IN THE MATTER OF THE INTEREST ARBITRATION PROCEEDINGS BETWEEN

LOCAL 1053, MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO,

Union,

and

ARBITRATOR'S AWARD
Case 455 No. 67169 INT/ARB-10978
Decision No. 32429-A
(Clerical-Technical Bargaining Unit)

MILWAUKEE BOARD OF SCHOOL DIRECTORS,

Employer.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Donald L. Schriefer, Esq.
Assistant City Attorney
City of Milwaukee

For the Union: Mark A. Sweet, Esq.
Law Offices of Mark Sweet

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between the Milwaukee Board of School Directors ("Board," "MPS," or "Employer") and the Local 1053, affiliated with Milwaukee District Council 48, AFSCME ("Union"). The Board is a municipal employer. The Union is the exclusive collective bargaining representative for certain employees of the Board.

On August 1, 2007, the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Labor Relations Act. A member of the Commission's staff conducted an investigation reflecting that the parties were deadlocked on their negotiations.

By letter dated August 5, 2008, the WERC notified the arbitrator that he had been selected as the arbitrator in this matter. Arbitration hearings were conducted on January 14 and 15, 2009. Upon receipt of the parties' reply briefs, the hearing was declared closed on May 30, 2009.

II. FINAL OFFERS

The parties did not reach tentative agreements during negotiations; however, aside from three proposals, the parties' final offers are quite similar. The two final offers entailed substantially identical modifications to the Conditions and Duration of the Agreement; Voluntary Political Deductions; Publishing of the Contract; Retiree Health; Transportation Allowance; Pension: Creditable Service for Active Military Service; Wage Increases; and the establishment of a School Secretarial Personnel Study. Where the language differs slightly, the parties stipulated to the intent and construction of that language at the arbitration hearing.

Because the Union's and the Employer's final offers contain identical wage proposals, the issue of wages is not in dispute except to the extent it affects the total packages of the parties. The Union's final offer contains three proposals the Employer's final offer does not. Specifically, the Union's final offer calls for one primary change to the status quo—seniority applicable to a reduction in staff. The Union included two other changes that were originally Board proposals—the deletion of the humanitarian aid section, and a modification of the assistance in assault cases section. The Union agreed to both Board-initiated proposals during bargaining, and then the Union incorporated them into its final offer. The Employer's final offer includes a proposal relating to released time for the Union president and a second proposal relating to life insurance.

The pertinent Union-proposed changes to the collective bargaining agreement are as follows:

PART III

SALARIES AND FRINGE BENEFITS

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~~O. HUMANITARIAN AID~~

~~The Board shall establish a humanitarian aid committee to study the feasibility of donating unused vacation, compensatory time, sick leave, or floating holiday to employees in need. Local 1053 will participate fully on the committee.~~

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PART V

WORKING CONDITIONS

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K. PROTECTION OF EMPLOYEES

1. ASSISTANCE IN ASSAULT CASES

a. Employees should immediately report all cases of assault suffered by them in connection with their employment to their immediate supervisors ~~by the close of the next workday following the assault~~ but, in any event, no later than seventy-two (72) hours following the occurrence assault on forms provided by the Board which may be obtained at the office in each school or department. Supervisors shall transmit a copy of the report to the office of the superintendent or his/her designee. The superintendent or his/her designee shall acknowledge receipt of such report immediately after the report is received. In acknowledging receipt, the superintendent or his/her designee shall send a copy to the Union President.

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PART VI

SENIORITY

A. DEFINITION

Seniority means an employee's length of continuous service with the Board since his/her last date of hire, subject to Section D below. Seniority means right of preference with reference to starting time and vacation selection, ~~shift selection and excessing~~. In the event of a reduction in staff, the employee with the least seniority in the targeted classification in either the [a]ffected school or the [a]ffected department shall be the employee reduced. This shall in no way, limit an employee's rights under Part VI Section E (2). An authorized leave of absence shall not be considered a break in seniority.

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G. SHIFT ASSIGNMENTS

Assignments of employees in the bargaining unit of like title to second and third shifts will be made in the following manner:

1. Volunteers first.

2. If there are more volunteers than available positions, assignments shall be made according to seniority, within the classification.

3. If there are not sufficient volunteers to fill the available positions, assignments shall be made according to the inverse order of seniority, within the classification.

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The Employer's final offer includes two pertinent changes to the collective bargaining agreement:

PART II

F. RELEASE OF UNION PRESIDENT

1. The president of the Union may be released to conduct Union business under one (1) of the following three (3) two (2) options:

a. The president of the Union will be granted a leave of absence for contract administration and grievance processing on a full-time basis. The Board will continue to pay the full salary and fringe benefits and the Union will reimburse the Board for said full-time salary and fringe benefits. This arrangement shall continue as long as the Union reimburses the Board for the full-time salary and fringe benefits of the president of the Union.

~~b. The Board shall employ the president in a half time ten (10) month or twelve (12) month secretary position if such positions are available. The president will work the regularly scheduled school days. Earned vacation may be taken any time provided that if vacation requires absence from work the approval of the immediate supervisor is required and no substitute is necessary. Any deviation from this schedule for Union activities must be approved by the principal.~~

~~While employed in a half time ten (10) month or twelve (12) month secretary position the Board will pay the full salary and fringe benefits and the Union will reimburse the Board for the difference between the salary and benefits earned while employed as a half time ten (10) month secretary and half time ten (10) month senior secretary or a twelve (12) month senior secretary and the total salary paid the president. The Union shall reimburse the Board for fifty percent (50%) of the premiums for health insurance dental insurance and life insurance. The Union shall also reimburse the Board for both the employer and employee portion of pension and the employer portion of the FICA for salary paid in excess of the salary earned while employed by the Board as a half time, ten (10) month secretary, twelve (12) month secretary.~~

~~c~~b. The Union may request from time to time the release of the Union president for the purpose of contract administration and grievance processing up to a total of 100 hours each year of the contract. During such absence, the Union president will continue to receive full salary and fringe benefits. At the request of the Union, an additional 75 hours may be requested ~~If the absence requires a substitute~~ the Union agrees to reimburse the Board in full for the substitute's cost of salary and benefits. If the absence is anticipated to continues for a period ~~sufficiently long to lose the entitlement to fringe benefits reimbursements for these benefits shall also be made~~ beyond the maximum number of hours (175) allowed under this paragraph, the Union will be required to submit the request for full-time union business release under the terms and conditions outlined in paragraph a above.

c. Sufficient prior notification of a request under either paragraph a or b shall be given to the principal/supervisor and prior approval granted by the negotiator's office before the employee leaves the worksite so that if needed a substitute maybe provided if one is required.

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PART III

SALARIES AND FRINGE BENEFITS

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C. LIFE INSURANCE

~~1. The Board shall continue in effect its present group life insurance policy for employees. The insurance for each employee shall be an amount equal to the next even one thousand dollars ($1,000) exceeding the basic wage of the employee.~~

1. Effective the first of the month following 60 days after ratification or receipt of an interest arbitration award the Board shall provide a group life insurance provision for active employees in an amount of coverage equal to annual earnings to the next even thousand dollars subject to the following.

~~2. Effective upon ratification the premium of the first thirty seven thousand dollars ($37,000) of insurance shall be paid in full by the Board. On life insurance above that amount the Board shall pay three dollars and sixty cents ($3.60) per one thousand dollars ($1,000) per year toward the premium with the balance paid by the employee.~~

2. The Board agrees to maintain in force group life insurance for those employees who retire at age fifty-five (55) with thirty (30) years of service without cost to the employee in accordance with the practice in effect on July 1, 1992.

3. For employees hired before January 1, 1987, the Board agrees to maintain in force group life insurance for an employee who retires at age fifty-five (55) with at least fifteen (15) years of service, provided such employee pays the full premium until attaining age sixty-five (65) . The insurance provides that at attainment of age sixty-five (65) and thereafter, for those eligible, life insurance is provided without cost to the employee. Employees hired on or after January 1, 1987, shall be eligible for life insurance benefits on a self-paid basis only upon retirement.

4. At attainment of age sixty-five (65) and thereafter, life insurance, as specified below, is provided without cost to enrolled retired employees in accordance with paragraph 3 above. On March 1, following the sixty-fifth birthday, life insurance coverage is reduced to seventy-five percent (75%) of original coverage; on March 1, following the sixty-sixth birthday, it is reduced to fifty percent (50%) of coverage; and on March 1, effective the first of the month following 60 days after ratification or receipt of an interest arbitration award following the sixty-seventh birthday and thereafter, coverage is reduced to twenty-

five percent (25%) of original and remains at that amount <u>up to a maximum of twenty thousand dollars ($20,000)</u>.

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III. STATUTORY CRITERIA

111.70(4)(cm)

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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 Employer

According to the Employer, its proposal regarding release time for the union president is reasonable. The Employer says its release-time proposal modifies Part II, Section F.1 of the contract to eliminate the second (half-time) option existing under the current contract language and, modifies the third option to allow the Union president: (1) to spend up to 100 hours per year during working time on matters involving contract administration and grievance processing with full wages and benefits for such time paid by the Employer; and (2) an additional 75 hours per year for such purposes with reimbursement by the Union for the salary and benefits associated with this additional time.

Under its proposal, if additional time beyond 175 hours is required, the Employer explains the Union president is required to take fulltime release under the full-time release option. The Employer says its proposal also requires the Union, reasonably enough, to provide sufficient advance notice of its election for full-time or partial release of its president to the principal or supervisor for whom the president works and to the Employer's labor relations office so that a substitute can be provided to fill in for the president if one is required.

The Employer emphasizes that the 175-hour feature of its proposal relates only to time spent by the Union president during the president's work day. The Employer reasons that grievance processing and a wide range of duties associated with the broad concept of "contract administration" with the Employer's other units are frequently scheduled after hours and the Union could easily stretch the 175 hours of release time for its president under the Employer's proposal by doing the same thing as the Employer's other unions do.

According to the Employer, time spent by the Union president on disciplinary and grievance meetings and other contract administration matters during the work day would not count against the 175-hour feature of the Employer's proposal whenever scheduling of such meetings during the work day takes place at the Employer's request. The Employer notes that, because the 175-hour feature of the Board's proposal regarding release time for the Union president only applies to the Union president and has no impact whatsoever upon other Union officers, any time spent by these other officers on grievances or contract administration during the workday has no impact upon the time allocated for the president's release.

It is the Employer's position that the Union has failed to show that the Employer's release-time proposal would impose any hardship whatsoever upon the Union. The Employer explains that the length of the school day would allow the Union president to easily avoid meetings that would apply to the 175-hour provision simply by scheduling meetings outside the school day. The Employer claims this is the common practice with other unions; for simple reasons of economy and avoidance of disruption it should be the regular practice with the Union.

According to the Employer, the current release-time provision has created extreme difficulties in the past and will continue to do so in the future. The Employer points out the Union has had five presidents from 1999 through the present. Except for a period in the late 1990s, when the president went from half-time to full-time release, the Employer says each president elected for half-time release.

The Employer maintains that, historically, when a new Union president is elected, the Employer has had an extremely difficult time finding a half-time placement position for the president. If the president comes from either of the two higher secretarial classifications (Secretary II and III), the Employer says they occupy positions with such a high level of responsibility that half-time employment in the same position is unthinkable.

The Employer asserts that principals and managers are extremely reluctant to take on half-time workers because a half-time release position created for a union president is classified as a full-time allocation. The Employer says it has found itself in a frequently recurrent situation in which it has to beg, deal, and cajole with principals or managers in order to place a halftime release president in a position. The Employer claims its proposal, bringing the release of the Union president into closer alignment with the release time of other classified units, obviates this continuing problem and does not entail any demonstrated hardship whatsoever to the Union.

It is the Employer's position that its release proposal is supported by quid pro quo. The Employer reasons that the economic impact of the Employer's proposal upon the Union is entirely positive. The Employer points out that under its proposal the Union presently pays 50% of the cost of a 10-month Secretary I position. Under the Employer's proposal, the Employer says this cost will disappear, and the Employer will pay the entirety of the president's wages and benefits for the first 100 hours of the president's release time and the Union pays these costs for the next 75 hours only if they are needed.

The Employer argues that the Union's proposed modification of the seniority provision is unreasonable. According to the Employer, the Union's proposal does not accomplish what it seeks to accomplish when applied in conjunction with other contract provisions. The Employer explains the procedure applicable for placing an excessed employee under the current contract requires placement of the excessed employee in an open position in the employee's classification if any exists; allows the employee to bump the employee in that same classification with the least seniority, based on "continuous service with the Board," if no open positions exist; allows the employee to take a vacant position in the next lower classification if bumping is not possible; and allows the employee to bump the least senior person in the next lower classification if no such open position exists.

The Employer argues that the Union's proposal entails a serious problem with coherence, consistency, logic, and reasonability because it creates a hybrid seniority system—one where classification-based seniority controls who is excessed from a school or department but where traditional continuous-service-with-the-Board-based seniority governs the placement of the excessed individual under the contractual placement procedures. The Employer claims this leads to curious, even nonsensical, results.

According to the Employer, the Union's proposal to modify the concept of seniority when excessing employees from a school or department plainly does not accomplish what the Union sought to accomplish when making the proposal. In crafting its proposal, Employer says the Union apparently failed to fully consider the ramifications of another very significant contract provision—the provision governing placement of an employee who is excessed and how that provision interacts with its proposal. Instead, the Employer asserts the Union emphasized in its proposal that placement procedure rights are unchanged. As a consequence, the Employer argues the Union has crafted a hybrid seniority system in which employees who are excessed on the basis of their time in a classification are then immediately subject to a placement procedure that utilizes a broader, continuous-service-based definition of seniority. The Employer contends the net result is that an employee excessed on the basis of low classification-based seniority could easily wind up bumping an employee in the same position with more classification-based seniority.

The Employer argues that the Union has failed to provide a logical, coherent, or practical explanation of how its concept of classification-based seniority is calculated, a fact that makes its proposal all but impossible to administrate, that will breed grievances, and that will impose an extraordinary burden upon the Employer.

The Employer explains that, to keep track of an employee's classification-based seniority, it needs to keep track of the years and days an employee works in a particular position, but apparently must not count any more days for an employee in a given school year than a 10-month employee works; in addition, if the employee has been voluntarily demoted then promoted back into the employee's original position again, the Employer must add up the total number of years the employee served in the position before the demotion, and must then count back and subtract these years and days from the date when the employee was first promoted back into the position in order to determine the new classification-based seniority date.

The Employer reasons that, any time an employee is excessed from a job, there is a very substantial chance that the employee, or the employee in the same classification with the lowest seniority, will end up in a lower paying job. It says this is especially true in those classifications that have only a small number of employees in them, because there is less likelihood that open positions will exist for such classifications.

In the final analysis, the Employer asserts the Union has presented a proposal that constitutes a dramatic and sudden shift from the way seniority has been determined and applied for close to 40 years, since 1970. The Employer argues that the Union's seniority proposal is too complicated and far too imprecisely developed to be thrust into the contract in the context of an interest arbitration.

According to the Employer, administration of the Union's classification-based seniority system will entail a huge amount of work on an on-going basis. The Employer says the Union proposal requires the Employer to keep track of each employee's seniority in any given classification by years and by days, but only counting certain days; it requires, when an employee changes jobs, to determine whether the new job has a higher or lower rate of pay; it allows an employee to constructively continue to accrue seniority in a previous position if the new job is a promotion; and, if a job change involves a voluntary demotion followed by a return to the prior job, the Union proposal requires the Employer to count years and days (but not certain days) originally served in the prior job before the demotion and to count back or subtract these days from the date the employee returns to the original to establish a new classification-based seniority date.

The Employer states that it does not presently keep track of classification-based seniority, and it is abundantly clear that doing so by means of any computer system would be a programmer's nightmare. The Employer says its system does not presently track classification-based seniority, and, even if massive sums were spent to create a program that could somehow accommodate the frightful intricacies of the Union proposal, the program would be highly subject to corruption and would require careful testing and quite possibly re-programming every time the PeopleSoft system is upgraded through major upgrades, service packs, or maintenance packs.

If the Union's proposal is motivated by a concern that the times are changing and that school closings, reorganizations, and the like are likely to have a significant impact on its members, the Employer argues it is incumbent upon the Union, if it seeks to modify how such changes will impact upon its members, to do so in a clear and coherent fashion. According to the Employer, the Union's proposal misses this mark.

It is the Employer's position that the Union has not articulated a convincing case supporting a need for its seniority proposal. While enrollment numbers have dropped since 2004, the Employer claims there is no reason to assume this will continue and that a similar period of stability will not return or has not already been reached. The Employer stresses that, as far back as witnesses on either side can recall, there has only been one instance where an employee with low classification-based but high MPS seniority almost got to remain in a Secretary II job while an employee with more classification-based but less MPS seniority was excessed. The Employer argues the present record shows there has never been a single situation where use of classification-based seniority could have actually precluded an employee with lower classification-based seniority from being retained over an employee with higher classification-based seniority.

The Employer observes that the Union has cited the City of Milwaukee as an external comparable, noting that classification-based seniority governs there. However, the Employer argues the City's circumstances and system are not comparable to the system proposed by the Union for the Employer. First, the Employer says it is not at all apparent from the City contract provisions introduced by the Union, and it seems unlikely, that promotions and demotions there have the bizarre effects upon seniority in prior classifications intended by the Union in its proposal. Second, unlike the Union's proposal here covering all employees represented by the Union without regard to where they work now or where they worked in the past, seniority at the City is administrated separately for each department.

The Employer contends the Administrators and Supervisors Council (ASC) is not an appropriate comparator for several reasons. First, it points out the ASC consists almost entirely of certificated rather than classified employees. Second, it notes the vast majority of ASC members are principals and assistant principals, and, because MPS has between 150 and 200 schools, plus Central Office jobs into which ASC member can be assigned at will, there are always vacancies in situations where principals, assistant principals, and many other ASC members, too, are excessed from a position. In short, the Employer argues that layoffs tend to be a non-issue with this group; when excessing occasionally does occur, it usually involves positions that are unique, with a single incumbent.

The Employer claims the Union has not provided anything in the nature of a quid pro quo for its seniority proposal. Although not an economic proposal in the traditional sense of that term, the Employer says the Union's proposal would require MPS personnel to perform an enormous amount of difficult and time consuming work to implement it, and this task would be ongoing. Given this impact, the Employer argues some quid pro quo is required from the Union. The Employer asserts the items the parties agreed upon in the most recent round of negotiations and the proposals that make up the Union's final offer do not contain any provisions that could even remotely be deemed a quid pro quo from the Union for its seniority proposal.

With respect to its life insurance proposal, the Employer claims its proposal eliminates a feature under which it paid the full premium for the first $37,000 of life insurance and a maximum of $3.60 per thousand dollars on life insurance above that amount, with any balance above that amount paid by the employee. Under the Employer's proposal, the Employer points out it pays for all life insurance premiums not merely up to $37,000, but also for coverage over and above that amount, and employees pay nothing for the additional coverage even if the cost per thousand dollars increases. The Employer claims its proposal benefits a sizeable percentage of the bargaining unit's members.

Acknowledging that, under the existing contract language, coverage following an employee's sixty-seventh birthday is reduced to twenty-five percent of the original coverage amount, the Employer explains that under its proposal, the reduction is still to twenty-five percent of the original life insurance amount, but new language caps this amount to "a maximum of $20,000." According to the Employer, given the 25% reduction, a $20,000 cap would not have an effect on any employee with a salary of $80,000 or, less per year. The Employer points out the highest paid bargaining unit employees (three employees) make salaries of less than $52,000 per year. Accordingly, the Employer argues the cap feature of its proposal has no present impact on any bargaining unit employees and seems unlikely to ever have any practical relevance to any current employees.

The Employer concludes the parties' final offers are primarily distinguished by two provisions: the Employer's proposal on Union president leave and the Union's proposal to modify the seniority provisions. The Employer claims the Union's seniority proposal has by far the more profound far reaching implications, and its implications, unfortunately, are all ominous and unreasonable. The Employer asserts the Arbitrator should favor the Board's final offer as more reasonable than the Union's.

B. The Union

According to the Union, the "greatest weight" provision is not brought into play by evidence in these proceedings. Likewise, it says the "greater weight" criteria is not relevant in this case because the Employer has presented no evidence to indicate poor economic conditions.

The Union argues that the Employer's failure to raise its proposal regarding Release of the Union president during any negotiating session should be considered. It stresses that interest arbitration is not intended to take the place of collective bargaining. The Union claims the Employer is attempting to gain a significant benefit, limiting the amount of time the Union president spends on Union issues, by the interest arbitration process, and not by the collective bargaining process. The Union points out this proposal first appeared when the parties exchanged their final offers in March 2008.

To uphold the Employer's significant changes to the status quo, the Union argues the Arbitrator must find a demonstrated, compelling need and quid pro quo. The Union says the Employer has demonstrated no proven or compelling need for its proposal regarding the Release Time for the Union president. Because the Employer's proposal is significant, the Board must also offer an equally significant quid pro quo. The Board has not put forth any quid pro quo, significant or not.

The Union asserts the Employer is proposing to delete from the collective bargaining agreement the entire portion that has allowed the Union president for the last twelve out of thirteen years to utilize a part-time release. In addition, it says the Employer is seeking to add language placing a ceiling on the amount of union work the Union president may work on each day. Under the Board's proposal, the Union would be forced to elect to have the Union president work on behalf of the bargaining unit either 175 hours per year or 1,600 hours per year. The Union argues this election is unreasonable. It is the Union's position that the Employer has offered no proof of any problem that the current contract language creates.

The Union points out the Employer's proposal caps and restricts the use of the Union president's time. Currently, and for the past twelve out of thirteen years, the Union has exercised its contractual option to place the Union president in a part-time release. According to the Union, this election has given the Union president some 800 hours to attend to union business. Under the Employer's proposal, the Union asserts the Union president would only be given 175 hours to attend to union business. If the Union needed a few more hours from the Union president, the Union says it would be forced to have the Union president to serve on a full-time release basis. While many grievance meetings and other union business are conducted in the evening, the Union asserts there is a need for the Union president to prepare for these meetings and attend to other union business during day-time hours.

The Employer is also seeking to add a section requiring the Union president to notify and seek approval from the president's principal or supervisor, as well as the negotiator's office. The Union says the proposed language also provides that the request may be dependent on the availability of a substitute. The Union explains that each time the Union president would need to be released during the day, the president would need to make an independent request, which would then commence a search for a substitute, and would demand further approval from the Labor Relations office. The Union claims this language seems to hamstring it and burden the Employer far more than the status quo allegedly burdens the Employer.

By limiting and restricting the use of the Union president's time, the Union says the Employer's proposal impacts the entire bargaining unit. The Union emphasizes that the Union president does not use release time to attend to the president's own individual affairs, but the affairs of 479 members of the bargaining unit.

According to the Union, the Employer's final offer does not include additional wages or benefits justifying the language change it proposes. The Union submits that Employer's proffered quid pro quo, life insurance, is not a quid pro quo offer. The Union explains that the current life insurance provision requires bargaining unit members whose salary is more than $37,000 a year to pay a premium for life insurance above $37,000. The cost is $3.60 a month for each thousand dollars above $37,000. In addition, the current contract language reduces the life insurance benefit to retirees who reach 67 years of age to 25% of the original amount. The Employer has a current practice of supplying this benefit at no cost to members who are at least 55 years old, have at least 30 years of service, and who make above $37,000.

The Union argues the Employer's proposal immediately benefits a few union members and may hurt others in the future. First, it says the proposal eliminates the cost of additional life insurance for members whose salary is above $37,000. Second, the Union says the proposal codifies the practice of providing the benefit at no cost to members who are at least 55 years old, have at least 30 years of service, and who make above $37,000. The Union states that proposal caps the life insurance for retirees who are above 67 years of age at a $20,000 benefit.

It is the Union's position that a close examination of the life insurance shows that it is not quid pro quo for three reasons: (1) it was a proposal put forward at the time of bargaining, whereas the release-time proposal was not; (2) even if it could be considered quid pro quo, it is insufficient because it is not significant; (3) it benefits the Employer more than the Union.

It is the Union's position that its proposed seniority changes address a demonstrated, compelling problem and need no quid pro quo. The Union explains it primarily proposes a language change to two specific sections within the seniority provision. Seniority is a useful method of preventing arbitrary action by management, particularly in reductions in staff. *See Milwaukee Board of School Directors*, Dec. No. 30136-A (Grenig 2002). Due to current circumstances, the Union declares it is proposing to slightly alter the manner in which seniority is applied for purposes of reductions in staff. Instead of employing the starting date within the bargaining unit to select which staff member will be excessed, the Union states that the classification date would control seniority for reductions in staff. The Union also proposes to modify the manner in which seniority is used to select shift assignments, so that the classification date would control. In addition, the Union has adopted two of the Board's original proposals regarding minor deletions and changes to a committee that never met and a more reasonable timeframe for reporting assaults that occur on Board grounds.

According to the Union, its proposed changes to seniority address a demonstrated, compelling problem. Under the Union's proposal, the Union asserts the only affected members would be those who would face a reduction in staff within their classification. The Union claims the Employer would only be affected when it decides to reduce the staff in a particular classification. The proposal addresses a recent trend within the Board to close traditionally large high schools and open or merge smaller high schools, which has tended to reduce the need for a Secretary II or III. The Union argues its proposal addresses this problem by retaining the employee, within the classification, who has the most seniority and, therefore, the most experience and expertise within the classification.

The Union says its proposal modifies how, in the event of a reduction in staff, the Board should determine which employee within a classification should be excessed into a vacancy within the classification or a position in a lower classification. The Union explains that, currently, the employee with the least amount of Board seniority is bumped into a vacancy or a lower classification. The Union proposes to retain the employee with the most experience—the employee with the longest service in the classification. The Union also indicates its proposal also seeks to use classification seniority for shift assignments. There is scant evidence in the record regarding any Board opposition to this modification, other than its general objections to identifying an employee's classification seniority.

The Union claims it put forth its proposal largely in reaction to the Employer's decision to restructure some of its larger schools. The immediate problem the current language poses is that, as the Employer has been closing larger high schools and opening smaller high schools, it has diminished the need for Secretary IIIs. The Union explains that, traditionally, Secretary IIs have been assigned to junior high schools and Secretary IIIs have been assigned to high schools. As of January 2009, these two classifications accounted for 45 employees, 9% of the bargaining unit. When a large school closes, and smaller high schools open in its place, the schools often are not in need of a Secretary III. Thus, one Secretary III will have to bump into a Secretary II position, unless a Secretary III vacancy exists elsewhere in the District.

The Union says that, under the current contract language, the employee that would be moved from the Secretary III position would be the employee with the least amount of Board seniority. According to the Union, this method poses a problem because, when this employee has more of classification seniority than another employee who has more board-wide seniority, the department and the public lose an employee with more experience and expertise in the classification.

The Union contends its proposal would attempt to remedy this situation by giving priority to the employee with the longest classification date. Under its proposal, the Union explains that the employee with the least amount of time in the classification would be the first to be either moved into a vacant position or excessed to a lower classification; it would not affect any employee who is ultimately laid off by the Board's decision.

It is the Union's position that identifying the classification date for each employee within a classification facing a reduction in staff is not unreasonably burdensome to the Employer. It explains: Within the Union's bargaining unit, there are 479 employees and 16 classifications. Eleven classifications have four or less employees. Thus, if a reduction in staff occurred in over two-thirds of the classifications, little work would need to be conducted to identify the classification dates of the one or two employees. Pointing out that the Employer has argued that the Union's proposal is overly complex and administratively burdensome, the Union contends that calculating the classification date is generally not an onerous activity.

The Union points out that a Board employee was able to determine employee classification seniority date. According to the Union, the Employer has the tools to arrive at a classification date for each employee.

The Union asserts there are two relevant bargaining units that use classification seniority for reductions in staff: the Administrators and Supervisors Council ("ASC"), who are employed by the Board, as well as the District Council 48 Union ("City Union"), who are employed by the City of Milwaukee. The ASC contract allows reductions in staff by classification seniority, and the City Union's contract allows reductions in staff by classification seniority.

The Union says its proposed changes to Humanitarian aid and Assistance in Assault Cases were originally Employer proposals, and need no quid pro quo. The Union claims both proposals initiated by the Employer were agreeable to the Union. The Union explains that the Employer first proposed the deletion of the provision regarding Humanitarian aid, and the Union found it to be reasonable because the committee it created never met.

The second language change the Union proposed was to slightly modify the section regarding Assistance in Assault cases. The Union says the Employer first proposed the deletion, and the Union found it to be reasonable, because reporting assaults not only assists the Employer, but also assists employees in receiving the aid they need after an assault. The Union contends it found the modification to be reasonable, and included it in its final offer.

The Union concludes its final offer is reasonable, and attempts to remedy real issues: retain expert staff in the event of a reduction in force, abolish a committee that never met, and put a reasonable time limit to report assaults that occur on the Board's property. The Union requests that the Arbitrator select its final offer.

V. STATUTORY FACTORS

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 effect 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.

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. The population of the city of Milwaukee has fallen consistently since 1990. City employment has fallen consistently since the 1990s. The evidence shows that the Employer has been taxing to the maximum of its authority since the

1990s and has had serious budget shortfalls for five years. Health care costs have risen 69% since fiscal year 2001 and each year health care benefit costs consume an increasingly larger percentage of the Employer's budget.

C. The Lawful Authority of the Employer

There is no contention that the Employer 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 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 employer'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 evidence shows that the Employer already taxes to the maximum allowed under the statutory revenue limit. A referendum to raise the revenue limits most likely would not pass.

The public has an interest in keeping the Employer in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Employer. 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.

3. *Internal Comparables*

Generally, internal comparables have been given great weight with respect to basic fringe benefits. *Rio Community School Dist. (Educational Support Team),* Dec. No. 30092-A (2001 Torosian); *Winnebago Village,* Dec. No. 26494-A (Vernon 1991); *Rock Village (Deputy Sheriffs' Ass'n),* Dec. No. 20600-A (Grenig 1984).

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."

H. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Union 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. The arbitrator must select the complete final offer. The arbitrator has no authority to pick and choose from the various items in the final offers.

In this case, there is no question regarding the ability of the Employer to pay either offer or the legal authority of the Employer to implement either offer. In terms of the final offers, the total cost differences over the life of the contract are relatively slight.

As previously noted, aside from five proposals, the parties' final offers are quite similar. The two final offers entailed substantially identical modifications to the Conditions and Duration of the Agreement; Voluntary Political Deductions; Publishing of the Contract; Retiree Health; Transportation Allowance; Pension: Creditable Service for Active Military Service; Wage Increases; and the establishment of a School Secretarial Personnel Study. Where the language differs slightly, the parties stipulated to the intent and construction of that language at the arbitration hearing.

The Union's final offer contains three proposals the Employer's final offer does not. The Union's final offer calls for one primary change to the status quo—seniority applicable to a reduction in staff. The Union included two other changes that were originally Board proposals—the deletion of the humanitarian aid section, and a modification of the assistance in assault cases section. The Union agreed to both Board-initiated proposals during bargaining, and then the Union incorporated them into its final offer. The Employer's final offer includes a proposal relating to released time for the Union president and a second proposal relating to life insurance.

The parties' outcome-determinative final offers are the Union's seniority proposal and the Employer's proposal relating to release time for the Union president. Accordingly, the analysis focuses on these two offers. The more reasonable of the two offers will determine which parties' final offer package will be selected.

Each of the two offers seeks to change the status quo. When a party wishes to make a change in the substantive terms of the collective bargaining agreement, the party is obligated to justify its proposed changes. *School District of Cumberland*, 115 LA 916, 920 (Vernon 2000); *see also Monroe County*, Dec. No. 31383-A (Grenig 2005); *City of Anderson*, 117 LA 1463 (Goldstein 2002). When a party proposes significant changes to the status quo, the party must present an appropriate quid pro quo. *See D.C. Everest School Dist.*, Dec. No. 24678-A (Malamud 1988). Here, the choice between the offers is complicated by the lack of appropriate quid pro quo from either party.

The Employer's life insurance proposal should not be considered as quid pro quo for its release proposal because it was not offered contemporaneously with the release time offer. While the Employer's life insurance proposal was made during collective bargaining, it's release proposal was not made during bargaining—it did not appear until the Employer made its final offer in this interest arbitration. As the life insurance was already on the table, it was not an added wage or benefit package to accompany the Union president release time proposal, and therefore cannot be considered a quid pro quo proposal. For the same reasons, the Employer's political contribution proposal cannot be considered as quid pro quo for its release proposal.

While the life insurance proposal is not quid pro quo for the Employer's release proposal, the release proposal itself provides some additional benefits to the Union. Presently, the Union must pay 50% of the cost of a 10-month Secretary I position. The Employer's proposal would eliminate this cost, and the Employer would pay all the Union president's wages and benefits for the first 100 hours of the president's release time. The Union would only be required to pay for the Union president's release time (up to 75 hours) after the Union president had used 100 hours of release time. In addition, certain meetings, such as Health and Productivity Maintenance bargaining scheduled during the day do not count against the 175 hours of release time.

Although it is proposing a change to a seniority system that has been in place for approximately 40 years, the Union has not provided any quid pro quo for its proposal. The Union's proposal is not an economic proposal as that term is generally used, however the Union's proposal would require the Employer to incur costs to implement the proposal. There is no proposal in the Union's final offer that can be deemed a quid pro quo from the Union for its seniority proposal.

With respect to the Union's seniority proposal, the record discloses that keeping track of seniority rights under the Union's proposal for the more than 460 employees in the bargaining unit will be complicated and impose an additional, ongoing burden on the Employer. First every bargaining unit members' complete job history would need to be reviewed by means of a page-by-page examination of employee personnel files. Each time an employee changes jobs, updated lists for different classifications the employee has occupied must be prepared. The rules for keeping track of seniority under the Union's proposal are unclear, creating the likelihood of future disagreements and grievances.

The comparables offered by the Union present somewhat different situations than is at issue here. The City of Milwaukee uses classification-based seniority, but its circumstances and methodology are distinguishable from the situation at the Employer.

The comparability of the Employer's ASC bargaining unit is of limited applicability here. The ASC consists almost entirely of certificated rather than classified employees. The vast majority of ASC members are principals and assistant principals, and, because MPS has between 150 and 200 schools, plus Central Office jobs into which ASC members can be assigned at will, there are always vacancies in situations where principals, assistant principals, and many other ASC members are excessed from a position. Layoffs tend to be a non-issue with this group; when excessing occasionally does occur, it usually involves positions that are unique, with a single incumbent.

While the Union's offer specifies that classification seniority applies where there is a reduction in force, the Union's proposal fails to modify the procedures for placement of excessed employees. The Union's proposal appears to create a hybrid procedure in which excessing is governed by classification-based seniority but placement of excessed employees is governed by an employee's total time in the bargaining unit since the employee's last date of hire.

Finally, the Union has not demonstrated any compelling need for adoption of its proposal. There is no evidence that the present seniority system has ever had an undesirable result.

With respect to the Employer's release proposal, the current contract allows the Union to elect one of three options with regard to leave time for its president: (1) a full-time leave of absence for the president with full pay and benefits provided by the Employer but reimbursement for the cost by the Union; (2) employment of the president half-time in a 10- or 12-month position, dependent upon availability, with full-time pay and benefits provided by Employer and reimbursement for half of the cost of these by the Union; or (3) release of the president for contract administration and grievance processing on an as-needed basis with full pay and benefits received from the Employer but with reimbursement by the Union of the salary of any substitute assigned to fill in for the president during such absences.

As previously discussed, the Employer's proposal would eliminate this cost, and the Employer would pay all the Union president's wages and benefits for the first 100 hours of the president's release time. The Union would only be required to pay for the Union's president's release time (up to 75 hours) after the Union president had used 100 hours of release time. In addition, certain meetings, such as Health and Productivity Maintenance bargaining scheduled during the day do not count against the 175 hours of release time.

The Employer presented persuasive evidence showing the difficulty of filling a half-time position during the term of office of a Union president for one school year. In addition, the record does not indicate that the Employer's proposal would impinge on the ability of the Union president to perform the duties of office.

The Employer's proposal brings the release-time provision in the parties' collective bargaining agreement in line with the provisions in the other collective bargaining units. At present, no other bargaining unit has a release provision similar to the current release provision in the parties' collective bargaining agreement. Unfortunately, the proposal was not presented at the bargaining table. Instead, the Employer included the proposal in its final offer after an impasse was declared.

Under Wisconsin law, the Arbitrator has no authority to select different offers from the parties final offers. The Arbitrator is required to select one party's total final-offer package. If it was possible to select issue-by-issue, it is possible neither the Employer's release-time offer nor the Union's seniority offer would be selected. Among other things, the Employer release-time offer suffers from the infirmity of not having been presented to the Union at the bargaining table. On the other hand, the Union's seniority offer could use further refinement in order to avoid problems of application. The Union's offer also complicates seniority recordkeeping by using Board seniority from some purposes and classification seniority for reductions in force. Both parties' offers would have benefited from serious discussions at the bargaining table. Interest arbitration does not give either the arbitrator or the parties the ability to solve language and implementation issues. The final offers must be taken as presented.

Because it is necessary to select one offer over the other, it is concluded that the Employer's release-time offer is more reasonable than the Union's seniority offer. While there are concerns about the Employer's offer, the Union's offer would have long-term problems including the burden to the Employer of keeping records for two seniority systems—Board seniority and classification seniority. The Union's offer also raises issues about implementation and application.

VII. AWARD

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

Executed this thirtieth day of June, 2009.

Jay E. Grenig