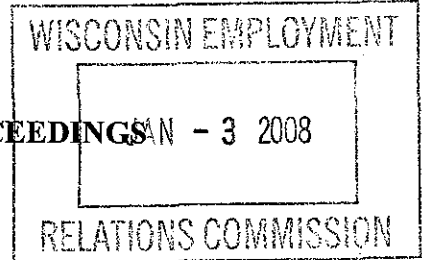


IN THE MATTER OF THE ARBITRATION PROCEEDINGS

BETWEEN



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WAUWATOSA SCHOOL DISTRICT,

Employer,

and

ARBITRATOR'S AWARD

Case 50 No. 65786

INT/ARB-10694

Dec. No. 32037-A

WAUWATOSA EDUCATION SUPPORT  
PROFESSIONALS (WEST SUBURBAN  
COUNCIL/WEAC),

Union.

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Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Mary L. Hubacher, Esq.  
Davis & Kuelthau, s.c.

For the Union: Sandra L. Nass  
Executive Director  
West Suburban Council  
Wisconsin Education Association Council

**I. BACKGROUND**

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between the Wauwatosa School District ("District" or "Employer") and the Wauwatosa Education Support Professionals ("Association" or "Union").

After the parties began negotiations for their initial contract, the District filed a petition on April 6, 2006, requesting the WERC to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission's staff conducted an investigation. On March 1, 2007, the parties submitted to the

staff member their final offers and a stipulation of matters agreed upon. On March 12, 2007, the WERC ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse between the parties.

The parties selected the undersigned as the arbitrator, and on April 27, 2007, the WERC appointed the undersigned as arbitrator. An arbitration hearing was conducted on August 8, 2007. Upon receipt of the parties' reply briefs, the hearing was declared closed on October 20, 2007.

## **II. FINAL OFFERS**

### **A. Introduction**

This being the parties' first collective bargaining agreement, there is a substantial number of issues in dispute in this proceeding. The Parties' final offers are on file with the Wisconsin Employment Relations Commission.

The parties submitted Tentative Agreements reached in the negotiations. The items agreed to by the parties, included the following: Recognition; Rights of the Employer; Association Rights; Grievance Procedure; Fair Share Agreement; Wisconsin Retirement System; Layoff (portions of article agreed to; portions of article in dispute); Wages and Salaries (portions of article agreed to; portions of article in dispute); Benefits (health insurance in dispute); Holidays; Leaves; Working Conditions; Injury; Health Requirements; Absence from Duty; Professional Development; Agreements and Severability; and Duration.

The unresolved issues in this case are limited, especially in light of the fact that this is a first contract. The parties have nearly the same per cell wage increase proposals for 2005-2006 and 2006-2007. The difference is simply a function of computer rounding. The proposals are:

July 1, 2005    Association increase of 2.1% per cell;  
                  District increase of 2.1% per cell;

July 1, 2006    Association increase of 2.2% per cell;  
                  District increase of 2.21% per cell

The method of adding two additional steps to two of the job classifications so that all classifications have a 3-step schedule is in dispute. The Association and District have each proposed to add two steps to the special education aide and student supervisor/monitor positions. However, the parties have proposed different methods for expanding the number of steps from one step. The District has proposed that the existing single step become step three, the maximum step. The Association proposal would leave the existing one step as step one and add two additional steps at the same ratio as the other employee classifications. Additionally, under the Association proposal, the category of

supervisor/monitor would be deleted as all supervisors are in the same classification. There is no wage adjustment needed to combine the positions.

Also in dispute is the criteria for the selection of special education aides for layoff. The Association has proposed that special education employees be selected for layoff in the same fashion as the other categories of aides in the bargaining unit. The selection is based on "inverse order of seniority." The District's offer would use different criteria for special education aides based on "consideration of the following: experience, duties of assignment, specialized education and/or training and seniority in category; all factors being equal, seniority in the category is the determining factor.

The final item in dispute is the amount of employer contribution to health and dental insurance. The Association proposal provides that employees in the unit would be eligible for the same level of employer-paid health and dental insurance as all organized employee groups in the District. This would provide for fully paid health and dental insurance (for those meeting the already agreed upon eligibility criteria). The plans are the same as those of the other District bargaining units at the time the final offers were certified. As the contract has gone beyond the 2005-2007 contract term, the actual cost is less as the group has remained in the lower cost health plan pending resolution of the dispute.

The District's final offer would cap the employer contribution at the 2004-2005 level for aides in an amount of \$550.00 per month for either single or family coverage toward the health or dental premiums for the 2005-2006 school year and \$600.00 for 2006-2007. Student Supervisors hired prior to July 1, 2002 will continue to receive fully paid health and dental insurance and have the option for the cash-in-lieu of health insurance benefit.

**B. District's Final Offer**

ARTICLE VII

LAYOFF

7.2 Layoff and Bumping

- A. Should a layoff become necessary in Category I, employees shall be laid off in inverse order of their seniority in the affected job classification. Should a layoff become necessary in Category II, employees shall be laid off based on consideration of the following: experience, duties of assignment, specialized education and/or training and seniority in category; all factors being equal, seniority in the category shall be the determining factor. Should a layoff become necessary in Category III, employees shall be laid off in inverse order of their seniority in category.

ARTICLE IX

BENEFITS

9.1 Health Insurance

A. Eligibility

Regular Full-time employees and Regular Part-time employees are eligible to participate in either the individual or family coverage in the District's insurance program for non-represented employees.

Employees currently receiving fully employer paid single or family coverage in the District's insurance program are eligible to continue to do so.

B. Premium Payment

1. Regular Full-time employees

2005-2006: The District shall pay up to a maximum of \$550.00 per month towards the total cost of premiums for health and dental insurance.

2006-2007: The District shall pay up to a maximum of \$600.00 per month

2. Regular Part-time employees

2005-2006: The District shall pay a prorated amount of the maximum of \$550.00 per month towards the total cost of premiums for health and dental insurance, such prorated amount to be based on the number of hours the employee is regularly scheduled to work.

2006-2007: The District shall pay a prorated amount of the maximum of \$600.00 per month towards the total cost of premiums for health and dental insurance, such prorated amount to be based on the number of hours the employee is regularly scheduled to work.

9.2 Dental Insurance

A. Eligibility

All regular full-time employees and regular part-time employees are eligible to participate in either individual or family dental insurance coverage in the District's plan.

B. Premium Payment

1. Regular Full-time employees

2005-2006: The District shall pay a prorated amount of the maximum of \$550.00 per month towards the total cost of premiums for health and dental insurance.

2006-2007: The District shall pay a prorated amount of the maximum of \$600.00 per month towards the total cost of premiums for health and dental insurance.

9.2 Dental Insurance

1. Regular Part-time employees

2005-2006: The District shall pay a prorated amount of the total \$550.00 per month towards the premiums for health and dental insurance such prorated amount to be based on the number of hours the employee is regularly scheduled to work.

2006-2007: The District shall pay a prorated amount of the total \$600.00 per month towards the premiums for health and dental insurance such prorated amount to be based on the number of hours the employee is regularly scheduled to work.

9.7 Premium Payments for Employees on Medical Leave

The District's contribution towards the premiums for the insurance in 9.1, 9.2 and 9.3 above will be discontinued after the employee's sick leave pay and/or duty incurred disability pay has expired except that for employees with twelve (12) years or more of service to the District, the District's contribution towards the cost of premiums as set out in 9.1B(1) and (2) and 9.2B(1) and (2) above will be extended for up to ninety (90) calendar days.

APPENDIX A-1

SALARY SCHEDULE

2005-2006 — 2.1%  
2006-2007 — 2.21%

All special education aides and supervisors/monitors will be placed at Step 3 in their respective category.

See attached schedule for specific hourly rates for positions in the bargaining unit.

### WESP SALARY SCHEDULES

#### 2005 – 2006 Hourly Rates

| Position  | Step 1  | Step 2  | Step 3  |
|---|---------|---------|---------|
| School aide w/o teacher license                           | \$10.71 | \$10.96 | \$11.19 |
| Teacher Certified - school aide                           | \$13.28 | \$13.66 | \$13.94 |
| School aide special needs with DPI license                | \$11.74 | \$12.00 | \$12.25 |
| Supervisor/monitor  | \$10.18 | \$10.43 | \$10.69 |
| Student supervisor hired before <7/1/02                   | \$10.40 | \$10.64 | \$10.86 |
| Teacher Certified student supervisor hired before <7/1/02 | \$11.89 | \$12.26 | \$12.43 |
| Student supervisor hired after >7/1/02                    | \$10.71 | \$10.96 | \$11.19 |
| Teacher Certified student supervisor hired after 7/1/02   | \$13.28 | \$13.66 | \$13.94 |

#### 2006 - 2007 Hourly Rates

| Position  | Step 1  | Step 2  | Step 3  |
|---|---------|---------|---------|
| School aide w/o teacher license                           | \$10.95 | \$11.21 | \$11.44 |
| Teacher Certified - school aide                           | \$13.58 | \$13.97 | \$14.25 |
| School aide special needs with DPI license                | \$12.01 | \$12.27 | \$12.53 |
| Supervisor/monitor  | \$10.41 | \$10.67 | \$10.93 |
| Student supervisor hired before <7/1/02                   | \$10.64 | \$10.88 | \$11.11 |
| Teacher Certified student supervisor hired before <7/1/02 | \$12.16 | \$12.54 | \$12.71 |
| Student supervisor hired after > 7/1/02                   | \$10.95 | \$11.21 | \$11.44 |
| Teacher Certified student supervisor hired after 7/1/02   | \$13.58 | \$13.97 | \$14.25 |

#### C. Association's Final Offer

#### ARTICLE VII LAYOFF

#### 7.2 Layoff and Bumping

- A. Should a layoff become necessary in Category I, employees shall be laid off in inverse order of their seniority in the affected job classification. Should a layoff become necessary in Category II or III, employees in the affected category shall be laid off in inverse order of their seniority in the category (*This language was part of an earlier tentative agreement*)

**Note—The Association adds the following to the above paragraph:**

Should a layoff in Category II be necessary, employees will participate in any training the District may deem appropriate to perform all duties of the less senior employee who was laid off.

## ARTICLE IX BENEFITS

### 9.1 Health Insurance

#### A. Eligibility

All employees regularly scheduled to work thirty-five (35) or more hours per week are eligible for fully employer paid coverage at either individual or family coverage in the District's insurance program. Those employees regularly scheduled to work at least 17.5 hours per week shall be eligible to participate in the District plan and shall receive employer payment on a pro rata basis based on the number of hours the employee is regularly scheduled to work. (Example: A 28 hour per week employee will receive benefits paid at an 80% level)

The plan summary is attached as appendix B.

#### B. Premium Payment

The District shall pay the full funding rate during the term of this agreement for individual and family coverage respectively for the District's insurance program. The plan coverage shall be the same plan as that bargained by the Wauwatosa Education Association (teachers).

#### F. Compensation in Lieu of Health Insurance

For any eligible employee who does not elect health insurance coverage, the Board will pay fifteen percent(15%) of the annual single premium (currently \$1,156) per year (prorated for part-time employees) as compensation in lieu of the health insurance coverage. This amount shall be divided equally among each pay period and shall cease when an employee becomes enrolled in health insurance. The annual amount shall not exceed \$3,240.00. The employee and/or eligible dependent will be able to enter/re-enter the District's health insurance plan if a qualifying event occurs or during the District's open enrollment period. A list of "Qualifying Events" is listed as Appendix C.

### 9.2 Dental Insurance

#### A. Eligibility

All full-time employees regularly scheduled to work thirty-five (35) hours or more per week, and part-time employees regularly scheduled to work 17.5 hours or more per week are eligible for either individual or family dental insurance coverage in the District's plan.

B. Premium Payment

The District shall pay the full monthly premium rate for both single and family coverage. Employees regularly scheduled to work less than thirty-five (35) hours per week shall receive payment on a pro rata basis based on the number of hours the employee is regularly scheduled to work. (Example: a 28 hour per week employee will receive benefits paid at an 80% level)

9.7 Premium Payments for Employees on Medical Leave (Will become 9.5)

Payment of premiums by the District for the insurance in 9.1 and 9.2 above and 9.3 will be discontinued after the employee's sick leave pay and/or duty incurred disability pay has expired, except that for employees with twelve (12) years or more of service, the premium payments will be extended for up to ninety (90) calendar days in cases where sick leave is exhausted.

ARTICLE XII  
WORKING CONDITIONS

12.8 Hours

A. Full-time Employees

2. The Board reserves the right to schedule schools. Bargaining unit members shall minimally work on all days when schools are open for students and required in-service days. These days are exclusive of paid holidays.

SALARY SCHEDULE—Appendix A

2005-2006 = 2.1% cell increase

2006-2007 = 2.2% cell increase



2005-2006 Salary Schedule

2.1% Cell Increase

Special Education Aides placed on Step I  
Supervisory positions combined

|  |               | 1                | 2                | 3                |
|--|---------------|------------------|------------------|------------------|
| School Aide w/license                                    | 81            | 10.70            | 10.96            | 11.18            |
| Certified School Aide                                    | 82            | 13.27            | 13.65            | 13.93            |
| Special needs w/o license                                | 83            | 12.24            | 12.55            | 12.86            |
| Student Supervisor                                       | 84            | 10.68            | 10.95            | 11.22            |
| <del>Student Supervisor hired &lt;7/1/02</del>           | <del>86</del> | <del>10.39</del> | <del>10.63</del> | <del>10.85</del> |
| <del>Certified Student supervisor hired &lt;7/1/02</del> | <del>87</del> | <del>11.88</del> | <del>12.25</del> | <del>12.43</del> |
| Student Supervisor hired >7/1/02                         | 88            | 10.70            | 10.96            | 11.18            |
| Certified Student supervisor hired >7/1/02               | 89            | 13.27            | 13.65            | 13.93            |

2006-2007 Salary Schedule

2.2% Cell Increase

Special Education Aides placed on Step II  
Supervisory positions combined

|  |               | 1                | 2                | 3                |
|--|---------------|------------------|------------------|------------------|
| School Aide w/license                                    | 81            | 10.94            | 11.20            | 11.43            |
| Certified School Aide                                    | 82            | 13.57            | 13.95            | 14.23            |
| Special needs w/o license                                | 83            | 12.51            | 12.82            | 13.14            |
| Student Supervisor                                       | 84            | 10.91            | 11.19            | 11.47            |
| <del>Student Supervisor hired &lt;7/1/02</del>           | <del>86</del> | <del>10.62</del> | <del>10.86</del> | <del>11.09</del> |
| <del>Certified Student supervisor hired &lt;7/1/02</del> | <del>87</del> | <del>12.15</del> | <del>12.52</del> | <del>12.70</del> |
| Student Supervisor hired >7/1/02                         | 88            | 10.94            | 11.20            | 11.43            |
| Certified Student supervisor hired >7/1/02               | 89            | 13.67            | 13.95            | 14.23            |

**III. STATUTORY CRITERIA**

**111.70(4)(cm)**

...

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

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

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

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal 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 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.

#### **IV. POSITIONS OF THE PARTIES**

##### **A. The District**

The District asserts it is offering the Association a generous package that, if accepted, would improve the employees' position from the status quo. On the other hand, the District contends the Association's offer would amount to a windfall for the employees and result in a negative financial impact on the District that could be the catalyst for layoffs among the bargaining unit employees. The District argues it is completely unreasonable for the Association to have all of the provisions of other District bargaining units incorporated into its first contract.

With respect to the comparable school districts, the District says it has included the districts that are contiguous or reasonably proximate, are represented by a union, and that have student enrollment numbers between 2,300 and 8,200. Of the districts included by the Association, but not in the District's set of comparables, the District states: (1) it did not include Greendale because it is a non-unionized unit, (2) New Berlin was excluded because it has both unionized and non-unionized aide positions, (3) Pewaukee is geographically more distant and not in the same socio-economic market as Wauwatosa; and (4) St. Francis was excluded because it is considerably smaller in size than Wauwatosa.

The District declares it has the right and responsibility to determine appropriate budgetary restraints. The District argues the Union's claim that the district is well-positioned to pay the enormous costs of its offer is incorrect.

Of the districts included by the District but not included in the Association's set of comparables, the District argues: (1) Franklin is reasonably proximate to Wauwatosa, relatively close in size to Wauwatosa and in the same socio-economic climate as Wauwatosa; (2) Muskego-Norway is reasonably proximate to Wauwatosa, relatively close in size to Wauwatosa and in the same socio-economic climate as Wauwatosa; (3) Oak Creek-Franklin is reasonably proximate to Wauwatosa, relatively close in size to Wauwatosa and in the same socio-economic climate as Wauwatosa; and (4) South Milwaukee is reasonably proximate to Wauwatosa, relatively close in size to Wauwatosa and in the same socio-economic climate as Wauwatosa.

The District argues that the section of the appropriate comparables based solely on athletic conference membership is unduly restrictive and ignores well-established factors for determining the appropriate pool. The District contends its comparables are rea-

sonably geographically proximate and unlike the Union's comparables, more similar in size.

With respect to the Association's health benefits offer, the District argues the offer is flawed in that it is logistically impossible to retroactively enroll employees into the Plan C (teachers' plan). The District points out that the Association specifically did not propose that the change in premium contributions and the change to a totally different plan would be prospective or that it would coincide with the Arbitrator's award. The Association's offer was certified by the WERC as the Final Offer and for that reason, it must be considered "as is."

The District says it has not presented a claim that it is unable to financially meet the funding of the Association's offer. The District also says that, however, does not exempt the District from its obligation to operate in a fiscally responsible fashion; it also does not exempt the Association from considering the possible consequences to the District if it is forced to fund the Association's offer. The District asserts the possible consequences to the District of having the Association's offer selected are many, not the least of which involves the elimination of Association aide positions.

It is the District's position that the Association's demands for increased wages, changes to the salary schedule structure, changes to health insurance plan provisions, District increases toward health insurance premiums, and restrictions on the District's ability to appropriately staff based on the needs of students served by members of that unit are indicative of a total lack of understanding on the part of the Association of the District's main mission and purpose. The District argues that the Association's disregard for the job security of its own members appears to be very short-sighted on the part of the Association and its offer, even if analyzed "charitably," would appear to be ill-advised.

According to the District, the exorbitant cost increases that would result from the association's proposal strongly supports selection of the District's proposal. The District asserts it is critical that the costs of the parties' offers be analyzed in order to obtain an "apples to apples" comparison of those offers. Declaring that the Association's sole attempt to produce any financial data in support of its offer was to duplicate an initial costing prepared by the District at the beginning of the negotiation process, the District says this December 2005 costing was not intended as a final document for either the District's or the Association's offer, but, rather, was a preliminary draft establishing employees' placement on the salary schedule, and base year costs.

The District argues it cannot afford to fund the Association's offer absent a significant reduction in staffing, which would not be in the best interests of the public. The District says its purpose is to provide quality education for its students. To this end, it asserts it attempts to use an appropriate level of staffing. According to the District, the current level of staffing would be jeopardized under the Association's offer, resulting in a negative impact on the students.

It is the District's position that settlements with comparable internal District bargaining units support the selection of the District's proposal. The District submits that its wage and insurance proposals to the Association are reasonable and consistent with its remaining internal settlements. The District further submits that there are inherent differences in bargaining units and there are groups that are more or less comparable to this group. The District claims the Association is attempting to force the District to provide identical benefits to it that the District provides the teachers. The District says it appreciates the value of all of its employees; however, it states there are major differences in the job duties assigned to teachers and those assigned to Association personnel.

The District says the health insurance changes requested by the Association are unacceptable for a number of reasons: (1) the plan being sought by the Association is one the District is seeking to eliminate District-wide; (2) the plan being sought by the Association is the most expensive plan when calculating premium costs; (3) the plan being sought by the Association is a major deviation from the status quo; (4) the eligibility for plan participation (with District-funded premiums) proposed by the Association is also a major deviation from the status quo; and (5) the implementation of the plan proposed by the Association contains huge flaws. The District asserts that the evidence shows the District's cost for insurance is already high and, should the Association offer be chosen, the District's cost will climb even further. In addition to that, the coverage presently provided to the WESP unit (and, as noted above, the Local 1561 group and the non-represented group of employees) is not substandard or lacking in any way.

With respect to layoffs, the District explains that different classifications are not interchangeable. It says that the layoff language does not use unit-wide seniority to determine layoff, but rather uses seniority from each classification, with each classification possessing different job duties and skill levels. Within the Aides' unit, the classifications are further divided by the special educational requirements, skills and job duties of each position.

Pointing out it has maintained a practice of contributing toward the Aides' health insurance in an amount intended to cover the single premium cost, the District states this continues to be the District's intention, evidenced by its offer to increase the amount of its contribution from \$550/month to \$600/month. The District claims the Association is proposing a drastic change to the status quo—demanding full District-paid health insurance premiums for all Association employees working 35 or more hours per week. In addition, the District says the Association is demanding prorated District-paid health insurance premiums for all Association employees working 17.5 or more hours per week. According to the District, this 17.5 hours per week threshold is especially disturbing in light of the fact that it is unprecedented among the comparable districts.

In proposing its layoff language, the District contends it is attempting to be respectful of the needs of its students. The District says its proposal assures that its special needs children are not compromised in the event a layoff becomes necessary. The District says the majority of districts do not have layoff clauses incorporating seniority only.

The District argues the Association's health insurance premium proposal is especially troublesome in light of the current health insurance climate. According to the District, the trend is to obtain cost-sharing from employees on premiums and/or health plan co-pays and co-insurances. The District argues it is offering to increase its contribution toward health insurance and maintain the current health insurance plan. It claims the Association, as the party requesting a significant and costly change in the status quo, must provide a quid pro quo.

The District says its offer, when compared to the CPI, provides an increase over the amount of the increase in the CPI for both years of the contract in dispute. In contrast, the District states the Association's offer is much higher than the increase in the CPI making its offer totally unreasonable.

## **B. The Association**

The Union claims its selection of comparable school districts is more appropriate and reasonable than the District's. Pointing out that there has never been an interest arbitration between any of the organized bargaining units and the Wauwatosa School District, the Union says there has never been a set of external comparables identified as appropriate for this group.

Declaring that both parties include six of the same districts on their lists of comparables, the Association disputes the relevance of Franklin, Muskego-Norway, Oak Creek-Franklin and South Milwaukee school districts. It notes that none of the four districts are in either the Greater Metro or Woodland conference and are, instead, a part of the Southeast Conference. The Association also says that all four of the districts are geographically further away from Wauwatosa than the schools of the Greater Metro and Woodland conferences.

The Association asserts that it offers a comparable set that includes unionized employee groups from geographically proximate school districts from the Greater Metro and Woodland Conferences. In selecting its comparable group the Association says it has given consideration to geographic proximity, similarity of size, and the distance an employee would have to travel for similar employment in another district. The four districts the Association includes as comparable districts that were not included in the District's list are the Greendale, New Berlin, Pewaukee, and St. Francis School Districts. The Association points out these districts are all in the same athletic conferences with the District.

The Association asserts that the District has a split personality as it abuts both the urban Milwaukee School District and the suburban districts located to the west. According to the Association, the District is both urban and suburban as are several of the other districts in the athletic conferences. The Association contends that not all of the schools listed in the Association set of comparables are favorable to the Association's position. The Union says it looked at what would be the most appropriate grouping.

It is the Association's position that the District has shown signs of mounting an argument that the District lacks the financial ability to implement the Union's final offer. The Association says the parties' final offers have the same per cell wage impact. While there is some financial impact due to the structural difference in the salary schedule for special education aides, the Association states that most of the impact on financial ability is limited in scope and would be prospective. The Association contends it has provided substantial evidence that the Wauwatosa School District taxpayers have not been taxed out of proportion to their peers in comparable school districts. Declaring that Wauwatosa taxpayers have fared well, the Association does not believe that the Employer can rely on the "greater weight" factor in this case.

With respect to method of selecting for layoffs, the Association says the District's proposed method is fraught with problems. According to the Association, it is nothing more than the District arbitrarily picking a person to be laid off and then creating the rationale after-the-fact. The Association asserts that its proposal provides the District with the opportunity to require an employee to participate in any specialized training the District would like. This can be done as part of the layoff process. The Association says its proposal to allow additional training is consistent with the internal teacher comparable which gives the employer the option to require an employee to take coursework in a new area of assignment if they have not worked in that area in the past three years.

While the District has expressed concern about training and specific employee experience with special education students, the Association claims they have, by practice, been willing to hire a "warm" body to fill these positions. Testimony by special education aide Beth Stoskopf demonstrates the District has hired individuals with only high school diplomas and no special education experience; the District has provided no training for them.

It is the Association's position that the District currently utilizes inverse seniority as the criterion for layoff among its most highly trained special education employees, the specialists who are part of the WEA bargaining unit. Whether an occupational therapist, a physical therapist, psychologist, social worker, learning disabled teacher, cognitively disabled or behaviorally disabled teacher, etc., the Association says they are all subject to layoff within their certification by inverse seniority, not to pick whomever the District wants to layoff technique.

The Association claims its proposal is clearly more appropriate when looking at employees performing the same types of work in the external comparable group. Of the ten external comparables, the Association says nine have an inverse seniority based system and the tenth district uses a combination of inverse seniority and skill. While every child is unique, the Association argues that special education students in Wauwatosa are no more unique than those in the other comparable districts.

With respect to health benefits, the Association contends its offer establishes a benefit level consistent with all other employee groups within the District. Among the

internal comparables, the Association points out that organized support staff groups receive 100% employer paid health insurance, including both single and family coverage.

The Association stresses that its proposal includes a per-hour wage increase significantly less than that of the other support staff groups, both of which have fully employer-paid health and dental insurance, have the cash in lieu of insurance option of \$3,240 per year, and are part of the higher benefit health insurance plan for the 2005-2007 contract term. The Association claims its lower wage proposal was made in an effort to move this group of employees toward the benefit levels of the other employee groups. The Association says the District's offer is less in wage increases and does not even maintain the current level of health and dental benefits. According to the Association, its offer is consistent with the level of employer-paid benefits of employees in comparable school districts performing similar work.

The Association notes that the District's administrative assistants have fully paid insurance, the maintenance and custodial unit has fully paid insurances, the teachers, administrators and confidential (select) employees all have fully paid insurance, and even a segment of those covered by this initial contract have fully paid health and dental coverage. The Association says all student supervisors hired before July 1, 2002, receive fully paid health and dental coverage. It is the Association's position that its offer not only brings the bargaining unit closer to the internal District comparables and the external comparables, it brings the unit itself together with the same benefit level within the unit. There is no second class status for the aides.

The Association emphasizes that its proposal to move employees to the "teacher" plan cannot be done retrospectively, but only prospectively. The Association asserts that, because the parties are already in the midst of the 2007-2009 bargaining period, this limits the increased premium cost to those who were enrolled in the plan during the 2005-2007 time frame, and the premium level is less than what would have been paid had the group been covered by the teacher plan. According to the Association, the cost is further mitigated by the Association's inclusion of a cash-in-lieu of health insurance option that would limit the annual cost to the District to \$1,041 in 2005-2006 and \$1,100 for 2006-2007 for those employees electing not to enroll in the District health plan. Not only is this a huge cost savings to the District, but the Association contends it is only one-third of the cost of the cash-in-lieu of benefit (\$3,240) available to other District employees.

The Association claims its proposal regarding the salary schedule structure is more closely aligned with employees performing similar work in comparable school districts. The Association says the salary schedule structure proposed by the Association provides for a compensation level for special education employees more closely aligned with special education employees in comparable districts. It stresses that the maximum wage rate for the unit under either the Association or District proposal lags behind the external comparables; however, the Association says its proposal begins to close the gap. The Association asserts its wage proposal in conjunction with its benefit offer will stop the erosion of wages and benefits as compared to both the internal and external comparables.



The Association argues that the District is financially able to afford the Association offer. The Association points out that the District is well above the state average and the comparable districts in its Fund 10 balance and enjoys the lowest levy rate among the comparables.

The Association argues that the traditional status quo and qui pro quo analysis are inappropriate in an initial-contract arbitration.

## **V. FINDINGS OF FACT**

### **A. State Law or Directive (Factor Given the Greatest Weight)**

In order for this factor to come into play, employers must show that selection of a final offer would significantly affect the employer's ability to meet State-imposed restrictions. See *Manitowoc School Dist.*, Dec. No. 29491-A (Weisberger 1999). No state law or directive lawfully issued by a state legislative or administrative officer, body or agency placing limitations on expenditures that may be made or revenues that may be collected by a municipal employer is at issue here.

While the District, like other school districts, is operating under legislatively imposed revenue limits, there is no showing that either offer will require the District to exceed those limits. It must be kept in mind that the District is subject to the stringent revenue limits, particularly since the District tax levy is at the maximum amount allowed by law. The record indicates that the District imposed budget reductions for the 2005-2006 school year. It has also had to reduce the number of teachers.

The evidence shows that the difference in total cost between the District's final offer and the Association's final offer for 2005-2006 is \$796,808 (assuming fringe benefit cost increases would go into effect for that period). The difference in total cost between the District's final offer and the Association's final offer for 2006-2007 is \$912,167 (assuming fringe benefit cost increases would go into effect for that period). If health insurance increases do not go into effect until the 2007-2008 school year, then the difference in the costs between the two final offers in 2005-2006 and 2006-2007 would be approximately \$2,500 in 2005-2006 and \$21,000 in 2006-2007.

### **B. Economic Conditions in the Jurisdiction of the Municipal Employer (Factor Given Greater Weight)**

This factor relates to the issue of a municipal employer's ability to pay. There is no showing that the District is unable to pay either party's final offer.

### **C. The Lawful Authority of the Employer**

There is no contention that the District lacks the lawful authority to implement either offer.

#### **D. Stipulations of the Parties**

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute. They have, however, reached agreement on a number of issues not in dispute here.

#### **E. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs**

This criterion requires an arbitrator to consider both the District's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. The public has an interest in keeping the District in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the District. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly.

#### **F. Comparison of Wages, Hours and Conditions of Employment**

##### ***1. Introduction***

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

##### ***2. External Comparables***

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. See, e.g., *Rock Village (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984).

The District proposes the following school-district comparables: Cudahy, Elmbrook, Franklin, Hamilton-Sussex, Menomonee Falls, Muskego-Norway, Oak Creek-Franklin, South Milwaukee, West Allis-West Milwaukee, and Whitnall. The Association has proposed Cudahy, Elmbrook, Greendale, Hamilton-Sussex, Menomonee Falls, New Berlin, Pewaukee, St. Francis, West Allis-West Milwaukee, and Whitnall. Both parties present plausible reasons for their lists of comparables.

Arbitrators often accept the athletic conference as the comparable group because the athletic association tends to group similarly sized schools that are geographically near each other for competitive purposes. *Hurley School Dist. Nonprofessional Employees*, Decision 22216-A (Vernon 1985); *Weyauwega-Fremont School Dist. (Educ. Support*

*Personnel Ass'n*), Decision 30449-A (Engmann 2003). However, mere inclusion in the same athletic conference does not automatically make a district a comparable. An arbitrator must still consider the economic markets, proximity to the district, and enrollment.

Of the proposed comparables, Cudahy, Elmbrook, Franklin, Hamilton-Sussex, Menomonee Falls, Muskego-Norway, Oak Creek-Franklin, South Milwaukee, West Allis-West Milwaukee, and Whitnall are reasonably proximate to Wauwatosa, are relatively close in student enrollment, and are in the same socio-economic environment as Wauwatosa. Greendale is not appropriate because its aides are not unionized. New Berlin is not an appropriate comparable because some of its aides are unionized and some are not. Pewaukee is not proximate to Wauwatosa and it is in a different socio-economic environment. St. Francis is much smaller than Wauwatosa. Arbitrators have recognized that it is appropriate to exclude from comparables employers that do not have represented employees in the same or similar classifications. *See, e.g., Ashwaubenon Educ. Support Personnel*, Dec. No. 30339-A (Roberts 2002); *City of Shell Lake (DPW)*, Dec. No. 284866-A (Vernon 1996); *Roshold School Dist. (Support Personnel)*, Dec. No. 24004-A (Christenson 1987); *West Allis-West Milwaukee School Dist.*, Dec. No. 21700-A (Malamud 1985).

Accordingly, it is concluded that the most appropriate comparables are the comparables proposed by the District. These districts are geographically proximate to the Employer, they are similar in student enrollment, and they operate under comparable economic conditions.

#### **G. Changes in the Cost of Living**

The governing statute requires an arbitrator to consider “the average consumer prices for goods and services, commonly known as the cost of living.” While a number of arbitration awards suggest that changes in the cost of living are best measured by comparisons of settlement patterns, such settlements, do not reflect “the average consumer prices for goods and services.” Despite its shortcomings, the Consumer Price Index (“CPI”) is the customary standard for measuring changes in the “cost of living.” Settlement patterns may be based on a number of factors in addition to changes in the “average consumer prices for goods and services.”

Both offers provide for increases well above the increases in the CPI during the period covered by the contract. The Employer’s final offer results in an increase closer to the CPI than the Association’s.

#### **H. Overall Compensation Presently Received by the Employees**

In addition to their salaries, employees represented by the Association receive a number of other benefits. While there are some differences in benefits received by employees in comparable employers, it appears that persons employed by the Employer generally receive benefits equivalent to those received by employees in the comparable employers.

## **I. Changes During the Pendency of the Arbitration Proceedings**

The parties have not brought any changes during the pendency of the arbitration hearings to the Arbitrator's attention.

## **J. Other Factors**

This criterion recognizes that collective bargaining is not isolated from those factors comprising the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. No. 29303-B (Engmann 1998). See also *Iowa Village (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer's economic condition is strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

## **VI. ANALYSIS**

### **A. Introduction**

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (See, e.g., *D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. Realistically, if the parties reached a negotiated settlement, the final resolution would probably be the result of compromise and the outcome would be contract provisions somewhere between the two final offers here. The Arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria.

Undeniably there are some provisions in the Association's final offer that are more reasonable than some provisions in the District's final offer and vice versa. However, the Arbitrator is required to select one party's final offer; the Arbitrator cannot choose some provisions in one offer and some provisions in the other offer. Nor can the Arbitrator modify or edit final offers. Clearly, a negotiated agreement in which the parties select the best individual offers, modify them so they are mutually acceptable, and work together to clarify the language would be preferable to imposing one final offer on the parties. Unfortunately, the parties were unable to reach a negotiated settlement and it was necessary to have the matter resolved in this arbitration proceeding.

As is normal in interest arbitration and required by statute, attention has been given to the situation in comparable school districts and employers. However, this criterion must be examined with caution as employers and unions have become skilled at selecting "comparables" that are most favorable to their positions. Additionally, although a district

may be geographically proximate or of similar size, there are many variables in each district that make an exact comparison difficult.

The concept of changes in the status quo and the importance of quid pro quo are not as important here, where the contract is the parties' first, than in situations where the status quo is the result of agreement between a bargaining representative and an employer. Here, where the status quo is the result of custom or the District's exercise of discretion, the parties are not always in agreement as to the nature and scope of the claimed status quo.

Total package or overall compensation is an important part of analyzing final offers. One arbitrator has written:

[T]he total package data must be given weight even if it includes increases in insurance premiums. It is valid to consider total cost, including increased cost of insurance premiums, because it is a cost experienced by the employer as a result of a benefit negotiated by the Union. This cost, like the cost of any other benefit, which can be expressed in dollar terms, should be considered in comparing final offers of the parties to comparable districts. There is simply no way to ignore the fact that health insurance is a benefit negotiated in the agreement and is of benefit to the bargaining unit members and moreover, that the cost of this benefit is experienced by the employer.

*Marion School Dist.*, Dec. No. 19418-A (Vernon 1983). See also *Kenosha Service Employees*, Dec. No. 19882-A (Yaffe 1983) (one must consider the total value of benefits received by benefits and not ignore increased costs).

Total package analysis recognizes that an employee's compensation includes all benefits, including wages, health insurance, sick leave, and vacations. Total package analysis also recognizes that the money for an employee's compensation comes from a single source—the employer's budget. In determining the budget, including the budget for employee compensation, priorities must be set and choices must be made.

## **B. Wage Increases**

The parties' wage increases are relatively similar except for changes in the salary schedule proposed by the Association. The Association's proposal would result in total salary increases of \$23,434 more than the District office for the term of the collective bargaining agreement.

The across-the-board increases provided in both offers are greater than the across-the-board increases provided teachers during the same period and less than that provided custodial employees. The custodial employees were given a higher increase as quid pro quo for moving to the insurance plan presently in effect for the Association's bargaining unit.

With respect to the external comparables, the record shows that those districts have a variety of salary schedules. The steps in the schedules of the comparable districts range from a high of eleven to as few as three. The external comparables provide little guidance with respect to either final offer. Both parties' final offers regarding wages are equally reasonable.

### **C. Employee Benefits**

The Association is seeking to move its employees into a health insurance plan the District is seeking to eliminate District-wide. The plan sought by the Association is the most expensive plan with respect to premium costs. If the Association's offer is selected, the District's health insurance costs will increase significantly.

In the comparable school districts, the minimum threshold for eligibility for pro rata district-paid health insurance premiums is twenty hours per week. The Association proposes requiring pro rata District-paid insurance for aides working 17.5 or more hours per week.

The record shows that District teachers represented by the Wauwatosa Education Association are required to pay two percent of the health insurance premium effective July 1, 2006 (offset by a dollar-for-dollar increase in the salary schedule for 2006-2007). The 2005-2006 and 2006-2007 agreements between the District and AFSCME Local 1561 and the 2005-2006 agreement between the District and the Wauwatosa Educational Support Association provide for the District to pay the full health insurance premium.

District-paid premiums for full-time aides among the comparables vary from 100% to no contribution. Only one district pays 100%. The District proposes to increase its contribution for full-time employees to \$600 a month effective with the 2006-2007 school year. The Association proposes the District pay 100% of the health insurance premiums of full time employees.

The Association's final offer with respect to health benefits is not supported by the comparables. In addition, the Association's offer, which by its terms would become effective on the effective date of the collective bargaining agreement, is considerably more expensive than the District's offer. Accordingly, the District's final offer with respect to health benefits is more reasonable than the Association's offer.

### **D. Layoffs**

With respect to layoffs, the record discloses that layoff of teachers is governed by seniority and teaching certification, and the layoff of custodians/maintenance/food service employees is based on seniority in the affected classification. The District's final offer provides for layoff of aides by seniority within the aide categories. The District's final offer allows the District to consider factors such as experience, assignment, education and training in laying off aides in Category II. If those factors are equal, then seniority is the determining factor. The Association's final offer provides for layoff by strict seniority.

With respect to Category, the Association's final offer permits the District to require an aide to participate in appropriate training.

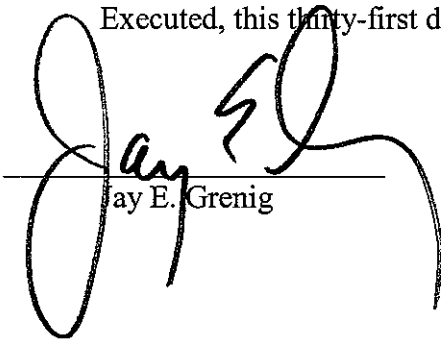
Both final offers provide for layoffs by category. They differ with respect to Category II. The District's offer allows it to consider experience and education or training as well as seniority while the Association's offer applies strict seniority to Category II and permits the District to require an employee undergo training in order to be able to perform the duties of the less senior, bumped employee.

While it is common to permit a familiarization period for a senior employee who bumps into a position, it is not common to permit an employee to bump into a position with duties that the employee is not qualified to perform without additional training. The Association's proposal puts an unnecessary burden on the District. The District's proposal, on the other hand, takes seniority into consideration while allowing it to evaluate an aide's experience and training to be sure the aide can perform the duties in question. Accordingly, the District's proposal with respect to this issue is more reasonable than the Association's.

## VII. AWARD

Having considered all the applicable statutory criteria, all the relevant evidence and the arguments of the parties, it is concluded the District's final offer is more reasonable than the Association's final offer. The parties are directed to incorporate into their collective bargaining agreement the District's final offer.

Executed, this thirty-first day of December 2007.



Jay E. Grenig