 % single; 1200 hours or more 85% family 100% single; 1400 hours or more, 92% family; reopener in 2007-08 if health insurance increase greater than 11%
- Wisconsin Heights: 6 hours or more per day, 100% family, 100% single; 6 hours or less per day, prorated based upon an 8 hour day

- Union: 20 hours or more per week eligibility, prorated based upon 35 hours per week, 95% family, 100% single, no package cap
- District: 20 hours or more per week eligibility, prorated based upon 37.5 hours per week, 95% family, 100% single, 2006-07 package cap of 4.6% (based upon a 10% increase of health insurance premium rates)

A careful review of the above comparables demonstrates the following: Only one of the comparables (Platteville) contains a total package cap (4.67%), only one of the comparables (Mount Horeb) places a cap on the amount of increase in health insurance premiums the employer will pick up prior to passing increases on to employees (14%).

One comparable (Riverdale) does provide for a reopener in the third year of the collective bargaining agreement in 2007-08. However, because that reopener occurs the year after the instant collective bargaining agreement expires, it is not applicable. Of the two above caps that apply to the instant matter, both place a higher burden on the employer before passing on premium increases to employees. Thus the comparables clearly support the Union's final offer.

Five of the above comparables (Dodgeville, Platteville, Prairie du Chien, Richland and Wisconsin Heights) prorate health insurance based upon hours per day or week. These five comparables support the Union's position. Three of the above comparables (Lancaster, Mount Horeb and Wisconsin Heights) prorate health insurance based upon hours worked per year. These three support the District's position. However, herein the parties use hours per day or week to determine the prorating of the health insurance premium and thus the Arbitrator concludes the comparables support the Union's position.

This same analysis applies to Dental insurance with the comparables that use hours per day or week supporting the Union's position and the comparables using hours per year support the District's position. Again, because the parties use hours per day or week to determine the prorating of dental insurance premium the Arbitrator concludes the comparables support the Union's position.

Only one of the comparables (Prairie du Chien) provides for an open enrollment during the term of the collective bargaining agreement. Therefore the Arbitrator concludes the comparables support the District's position.

Only three of the comparables have a subcontracting provision. However, the current memorandum of understanding bars the District from laying off employees during the term of the collective bargaining agreement any employee hired prior to June 10, 2003. Thus neither party's position is supported by the comparables.

As the District pointed out in its brief, it is difficult to evaluate the wage increases of the comparables because of varying schedule steps and varying position increases. The District has argued the average is somewhere around \$0.25 per hour. However, only two of the comparables (Prairie du Chien and Mount Horeb) have placed restrictions on the wage increase and both of these restrictions (Prairie du Chien's 4.67% package cap versus the District's 4.6% package cap, Mount Horeb's 14% health insurance increase cap versus the District's 10% cap), as noted above, place a greater burden on the employer than on the employees prior to shifting insurance premium costs to employees. Given that the parties anticipate a health insurance increase greater than 10% employees are less likely to receive an increase similar to the comparables. Therefore the arbitrator concludes the comparables favor the Union's position.

Having found the comparables favor the Union's position on health insurance, package costs, dental insurance and wages the Arbitrator concludes Factors d, e and f

favor selection of the Union's final offer.

The parties disagree on the costing of their packages. The Union costs its package as 3.42% in the first year and 2.86% with the District costing the Union's package as 5.23% in the first year and between 4.37% and 7.72% in the second year (the variance due to what the increase is for health insurance). The District costs its package as 4.57% the first year and 4.66% the second year. The Arbitrator notes here the only distinction between the parties in the first year is the wage increase and the Union's wage increase is less than the District's. Thus the costing the Union's package in the first year should be less than the District's. The cost-of-living (Factor g) both parties agree is approximately 3.4%. Both parties' final offers are higher than the cost-of-living, with the Union's being closer to the cost-of-living in the first year and the District's being closer in the second year. However, as both parties final offers exceed the cost-of-living index the Arbitrator concludes this factor favors neither position.

Neither party raised issues concerning overall compensation (Factor h) except for the Union argument that three of the four categories of employees are receiving pay below the average of the comparables. The Arbitrator there concludes this factor favors neither final offer.

The parties have not brought any changes (Factor j) to the attention of the Arbitrator during the pendency of the arbitration proceedings except the acknowledgement that the referendum to raise money above the levy limits passed by a slight majority and is undergoing a recount. At most, this lessens the impact on the District of declining student enrollment and the State's imposed levy limits. The Arbitrator notes here that four of the above comparables (Lancaster, Platteville, Richland and Wisconsin Heights) are also faced with declining enrollments and three of these four provide better threshold for benefits that the District does.

(Factor J) The City has also claimed the change in the threshold for the necessary hours to receive insurance benefits the Union is seeking is not accompanied by a quid pro quo. Some arbitrators have held a *quid pro quo* is not required for changes in health insurance, *Pierce County (Sheriff's Dept.)*, Dec. No. 28187-A (Friess 1995) and *Cornell School District*, Dec. No. 27292-B (Zeidler 1992), noting that comparative tests are a sufficient burden of proof. Further, as the District pointed out, this may only impact six employees. While some arbitrators have held that when one party seeks a significant change, the party proposing the change must demonstrate a need for the change, and, after demonstrating the need for the change provide a *quid pro quo*, *Middleton/Cross Plains School District*, Dec. No. 28496-A (Malumud 1996). Herein, the Union has demonstrated a need for the change in the threshold level for full benefits, the unilateral reduction of hours, and the Union is proposing a lesser wage increase than the District. The Arbitrator does note here the higher wage proposal of the District in the second year of the collective bargaining agreement is offset by the package cap that would reduce that wage increase resulting in employees falling further behind in wages.

The District has also argued there was not a quid pro quo for the change sought by the Union for obtaining the subcontracting language. However, the District is also making a change from the status quo. In previous collective bargaining agreements the parties changed the effective date for barring layoffs due to subcontracting to approximately the first date of the collective bargaining agreement. Thus, only employees hired during the term of a collective bargaining could be impacted by subcontracting. The District did not make such a modification for the instant collective bargaining agreement and has offered no rationale for not making such a modification nor has it presented a quid pro quo for changing the parties' status quo.

The Arbitrator also finds the Union's position on incorporating the open enrollment language into the collective bargaining agreement is a minor change. The Arbitrator finds no merit in the District's argument that the insurance carriers will not process such a request. It is clear from the Union's post hearing exhibit that if a request is made to the carrier they can approve it. Therefore, based upon the above and foregoing the Arbitrator concludes this factor favors the Union's position.

The evidence satisfies the Arbitrator that the comparison of health insurance, dental insurance, package cap, wages and the other statutory factors support the Union's offer. Therefore, based upon the above and foregoing, the Statute, and the evidence, testimony and arguments presented, it is concluded that the Union's final offer is more reasonable and the Arbitrator makes the following:

AWARD

Having considered all the statutory factors, and all the evidence, testimony and arguments presented by the parties, the Union's final offer is more reasonable than the District's final offer. The parties are directed to incorporate the Union's final offer into their collective bargaining agreement.

Dated at Sun Prairie, Wisconsin, this 12th day of June, 2006.

Edmond J. Bielarczyk, Jr., Arbitrator