BEFORE THE ARBITRATOR

In the Matter of the Interest
Arbitration of a Dispute Between

**LABOR ASSOCIATION OF WISCONSIN, INC.
(CUSTODIAL & LAUNDRY WORKERS,
LOCAL 531)**

and

Case 74
No. 66582 INT/ARB-10854
Decision No. 32191-A

RICE LAKE AREA SCHOOL DISTRICT

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, appearing on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by **Attorney Stephen L. Weld**, 3624 Oakwood Hills Pkwy., P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the District.

ARBITRATION AWARD

By Order dated September 10, 2007, the Wisconsin Employment Relations Commission, herein "WERC," appointed Dennis P. McGilligan as the Arbitrator "to issue a final and binding award, pursuant to Section 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties ". . . by selecting either the total final offer of the Labor Association of Wisconsin, Inc. (Custodial & Laundry Worker's, Local 531) or the total final offer of the Rice Lake Area School District."

A hearing was held in the Rice Lake Area School District Administration Building, Rice Lake, Wisconsin, on November 29, 2007. The hearing was not transcribed. The parties completed their briefing schedule on March 27, 2008.

After consideration of the entire record and the arguments made by the parties, the Arbitrator makes and renders his decision and Award.

BACKGROUND

Labor Association of Wisconsin, Inc. (Custodial & Laundry Workers, Local 531), herein "Association," represents for collective bargaining purposes a unit of certain maintenance, custodial and laundry employees of the Rice Lake Area School District, herein "District" or "Employer." The parties engaged in negotiations for a successor collective bargaining

agreement to replace the prior agreement which expired on June 30, 2005, and they agreed on all issues except health insurance, holiday pay, vacation, wages and hours of work.

The Association filed an interest arbitration petition on December 29, 2006, with the WERC. The WERC appointed Steve Morrison to conduct an investigation which he completed and then closed on or about August 13, 2007. On September 10, 2007, the WERC issued an Order appointing the undersigned to serve as the Arbitrator.

There are three other bargaining units in the District. They include teachers represented by Northwest United Educators ("NUE"); secretaries and aides represented by AFSCME Local 3286 ("AFSCME"); and food service employees represented by the International Brotherhood of Teamsters Joint Council No. 39 ("Teamsters"). There also are non-represented employees.

In the last negotiations between the District and NUE, the parties reached an agreement for two, two-year collective bargaining agreements for teachers covering the time period of 2005-07 and 2007-09. For 2005-06 the parties agreed to a 2.5% per cell wage rate increase and a total package increase of 5.57%. For 2006-07 the parties agreed to 2.0% per cell wage rate increase and a total package increase of 3.33%. For 2007-08 the parties agreed to a 2.0% per cell wage rate increase and a total package of 4.25%.

The parties also agreed to the following language on health insurance:

ARTICLE XVI – INSURANCE

A. Effective July 1, 2007, the Board agrees to pay up to $1,242.01 per month toward the cost of family coverage and $435.80 per month toward the cost of single coverage under the District's standard medical/hospitalization insurance plan.

   Effective July 1, 2008, the Board agrees to pay up to $1,378.63 per month toward the cost of family coverage and $483.73 per month toward the cost of single coverage under the District's standard medical/hospitalization insurance plan.

The language in the first paragraph above is identical to the language proposed by the District to the Association herein. The language in the second paragraph above represents an 11% increase in the amount the District would pay toward the health insurance premium from the year before.

During bargaining, NUE and the District also agreed to significant reductions and modifications in the early retirement program for teachers.

The food service employees represented by the Teamsters agreed to a three year collective bargaining agreement covering the period July 1, 2005 through June 30, 2008. Wage increases included 2.95% for each of the years covered by the agreement. Health insurance premiums remained unchanged with the District paying "95% of the cost of the family coverage

and 100% of single coverage under the District's standard medical/hospitalization insurance plan for eligible full-time employees." This bargaining unit has very few employees who are full-time or who participate in the District's health insurance plan.

AFSCME, representing the secretaries and aides, is currently in negotiations with the District over a new collective bargaining agreement. Payment of health insurance premiums is an issue in this bargain and the parties are headed toward arbitration on this dispute.

Beginning in 2008-09, the District will cap its share of the health insurance premium to a maximum of $1,415.89 for a family policy and $496.81 for single coverage for certain non-represented employees.

FINAL OFFERS

The Association's final offer states:

All articles/sections of the 2002-2005 Custodial and Laundry Workers Agreement shall continue into the successor Agreement for 2005-2008, except as set forth in the **Stipulation of Tentative Agreements**, dated February 21, 2007, and as follows:

1. Article XV – HOURS OF WORK, WORKWEEK AND OVERTIME COMPENSATION
   Add a new paragraph 5 to Section 2 – Hours as follows:

Section 2 – Hours: The standard daily work shift for all full time employees shall consist of eight (8) hours; as follows:

1. Elementary School Custodians – To be designated by Maintenance and Custodial Supervisor. *

2. Middle School Custodians –	Head Custodian	7:00 a.m. to 3:30 p.m.*
	First Shift	6:30 a.m. to 3:00 p.m.
	Second Shift	3:00 p.m. to 11:00 p.m.
3. High School Custodians -	Head Custodian	7:00 a.m. to 3:30 p.m.*
	First Shift	6:30 a.m. to 3:00 p.m.
	Second Shift	3:00 p.m. to 11:00 p.m.

4. Summer hours for all employees shall be from 7:00 a.m. to 11:30 a.m. and 12:00 noon to 3:30 p.m.

5. **All hours worked during a holiday shall be two (2) times the normal hourly rate in addition to the holiday pay**.

2. Article XVII – TOTAL COMPENSATION *Increase all wage classifications in Section 1 _ Wage Rates 3.0% effective July 1, 2005; 3.0% effective July 1, 2006; and 3.0% effective July 1, 2007.*

3. Article XVII – TOTAL COMPENSATION *Modify Section 7 – Vacations, Paragraph A by changing "After 8 years through 15 years – 3 weeks" to* "**After 7 years through 15 years – 3 weeks**"*, and Delete the following sentence* "Employees hired prior to July 1, 1990 shall receive three (3) weeks of vacation after seven (7) years."

4. Article XIC – DURATION *Delete "sixty (60) days prior to" in Section 2 and Replace with* "**March 1st of**" *prior to the "expiration of this contract".*

The District's final offer states:

All items shall remain in the 2002-2005 Custodial and Laundry Workers Agreement between the Rice Lake Area School District and Teamsters General Local 662 except as set out in the Stipulation of Tentative Agreements dated February 21, 2007, and as follows:

1. **Article XV, Section 2 – Hours**

   Create a new third paragraph (after the paragraph which starts with an asterisk) to read:

   The District may vary starting and end times up to one hour by providing 48 hours notice.

2. **Article XVII, Section 1**

   Revise all wage rates 3.0% effective July 1, 2005; an additional 3.0% effective July 1, 2006; and an additional 3.5% effective July 1, 2007.

3. **Article XVII, Section 6, Item 1**

   Add as third paragraph: "Effective July 1, 2007, the Board agrees to pay up to $1,242.01 per month toward the cost of family coverage and $435.80 per month toward the cost of single coverage under the District's standard medical/hospitalization insurance plan."

4. **Article XIX, Section 2, Duration**

   Revise by replacing "Sixty (60) days" with "the March 1."

The parties are in agreement that there is no dispute over item four in the parties' final offers.

STATUTORY CRITERIA

In deciding the issues presented, Section 111.70(4)(cm)7, Stats., requires the Arbitrator to consider the following factors:

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.

POSITIONS OF THE PARTIES

The parties filed concise and well-reasoned briefs. The parties' positions and arguments and cases cited are not reproduced in detail; instead the parties' positions are summarized below. The parties' main arguments are discussed below in the **DISCUSSION** section of the Award.

Association's Position

The Association first argues that use of the conference school districts as the primary set of external comparables is appropriate. With respect to the secondary set of labor pool comparables, the Association objects to the inclusion of any school not included in previous interest arbitration cases between the District and its represented employees.

The Association opines that the controlling factor in this interest arbitration is whether or not the District has offered the Association an adequate quid pro quo in return for the significant modifications it seeks in the insurance premiums. The Association contends that the District not only fails to offer an adequate quid pro quo for the significant changes they proposed, but "insults" employees by proposing a wage offer in the third year of the contract that is substantially below the internal comparables.

The Association also argues that the District's varying hours proposal is intended to *avoid* the payment of overtime and has an economic impact but lacks an appropriate quid pro quo. (Emphasis in the Original).

The Association further argues that its proposal that employees working on a holiday receive two (2) times their normal rate of pay is reasonable because the impact to the District of the change is minimal.

Likewise, the Association believes its vacation proposal is reasonable due to the negligible effect of the change on the District.

Based on the foregoing, the Association concludes that its final offer is more reasonable and requests that the Arbitrator incorporate it into the successor 2005-2008 collective bargaining agreement between the parties.

District's Position

The District initially proposes a labor pool with a 30-35 mile radius from Rice Lake as the primary comparable pool and the Big Rivers Athletic Conference as the secondary comparable pool. The District believes that these primary and secondary comparables provide a reasonable foundation for comparison of the parties' final offers.

The District next argues that it has a need to manage health insurance costs and that its proposal reasonably addresses this need. In this regard, the District claims that it has an excellent health insurance plan for which employees pay very little. The District then asserts that its health insurance premium contribution is increasing dramatically over the course of the contract and that employees should assume a larger share of the health insurance costs. The District opines that internal, external and private sector comparables support its proposal on health insurance premium contributions. The District adds that it has offered a reasonable quid pro quo for the proposed change.

The District also argues that its hours proposal simply reflects existing practice and that under the District's proposal schedule changes would no longer violate the contract.

The District further argues that the Association's holiday pay proposal has no rational basis, is not supported by the comparables and does not include a quid pro quo.

Likewise, the District argues that the Association has failed to provide any justification for improving vacation benefits.

Finally, the District objects to a number of mis-characterizations included in the Association's brief.

For these reasons, the District respectfully asserts that its final offer is the more reasonable and requests that it be incorporated in the collective bargaining agreement.

DISCUSSION

At the outset, the Arbitrator notes that the only issues in dispute are health insurance, holiday pay, vacation, wages and hours of work. The most significant issue is health insurance

premiums. The wage issue is linked to the health insurance premium changes proposed by the District. In this regard, the Arbitrator notes that the Association and the District have each proposed a 3% wage increase for the period of July 1, 2005 through June 30, 2006; and a 3% increase for the period of July 1, 2006, through June 30, 2007.

The significant difference in the parties' wage proposals occurs in the final year of the Agreement. The Association proposes a 3% wage increase for the period of July 1, 2007, through June 30, 2008. As a quid pro quo for the health insurance premium dollar caps, the District has offered a 3.5% increase for the same period, exceeding the Association's final wage offer by .5%.

The parties do not rely on all of the statutory criteria in support of their offers. The criteria not relied upon include: the "greatest," "greater," weight provisions of subsections 7 and 7g, the "lawful authority," the stipulations of the parties, the "interests and welfare" of the public, and the "ability to pay" provisions of 7r c, and the "overall compensation" and "changes during pendency" provisions of 7r h and i. Since said criteria are not addressed by the parties, the Arbitrator, like the parties, finds them to be non-determinative of the issues presented. *Sawyer County, Decision No. 31519-A, p. 6 (Torosian 9/06).*

With respect to the remaining criteria, comparison with private sector settlements, the "cost-of-living," and "such other factors," provisions of 7r f, g and j, were addressed, but, clearly they are not as significant as the primary criteria of 7r d and e; external and internal comparables. Consequently, the Arbitrator does not find them, individually or together, to be very important to the outcome of this case. Their relative significance will, however, be discussed below.

Comparables

The District proposes a labor pool with a 30-35 mile radius from Rice Lake as the primary comparable pool. It proposes the Big Rivers Athletic Conference as the secondary pool.

Labor Pool (30-35 mile radius from Rice Lake)	**Athletic Conference (Big Rivers)**
Barron	**Chippewa Falls**
Birchwood	**Eau Claire**
Bloomer	**Hudson**
Bruce	**Menomonie**
Cameron	**River Falls**
Chetek	

Clayton *(n/u)*	
Cumberland	
New Auburn	
Prairie Farm	
Shell Lake	
Spooner	
Turtle Lake	
Weyerhaeuser	

The Association, on the other hand, believes that the conference schools are the primary comparable group. The Association does not object to the inclusion of certain schools as a secondary comparable (labor) pool as long as they are consistent with comparables established in prior arbitrations for the District.

There have been no arbitration awards determining comparables for this bargaining unit. Further, the parties have not agreed to a comparable pool. All prior District interest arbitration decisions have involved the teachers. In 1978, Arbitrator Stern found the following districts comparable to the District's teachers: Amery, Bloomer, Chetek, Cumberland, Ladysmith, Maple/Northwestern, Osceola, Spooner, St. Croix Falls and Unity. Arbitrator Stern stated that he would have also included Barron and Hayward had settlement information been available. *Rice Lake Area School District, Decision No. 16242-B, pp. 2, 7 and 8 (11/15/78).* In arriving at these comparables, Arbitrator Stern selected schools from the applicable athletic conference and CESA District #4 using school district size as the determining factor in selecting the comparables. *Rice Lake Area School District, supra, pp. 2, 7.* It should be noted that Arbitrator Stern did not agree entirely with either the District or NUE on the comparability issue. *Rice Lake Area School District, supra, p. 2.*

In a 1983 teacher case, Arbitrator Yaffe (in large part due to lack of reliable data from many of the Stern school districts) added a number of similarly sized districts in contiguous CESA Districts #1 and #5 to the settled districts used previously. *School District of Rice Lake, Decision No. 19977-A (5/9/83).* Again, Arbitrator Yaffe did not agree entirely with either the District or NUE on comparables.

Finally, in a third teacher interest arbitration case in 1986, Arbitrator Weisberger added Menomonie to the Stern group but specifically excluded Chippewa Falls because it was part of a much larger urban area that included Eau Claire. *Rice Lake Area School District, Decision No. 23126-A (5/29/86).* Likewise, Arbitrator Weisberger did not agree entirely with either the District or NUE on comparables. *Rice Lake School District, supra, pp. 5-6.*

Shortly thereafter, at the start of the 1986-87 school year, Rice Lake moved from the Heart of the North Conference to the Big Rivers Athletic Conference. Since six of the ten

schools on the Stern list of comparables were chosen because of their membership in the Heart of the North Conference, and because the two schools Arbitrator Stern did not include on his list of comparables, Barron and Hayward, were also in said athletic conference, the comparability of those districts to Rice Lake is reduced, if not eliminated. In addition, all three previous Rice Lake interest arbitration awards involve teachers, are more than twenty years old and have different comparable groups. As a consequence, the District argues that the Arbitrator should determine a new appropriate comparable pool for the custodians. The Arbitrator agrees.

The District's proposed comparable pool includes both geographically proximate and athletic conference schools. That makes sense. In *Barron Area School District, WERC Voluntary Impasse Procedure Case No. 2694V (2/26/93),* Arbitrator Imes endorsed using a combined set of athletic conference and geographically proximate districts for support staff employees. In that case, both parties agreed that the athletic conference was the primary pool of comparables. However, Arbitrator Imes found validity in the District's argument that proximity to the District, as well as similarities in economic and demographic background, was an important test of comparability when the dispute involved non-certified staff "since there are limits to the distance these employees will travel for higher wages or improved working conditions," and instead selected geographically proximate districts for primary comparison purposes. *Barron Area School District, supra, pp. 9-10*.

Similarly, in *Holmen School District, Decision No. 27395 (4/16/93),* Arbitrator Vernon also supported using a combined labor pool/athletic conference set of comparables for support personnel. In creating a secondary pool of comparables based on size and inclusion in the applicable labor market, Arbitrator Vernon noted a difference between the labor markets for support staff and teachers "due to the fact that their professional qualification creates a different kind of labor market." *Holmen School District, supra, p. 12*. One of those differences, as noted by Arbitrator Imes above, is that there are limits to the distance support staff will travel for high wages or improved working conditions. *Barron Area School District, supra, p. 9.* The record evidence provides support for such an opinion. All custodians in the bargaining unit have Rice Lake addresses except for five. The rest live within fifteen miles of the District.

The parties are in agreement that the comparable pool should include both geographically proximate and athletic conference schools. A question remains as to whether the athletic conference or labor pool should constitute the primary comparable pool. Arbitrator Imes selected geographically proximate districts for primary comparison while Arbitrator Vernon chose a combined labor pool/athletic conference group of districts as the primary comparable group.

The District accurately points out that in some ways Rice Lake is "a tweener" – it is the largest district in the area, but the smallest in the conference. In this regard, the record indicates that Rice Lake has the highest enrollment in the geographically proximate schools and the lowest in the Big Rivers Conference. In terms of changes in enrollment, it is one of only two schools in the conference experiencing declining enrollment while 9 of the 15 geographically proximate schools relied upon by the District are declining. Comparing income, equalized value and tax levy, Rice Lake ranks last among the Big Rivers Conference schools but near the top of

proximate schools. These are all reasons the District would make the labor pool the primary comparable pool.

Although her interest arbitration award involved teachers, Arbitrator Weisberger foresaw the day when membership in the Big Rivers Athletic Conference would be more relevant in determining appropriate comparables. *Rice Lake Area School District, Decision No. 23126-A, supra, p. 6.* In fact, athletic conferences have often served as the primary comparable pool. In this regard, Arbitrator Gundermann wrote:

> The fact that arbitrators have relied upon athletic conferences as the basis for establishing comparables is well established in arbitral dicta. In fact, this arbitrator concluded that athletic conferences are generally accepted and relied upon by arbitrators in interest arbitration disputes. *Menomonie Area School District, Decision No. 2294, p. 3 (3/12/86).*

Similarly, Arbitrator Knudson stated:

> The District relies on the Dunn-St. Croix conference, of which the District is a member, as the comparable school districts. Those districts are Boyceville, Colfax, Elk Mound, Elmwood, Glenwood City, Pepin, Plum City, St. Croix Central and Spring Valley. The Union would exclude the unorganized districts of Pepin, Plum City and St. Croix Central and include two districts, i.e., Prescott and Somerset, which were in the Dunn-St. Croix conference until 2002-03. In its post-hearing brief the District cited several decisions in support of its argument that the Dunn-St. Croix conference is the appropriate group of comparables. The Union presented no convincing argument as to why such a group of comparables should be expanded to include the two districts removed from the conference, namely Prescott and Somerset. The undersigned is persuaded that arbitrators generally find the athletic conference to provide the best group of comparables and believes such is an appropriate group of comparables. *Mondovi School District, Decision No. 30633-A, pp. 11-12 (1/2/04).*

Likewise, Arbitrator Rice noted: "The athletic conference in which a school district competes has generally been considered the most appropriate comparable group for wage determinations." *School District of River Falls, Decision No. 30960, p. 5 (3/16/05).* Arbitrator Rice made this observation in the context of deciding three issues in dispute between the parties: wages, and the employer's contribution toward health and dental insurance. *School District of River Falls, supra, p. 13.* Arbitrator Rice specifically relied upon the Big Rivers Athletic Conference schools in making his decisions on wages and insurances. *School District of River Falls, supra, pp. 13-17.*

Finally, as noted by Arbitrator Dichter, there are good reasons for making the athletic conference the primary comparables:

> Furthermore, by making the Conference the comparables, the parties do always know whom to use as comparables when they sit at the bargaining table. They

always know who is in the Conference. The parties might have to take a new look at rankings, but again it is easy to determine who paid what in the past. *Omro School District, Decision No. 31068-A, p. 9 (5/5/05).*

Historically, the Big Rivers Athletic Conference has been used as the primary comparable pool for both teachers, *Menomonie Area School District, supra, p. 3,* and support staff. *Eau Claire School District, Decision No. 27161-A, p. 3 (Krinsky, 7/6/92).*

More recently, a number of arbitration awards have recognized the Big Rivers Athletic Conference as the primary comparable group for support staff. They include: *School District of River Falls (Secretaries), supra,* and *River Falls School District (bus drivers), Decision No. 30924-A, p. 14 (Engmann, 2/18/05).* In *River Falls School District (special education assistants), Decision No. 30923-A, pp. 13-14 (2/18/05),* Arbitrator Engmann included four of the five districts in the Big Rivers Athletic Conference in the primary comparable pool. He included Hudson in the secondary pool of comparables only because in Hudson the special education assistants were not represented for purposes of collective bargaining. *River Falls School District, supra, p. 14*. Finally, Arbitrator Torosian used the school districts in the Big Rivers Athletic Conference as the appropriate set of comparables for custodians. (Emphasis added). *River Falls School District, Decision No. 30959-A, p. 26 (3/22/05).*

Based on the foregoing, the Arbitrator finds that the Big Rivers Athletic Conference is the primary set of comparables for the custodians in this case. In reaching this decision, the Arbitrator rejects the District's contention that the factors it listed above support a finding that the labor pool should be the primary comparable pool. For example, the Arbitrator notes that while it is true, as the District points out, that Rice Lake has the highest enrollment in the geographically proximate schools and the lowest in the Big Rivers Athletic Conference, Rice Lake's enrollment is similar in size to four of the other five schools in the conference. Only Eau Claire with 10,861 students has a substantially larger student enrollment than Rice Lake (2,470). In contrast, Rice Lake has a significantly larger student population than a majority of the proposed labor pool schools. Enrollment-wise Rice Lake has more in common with the conference schools than it does with the labor pool schools.

Likewise, regarding income, equalized value and tax levy the Arbitrator is of the opinion that Rice Lake has more interests in common with the conference schools than the labor pool.

In addition, for the reasons articulated by Arbitrator Imes in *Barron Area School District, supra,* the Arbitrator will consider the labor pool schools as secondary comparables, if necessary. In reaching this conclusion, the Arbitrator rejects the Association's position that a number of labor pool comparables cited by the District should not be included in the labor pool because they were not included as comparables in the interest arbitration awards for the teachers' bargaining unit.

It is true that arbitrators are reluctant to disturb prior determinations relating to what constitutes the appropriate comparables because there is a great need to provide stability and predictability on this issue. *Racine County (Public Works Division), Decision No. 31681, p. 9 (Greco, 1/12/07).* However, as pointed out by the District, all three previous Rice Lake interest

arbitration awards involve teachers, are more than twenty years old and have different comparable groups. There is no commonly accepted comparable group for these employees that the Arbitrator needs to be concerned about disturbing.

In addition, things can change over time such that the basis for inclusion of previously established comparables no longer exists. *City of Tomah, Decision No. 31083-A, p. 6 (Yaeger, 2/18/05).* Arbitrator Weisberger accurately predicted over twenty years ago that in the future membership in the Big Rivers Athletic Conference would be more relevant in determining appropriate comparables. *Rice Lake Area School District, Decision No. 23126-A, supra, p. 6.* Likewise, the District persuasively argues that a labor pool comprised of schools that share similarities with Rice Lake in economic and demographic background (enrollment, enrollment changes, average total income, equalized value per member and total tax levy) and are in close proximity to Rice Lake (within a 30-35 mile radius of Rice Lake) comprise an appropriate group of secondary comparables.

Finally, as pointed out by the District, two of the schools (Bruce and Clayton) cited by the Association for the above proposition, were actually included as comparables in a prior arbitration for the District. *School District of Rice Lake, Decision No. 19977-A, supra, pp. 2-3.* A third school (Chetek) was included as a comparable in the Stern decision.

The Arbitrator will not, however, include in the labor pool proposed by the District Clayton, Prairie Farm, and New Auburn because of their extremely small size and because they are not contiguous school districts.

The Arbitrator turns his attention to the issues in dispute.

Health Insurance

The District basically argues that it needs to manage its health insurance costs. The District believes that its proposal to have dollar caps on the employer's contribution to premiums reasonably addresses the need.

The Association wants to maintain the *status quo* on health insurance premiums.

In determining whether a change in the *status quo* is justified, arbitrators have traditionally invoked a four-part analysis, considering: (1) whether there is a demonstrated need for the change; (2) whether the proposal reasonably addresses the need; (3) whether the proposal is supported by the comparables; and (4) the nature of the quid pro quo, if one is offered. *Elkhart Lake-Glenbeulah School District, Decision No. 26491-A, p. 15 (Vernon, 12/90).*

1. The Need for Change

The preexisting contract requires a five percent (5%) employee premium contribution for family health coverage and no employee contribution for single health insurance premiums. Further, in terms of out-of-pocket healthcare expenses, District custodians have no deductible, no

co-insurance payment, and no office or E.R. co-payments. The only out-of-pocket employee health care expenses are drug co-pays of $10/$20/$30.

As pointed out by the District, the rising cost of healthcare and, therefore, health insurance, is well-documented. The impact of health insurance costs on the District is dramatic. During the terms of this contract (2005-2008), the District's health insurance premium contribution will increase from slightly over one-third (36.55%) of the average hourly wage rate to nearly one-half (between 44.04%-47.56%). Under ***both*** District and Association proposals, the District's contribution is rising significantly. (Emphasis in the Original).

Assuming arguendo that the District has not proven actual need, its position still prevails. In this regard, Arbitrator Torosian concluded in *City of Wausau (Support/Technical), Decision No. 29533-A, p. 30 (11/16/ 99)*, that the action of four of five internal comparables in agreeing to the changes proposed in the arbitration was enough, in and of itself, to establish the need for change:

> Four of the five City units have voluntarily settled for the same insurance change proposed here, which persuades the Arbitrator that the internal comparables support the Employer's "need" to make a similar change in this unit and that its proposal reasonably addresses the need.

Here, the District's teachers recently adopted the District's dollar cap. The language in the teachers' contract is identical to the District's proposal. With 189 FTE's, teachers are by far the largest bargaining unit. In comparison, there are 51 secretaries and aides, 22 custodians and 18 cooks. Teachers constitute the "lion's share" of represented employees in the District. The District's final offer is identical to the insurance language in place for 67.5% or almost three-fourths of the represented workforce. Consequently, contrary to the Association's assertion, the District does have an internal settlement to support its insurance proposal.

Finally, while the District is asking for a change in the way the cost-share of health insurance premiums is computed, it is not asking for any changes in employees' out-of-pocket expenses. Employees will continue to have no deductibles, no co-insurance payments and no office or E.R. co-payments. There also will be no change in the drug co-pays of $10/$20/$30. In addition, the dollar amount at which the employer caps its share of the health insurance premium represents an 11% increase over the District's contribution in the prior year. As such, the District's proposal cannot be considered unreasonable. Based on this, the District's arguments regarding the need for change, the internal comparables, and a lack of any evidence or argument from the Association to the contrary, the Arbitrator is satisfied that the District has demonstrated that a need exists for a change in the parties' health insurance premiums.

2. Does the Offer Reasonably Address That Need?

Near-unanimous support of health insurance changes in the internal comparables is sufficient to establish both the need for the change and its reasonableness. *Marquette County (Highway Department), Decision No. 31027-A, p. 11 (Eich, 6/24/05).* As stated by Arbitrator Torosian in *City of Wausau, supra*, the fact that 80% of the employer's bargaining units have

settled for the same insurance change proposed here, persuades the arbitrator "that the internal comparables support the Employer's 'need' to make a similar change in this unit and that its proposal reasonably addresses the need." Arbitrator Torosian stated an opinion shared by many arbitrators when he opined: "the need for uniform benefits in the area of health insurance is vitally important." *Id*. In the alternative, allowing each bargaining unit to alter its total package with respect to health insurance benefits and the level of premium contribution by its employees "would make the administration of a health insurance program more difficult and raises a fairness issue among its employees." *Id*.

In the instant dispute, the District's final offer is identical to the insurance language in place for almost 70% of the represented workforce. Non-represented employees also have the same dollar caps on premiums. It is true that there were no changes in health insurance premiums for food service employees. However, this is the smallest bargaining unit, and is composed primarily of part-time employees who pay a higher, pro-rata share of their health insurance costs. Many food service employees do not take District health insurance. Finally, the secretaries and aides do not have a contract in place and are involved in negotiations where health insurance premiums are part of the discussions.

Because of the considerations discussed above, the Arbitrator finds that there is both a need for the change and the change in premiums reasonably addresses the need.

3. Is the Proposal Supported by the Comparables?

The record is clear that the internal comparables support the District's offer on having dollar caps on the employer's contribution to premiums.

In this regard, the Arbitrator notes that most arbitrators have concluded that an employer's ability to negotiate a successful voluntary agreement with other unions which includes the same terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such agreement(s) that reduces its persuasive value. *City of Tomah, supra, pp. 21-22*. In this case, the District has done just that. It achieved a voluntary settlement agreement with its teacher bargaining unit on the same terms for health insurance premiums that are contained in its final offer. As noted below, the Association has offered no persuasive evidence or argument that there are factors which distinguish the teacher bargaining unit's voluntary settlement from those present in this bargain. Absent same, internal comparability is of paramount consideration and leads to the conclusion that bargaining outcomes should be the same. *City of Tomah, supra, p. 22*.

Of additional weight, and very important in this case, the bargaining history of both the health insurance plan design and premium contribution for all represented employees favors the internal comparison criterion. *Sawyer County, supra, p. 12*. The teachers have historically determined both the health insurance plan design and premium contribution for all represented employees. Both the 5% employee premium contribution for family coverage and the drug co-payments were first implemented with the teachers. Both positive and negative changes in health insurance and costs were first implemented with the teachers. In fact, the custodial

contract (as well as the secretarial/aide contract) ties employee health insurance benefits to the benefits negotiated with the teachers.

The Arbitrator turns his attention to the external comparables.

In this regard, the Arbitrator notes that three of the six Big Rivers Athletic Conference schools, Chippewa Falls, Eau Claire and River Falls, have dollar caps on the employer's contribution to premiums. Consequently, the primary comparables favor the District's proposal.

However, almost all of the schools in the labor pool have percentages for the employer's contribution to health insurance premiums. Thus, the secondary comparables strongly favor the Association's position.

Taking into consideration all of the external comparables, the Arbitrator finds that they slightly favor the District's proposal.

Finally, private sector settlements support the District's position because the survey of private sector health insurance benefits conducted by the District shows that in the Rice Lake area, high premium contributions, deductibles, co-payments and co-insurance payments are the norm for private sector employees. Twenty-three of sixty-nine businesses contacted by the District responded to the survey, three indicating that they offered no health insurance coverage and 17 of the remaining businesses reporting employee contributions of at least 20% of family premiums. Further, in contrast to the District, all of the business which offer insurance have significant co-payments, co-insurance and sizable employee paid deductibles. It is clear that the District's health insurance plan is much better than these private sector plans.

Based on the foregoing, the Arbitrator finds that the District's proposal is supported by the comparables.

4. Is the Quid Pro Quo Adequate?

As a quid pro quo the District has offered a 2007-08 wage increase of 3.5% which exceeds the Association's final wage offer of 3% for that school year.

The District opines that its offer of an extra one-half percent (1/2 %) to 2007-08 wages to keep the custodians' health insurance premium contributions consistent with what it negotiated with the teachers is reasonable. The Association takes the opposite position.

In support of its position to maintain the status quo on health insurance premium contributions, the Association argues that arbitrators are reluctant to award changes in the status quo without an accompanying quid pro quo to help offset the effects of the change. The Association cites a couple of arbitration awards in support of this argument.

The Association first notes that in *Washington County (Social Services), Decision No. 29363-A (Torosian, 12/11/98)* the arbitrator commented on the necessity for an adequate quid pro quo:

> The Arbitrator in the instant case, like so many before him, is firmly convinced that in cases where one party is seeking to make significant changes in existing language or benefits (status quo), the interests of the parties and the public is best served by imposing on the moving party the burden of establishing . . . that a **sufficient quid pro quo** has been offered. . . . (Emphasis in the Original).

Likewise, the Association points out that where an employer failed to offer an adequate quid pro quo in exchange for a change in insurance benefits, Arbitrator Flaten rejected the employer's offer:

> A demand for a contract concession of that significance is traditionally accompanied by a quid pro quo benefit to compensate for the "take-back" and ameliorate its impact. No such quid pro quo was forthcoming. *Prentice School District, Decision No. 25814 7/3/89).*

However, Arbitrator Torosian later stated that a traditional quid pro quo might not be necessary where health insurance benefits are at issue:

> In recent years arbitrators have come to the conclusion that the economic impact of ever-increasing health insurance premiums has eliminated the burden of requiring a traditional quid pro quo, especially where existing contract provisions were bargained prior to the drastic increases in health insurance costs. *River Falls School District, Decision No. 30959-A, supra, p. 13*.

Other arbitrators likewise have held that the undisputed economic impact of rising health insurance costs has reduced or eliminated the employer's burden of establishing a traditional quid pro quo where health insurance benefits are at issue. *Marquette County (Highway Department), supra, pp. 16-17*.

In *Village of Fox Point, Decision No. 30337-A (Petrie, 11/ 02),* Arbitrator Petrie stated:

> [T]he spiraling costs of providing health care insurance for its current employees is a mutual problem for the Employer and the Association …. In light of the mutuality of the underlying problem, the requisite quid pro quo would normally be somewhat less than would be required to justify a traditional arms-length proposal to eliminate or modify negotiated benefits or advantageous contract language.

More recently, Arbitrator A. Henry Hempe in *Buffalo County (Human Services Clerical Parapro), Decision No. 31484-A, p. 28 (5/16 /06)* expressed a similar view:

> Given the critical, *mutual* nature of the health insurance problem in Buffalo County that, if unresolved, portends dire future consequences for each party, responsible, fair proposals for change that address the problem, offer a reasonable prospect of success, are compatible with conditions of employment in the external

> comparables as well as the mutual needs and interests of the parties do not necessarily require a quid pro quo.

In an earlier health insurance premium case, *Pierce County (Human Services), Decision No. 28186-A, p. 7 (4/27/95),* Arbitrator Weisberger observed:

> The County's argument is particularly effective since it is made against the background of external public sector comparability data which generally support the County's proposal and the County's related argument (supported by substantial arbitral authority) that increasing health care costs paid by an employer reduce significantly or even eliminate the usual burden to provide special justifications and a quid pro quo.

Other arbitrators have not required any quid pro quo for changes in health insurance benefits. See, for example, *Pierce County (Sheriff's Dept.), Decision No. 28187-A (Friess, 4/24/95)* (comparative tests contained in the statutory criteria are sufficient burden of proof for implementation of changes in health insurance premiums through arbitration); *Walworth Co. Handicapped Children's Educ. Bd., Decision No. 27422-A (Rice, 5/3/93)* (rising health insurance premiums alone alter the status quo and negate any presumption that the prior contract arrangements for paying health costs should carry over to the successor agreement); *Cornell School District, Decision No. 27292-B, p. 25 (Zeidler, 11/23/92)* (where comparables indicate a change may be in order, the concept of quid pro quo does not prevail.) *Buffalo County (Sheriff's Department), Decision No. 31340-A, p. 11 (Grenig, 2/8/06).*

The District in this case, however, has offered a quid pro quo for the changes in existing health insurance premium contributions. The question is whether or not it is adequate.

The Association initially argues that it is not sufficient because of the District's settlements with other bargaining units.

In this regard, the Association points out that the Teamsters bargaining unit (food service) voluntarily settled at 2.95% across-the-board for all three years of their contract and had no change in its health insurance language. The District continues to pay 95% of the cost of family coverage and 100% of the cost of single coverage. However, the food service group is the smallest bargaining unit, and is composed almost exclusively of part-time employees, many of whom do not take District health insurance. Those who do pay a higher, pro-rata share of the cost of their health insurance.

In addition, food service employees received less in across-the-board wage increases than the custodians in all three years of their contract (2.95% compared to the District's 3%, 3% and 3.5% offer herein).

The Association also claims that the teachers' bargaining unit (NUE) received a better settlement than the custodians in return for agreeing to cap the family plan premiums at a dollar amount.

However, the Association has introduced no persuasive evidence to support its claim that the teachers received a different or "better" quid pro quo than what the District is proposing for custodians. The teacher settlement includes a 2% per cell wage increase and a total package increase of 4.25% for 2007-08. In comparison, the District's final proposal of 3.5% wage increase for custodians results in a total package increase of 5.23% for the same year. In addition, contrary to the Association's assertion, the record indicates that positive changes in the retirement plan were not part of the teacher quid pro quo. To the contrary, retirement benefits diminished as part of the teacher settlement. (Emphasis in the Original). In this regard, the Arbitrator notes that the retirement eligibility threshold for teachers was raised from ten to fifteen years. (Emphasis in the Original). Additionally, an agreement was reached to cap the retirement payments of existing staff. (Emphasis in the Original). Finally, new staff (those hired after July 1, 2006) have *greatly reduced early retirement incentives*. (Emphasis in the Original).

It is true, as pointed out by the Association, that teachers received certain modest economic benefit changes as a result of their voluntary settlement agreement with the District (increased compensation for accumulated unused sick leave, compensation for substituting, opt-out pay for employees not taking health insurance and co-curricular pay). However, there is no indication in the record that this constitutes a more significant quid pro quo than what is being offered to the custodians for accepting the same health insurance premium changes.

The Association further argues that neither of the parties' final offers are unreasonable as they relate strictly to the wage proposals. Consequently, the Association opines that when the District's wage offer is compared against the other benefit changes proposed by the District it just doesn't measure up.

However, an examination of the wage rates within the Conference schools indicates that in 2006-07 the District's custodians had higher hourly wages than custodians in four of the other five schools (Chippewa Falls, Hudson, Menomonie and River Falls). During the same time period, in the labor pool, the District's custodians had higher hourly wages than those with settled contracts in Barron, Birchwood, Cameron, Shell Lake, Turtle Lake and Weyerhaeuser. Only custodians in Spooner, Bruce and Cameron were paid higher hourly wages than the custodians in Rice Lake. Despite being ranked near the top of the comparables, the District is offering a higher increase in 2007-08 than almost all of the settled schools in both the Conference and the labor pool.

In *Chippewa Valley Vocational, Technical and Adult Education District, Decision No. 26224-A, p. 17 (5/3/90),* Arbitrator Fleischli, citing the reasoning of Arbitrator Weisberger in a previous decision involving the same parties, noted the appropriateness of including public sector comparables:

> The undersigned must agree with Arbitrator Weisberger that, based on labor market considerations, it would be inappropriate to exclude consideration of other area public sector settlements. . . .

The District is competitive in terms of 2007 custodian wages when compared to the wage rates earned by custodians employed by the counties in which Rice Lake and the other

geographically proximate comparables are located. These counties include: Barron, Chippewa, Dunn, Polk, Rusk, Sawyer and Washburn. The Arbitrator would have included Burnett County in this comparison but no information on custodian salaries for Burnett County was provided by the parties.

A comparison of the custodial wage rates with those at the Wisconsin Indianhead Technical College (which has a Rice Lake campus) and the City of Rice Lake results in a similar conclusion. The District's wage rate for 2006-2007 exceeds the Custodian I wage for the College and the maintenance/custodian wage for the City.

The District also asks the Arbitrator to consider the wages and benefits of employees in private employment in the same community and in comparable communities. The District cites approvingly Arbitrator Mueller's comments in *Columbus School District, Decision No. 19335-A, p. 10 (3/31/82)* wherein he recognized the value of including private sector employers from the immediate labor market in reviewing final offers:

> The evidence establishes that the vast majority of the incumbent employees filling such positions for the Employer reside in either Columbus or maintain a rural route mailing address of Columbus. As such, that does indicate that they are obtained from the immediate Columbus area labor market.
>
> The evidence further tended to establish that there are a number of local private employers who employ clerical and secretarial employees and custodial and maintenance employees to which meaningful comparisons can be made. . . .

The Arbitrator has already found that the District has a better health insurance plan in effect for its employees than private employers in the Rice Lake area. The District, however, has not provided any data upon which wage comparisons can be made with the private sector. Therefore, the Arbitrator is unable to compare the wages of the District's custodians with the wages of custodians in private employment in Rice Lake and in comparable communities as requested by the District.

Additionally, the Association points out that prior to August 1, 2006 employees had a $400 stop-loss on the $10/$20/$30 drug card. The Association adds that the District removed the $400 cap during negotiations with NUE and unilaterally implemented the change on the custodial bargaining unit. The Association opines that this change has had a very negative impact ("When costed against the Employer's wage offer of 3.5% for 2007-08 the actual wage increase for affected employees is **1%**.") on custodians. (Emphasis in the Original).

However, the record indicates that the Association has filed a grievance over this change. The Arbitrator defers to the grievance arbitration process as the proper forum to resolve that dispute.

Finally, both parties cite the cost of living in support of their positions.

The statute requires an arbitrator to consider "the average consumer prices for goods and services, commonly known as the cost of living." Increases in the Consumer Price Index ("CPI") during the last 12 months of the preceding contract are the appropriate increase to analyze in comparing the parties final offers. *School District of Kohler, Decision No. 19674-A (Grenig, 11/22/82); City of South Milwaukee, Decision No. 31993-A, p. 30 (Hempe, 10/8/07).* It is well established that the total package cost of the parties' offers, including insurance, is the appropriate measure to use in comparison with inflation indices. *River Falls School District, Decision No. 30959-A, supra, pp. 22, 31; Buffalo County, supra, p. 30.*

Both parties rely on the CPI for Urban Wage Earners and Clerical Workers ("CPI-W"). The following information was provided to the Arbitrator by the District and will be utilized since the Association did not provide 2006 CPI-W information:

	June	**July**
2006 Midwest CPI – All Urban/Clerical	3.6%	3.5%
2006 National CPI – All Urban/Clerical	4.5%	4.3%

In the 2007-08 school year, the total package increase of the District's offer is 5.23% while the Association's offer is 6.71%. Since both parties' offers are far in excess of the cost of living, the Arbitrator finds that this factor does not favor either party's offer.

Because both internal and external comparables support the reasonableness of the District's quid pro quo as well as comparison of the District's custodial wage rates with those of other public sector comparables, the Arbitrator finds that the .5% quid pro quo offered by the District is adequate.

Holiday Pay

The Association requests that all hours worked during a holiday shall be **two (2) times** the normal hourly rate in addition to the holiday pay. (Emphasis in the Original). Currently, employees receive one and one-half (1½) times the normal hourly rate for all hours worked during a holiday. The Association has calculated that the increase in holiday pay would amount to $56.97 for each employee called into work on a holiday.

The Association believes that its proposed holiday pay increase is reasonable because of its minimal financial impact on the District. The Association also notes that its holiday pay proposal was mutually agreed to prior to impasse.

However, there is no evidence that there are any internal comparables to support the Association's position.

Likewise, there is no support among the external comparables for offering double-time to custodians for hours worked on a holiday. In this regard, the Arbitrator notes that of the conference schools only Eau Claire offers "double time" for all hours worked on a holiday. Bloomer and possibly Cameron are the only schools in the labor pool that pay double plus holiday pay for hours worked.

Finally, the Association has offered no rationale or need for changing the status quo and no quid pro quo for the proposed change.

For these reasons, the Arbitrator finds that the District's proposal on holiday pay (status quo) is favored.

Vacation

The Association's offer would grant 3 weeks of vacation to employees after 7 years of employment (compared to the current 8 years). The current contract establishes a vacation accrual system whereby employees earn vacation one year and take it the next. Three weeks of vacation is granted "after 8 years through 15 years."

The Association argues that this proposal is reasonable because the proposal has a negligible effect upon the District based on the current make-up of the bargaining unit. The Association also claims that it has proposed this change "because the parties had agreed to this change in their negotiations for 2002/2005 contract."

However, the Association cites no internal comparables in support of the proposed change.

The primary external comparables, contrary to the District's assertion, are a different matter. In this regard, the Arbitrator notes that four of the five conference schools provide three weeks of vacation after six (6) years (Chippewa Falls, Hudson, River Falls) or seven (7) years (Eau Claire). On the other hand, only two of the secondary comparables in the labor pool support the Association's position: Spooner (3 weeks of vacation after 6 years) and Bruce (3 weeks of vacation after 7 years). In the Arbitrator's opinion, the external comparables provide some support for the Association's final offer.

Finally, no rationale has been offered by the Association substantiating a need for a change in the status-quo. Nor has the Association proposed a quid pro quo for its proposed change.

As a result of the above, the District's offer on vacation (status quo) is slightly favored.

Hours of Work

The District argues that its proposal would allow the contract to reflect current practice.

The Association opines that the District's varying hours proposal allows the District to change the hours of custodians to avoid the payment of overtime. The Association asserts that this proposed change has an economic impact and lacks an appropriate quid pro quo. The Association adds that the current practice of voluntary adjustments of hours has saved the District overtime costs and worked to the mutual benefit of both parties.

Current practice is that both the District and the employees need some flexibility in hours. In response to that need, there have been a number of instances where an employee's schedule was changed. Those schedule changes were made at the employee's request and/or at the District's request. Witnesses talked about the value of this "give and take" working relationship. The District opines that these schedule changes would continue under its proposal. What would change, according to the District, is "the schedule changes would no longer violate the contract." Under its proposal, the District argues "one hour adjustments to the work schedule, with 48-hours advance notice, would not violate the collective bargaining agreement."

However, that is not exactly what the District's proposal says. It does not say any or all "one hour adjustments to the work schedule" may be made with 48 hours advance notice. Instead, it says the District may vary starting and end times up to one hour by providing 48 hours notice. (Emphasis added). The record is replete with examples of changes in work hours at the start, end and during the school day. (Emphasis added). In addition, those changes in work hours have not always been in increments of one hour. Finally, the parties' practice has been to change work hours as a result of mutual agreement between the employee and the District. The District's proposal permits it to unilaterally change the standard daily work schedule for full-time custodial employees set forth in the contract.

The District views its proposal "as simply legitimizing the practice of modifying the work schedule." However, the District's proposed language doesn't accomplish this result. Many of the changes in work hours, if they continue as they have in the past, would still violate the contract. The District's proposal simply allows it to vary the start and end times by one hour with advance notice. Those changes alone would then conform to the contract.

At hearing, the District raised a concern about a head custodian adjusting his summer hours without permission from management. However, again the District's proposal would not address such a problem. Article II – Management rights provides that the School Board has the right and responsibility to operate and manage the school system of the District and its programs, facilities and properties and the activities of its employees during working hours. The District's management rights include the right to direct and arrange all working forces in the system. If the District is unhappy with the head custodian's unilateral establishment of summer work hours it should either work something out with the offending employee or exercise its management rights and enforce the work schedule contained in the parties' collective bargaining agreement.

Finally, sometime in early 2000 a night shift employee refused a request from the District to adjust his hours in response to an operational need of the District. However, the District conceded at hearing that this was an "anomaly." Consequently, it provides no support for the District's proposed change.

The record indicates that the current practice is mutually beneficial from a financial and operations viewpoint to both the bargaining unit and the District. In fact, the District recognizes that "mutually beneficial changes" have been made in work hours. However, contrary to the District's assertion, its proposed language does not conform this mutually beneficial practice to the contract. There is contract language available that would allow the present practice to continue but in compliance with the contract. One such example is as follows: "Day to day

adjustments to the regular schedule may be made by mutual agreement between the employee and his/her supervisor." *City of Beloit, WERC #A/P M-07-164, p. 7 (Hempe, 3/04/08).*

Based on the above, the Association's offer (status quo) is favored. In reaching this conclusion, the Arbitrator emphasizes that he has found no evidence supporting the Association's claim that the District's proposal to vary work hours is intended to eliminate or reduce overtime for bargaining unit employees.

SELECTION OF THE FINAL OFFER

While the Association's final offer is favored on hours of work, the District's final offer is more reasonable as it relates to health insurance, holiday pay, vacation and wages. As a result, based on the statutory criteria, the evidence and arguments presented by the parties, all of the above and the record as a whole, the Arbitrator concludes that the offer of the District is more reasonable than the offer of the Association, and to that effect the Arbitrator makes and issues the following

AWARD

The District's offer is to be incorporated in the 2005-2008 three-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 4th day of April, 2008.

By _____
Dennis P. McGilligan, Arbitrator