IN THE MATTER OF THE ARBITRATION PROCEEDINGS

BETWEEN

AFT-W, LOCAL 4019, OTS UNIT,

Petitioner,

and

ARBITRATORS AWARD
Case 94 No. 67976
INT/ARB 1117
Decision No. 32460A

WISCONSIN INDIANHEAD
TECHNICAL COLLEGE,
(OFFICE AND TECHNICAL
SUPPORT PERSONNEL),

Respondent.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Andrea M. Voelker, Esq.
Weld, Riley, Prenn & Ricci, S.C.

For the Union: James Mangan
AFT-W Staff Representative

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between Wisconsin Indianhead Technical College (College or Employer) and Wisconsin Indianhead Technical College Education Support Personnel Federation, Local 4019, AFT-Wisconsin (Union) also known as the OTS unit. The Union is the exclusive collective bargaining representative for all employees classified as office and technical support staff as well as network technicians. The Employer has two other bargaining units: a faculty unit and a custodial unit.

Under the Governmental Accounting Standards Board (GASB), which establishes standards of financial accounting and reporting for the public sector, public sector employers have been required to calculate and recognize projected liability for future retiree health insurance costs for the first time. GASB Statement 45, governing the accounting for retiree health care and other nonpension benefits governments provide their employees, was issued in June 2004. Under GASB 45, the government employers must calculate the actuarial present value of retiree health care benefits. GASB 45 requires a change from "pay as you go" accounting, in which the expense is not recognized until benefits are actually paid after employees retire, to accrual basis accounting, in which the expense is recognized during years of active service. GASB requires measurement and disclosure of the total actuarial accrued liabilities for past services, as well as the net unfunded actuarial accrued liabilities, and requires actuarial valuations every two or three years for accounting and financial reporting purposes. Based on the study, An actuary makes assumptions about the medical trend and then determines the actual liability.

The Employer had its first GASB 45 actuarial evaluation in 2005. As of March 31, 2005, the Employer's liability, totally unfunded, for retiree health insurance was $5,680,700. A subsequent evaluation was completed in March, 2008, showing an unfunded liability for retiree health insurance of $6,474,931 at the end of the 2006-07 fiscal year, representing an increased liability for retiree health insurance of almost $800,000 in only 27 months. That cost increase is attributable not only to the escalating cost of health insurance but to an increase in the number of active employees eligible to receive paid health insurance benefits upon retirement. The 2008 GASB study shows an increase of 20 participants eligible for retiree health insurance benefits over the number of eligible participants in the 2005 GASB.

Under the existing contract language, bargaining unit employees with 15 years of service are eligible for early retirement benefits at age 55. They receive one month of single health insurance coverage for each day of accumulated sick leave, for up to 10 years, or a maximum of 120 months of fully paid single health insurance coverage. The Employer pays the full cost of the single health insurance premium. The Employer has no control over premium increases and no way of forecasting the future cost of health insurance. Between 1997-98 and 2008-09, single health insurance premiums increased 400%.

The Employer and the Union are parties to a collective bargaining agreement that expired on June 30, 2007. The parties exchanged initial proposals in May 2007. The Employer's initial proposals included proposals similar to those made to the faculty and custodial units. These proposals included changes in health insurance as well as a proposal to revise early retirement benefits for new hires only by eliminating a provision providing one month of paid single health insurance in return for each day of accumulated sick leave and adding an alternative benefit. The faculty and custodial units both settled their 2007-09 and 2007-10 contracts, respectively with an agreement to eliminate, for employees hired on or after January 1, 2008, the same provision included in the OTS contract—

"one month of paid single health insurance in return for each day of accumulated sick leave."

On October 11, 2007, the parties agreed they were at impasse. On April 30, 2008, the Union filed a petition with the Wisconsin Employment Relations Commission alleging that an impasse existed between it and the Employer in their collective bargaining and requesting the WERC to initiate arbitration pursuant to Wis. Stat. § 111.70(4)(cm)6 of the Municipal Employment Relations Act. On May 9, 2008, a member of the WERC staff, conducted an investigation reflecting that the parties were deadlocked in their negotiations. By June 9, 2008, the parties submitted to the investigator their final offers. On June 24, 2008, the WERC issued an order appointing the undersigned as the arbitrator.

A hearing was conducted in Shell Lake, Wisconsin, on September 8, 2008. Upon receipt of the parties' reply briefs, the hearing was declared closed on November 10, 2008.

II. FINAL OFFERS

A. UNION

The Union's final offer proposes continuing the early retirement health insurance plan as provided in the current collective bargaining agreement. The contract currently provides as follows:

> **ARTICLE XIV - <u>Retirement</u>**
>
> A. Employees who are eligible will participate in the Wisconsin Retirement Fund. Effective January 1, 1996, the Board will pay the employee's contributions, up to 6.5% of earned salary, to the Wisconsin Retirement System.
>
> B. The Board shall offer an early retirement program to employees who elect to retire between 55 and 65 years of age.
>
> 1. Participants must have at least 15 years of full-time service to the College and give a six (6) month notice of their intent to retire. Full-time defined as benefit eligible.
>
> 2. Program participation begins the first of the month following retirement and terminates at the end of the month in

which the retiree reaches the age of 65 or upon his/her death if earlier.

3. Participants may enroll in the WITC Retiree Medical Plan provided they do so at the time of retirement. If the employee does not enroll in the Plan when he/she retires, future participation in the WITC Retiree Medical Plan will not be permitted.

4. Employees having accrued (unused) sick leave may exchange such leave for employer-paid medical insurance with one day of sick leave considered equal to the premium of one month of single medical coverage. Family medical coverage may be obtained at the employee's expense by paying the difference between single coverage and family coverage. Employer-paid medical insurance ends when the retiree reaches the age of 65 or earlier if he/she should die or sick leave is depleted.

The Union explains the current benefit as permitting qualified employees to exchange unused sick leave for employer-paid health insurance. Each day of unused sick leave can be exchanged for one month of single health insurance coverage, regardless of the cost until the retiree reaches age 65, dies, or the sick leave is depleted.

B. EMPLOYER

Under the Employer's final proposal, employees hired before July 1, 2008, would continue to receive the same early retirement benefits as currently provided by the contract. The early retirement benefits would be changed for employees hired on or after July 1, 2008, by implementing a cash pool, based on accrued sick leave hours at the time of retirement, that could be used to pay for retiree health insurance premiums, and also by adding a 403(b) program that would match the employee contribution up to 1.5% of salary annually, beginning with their third year of employment. Employees hired prior to July 1, 2008, would have the option of maintaining the existing benefit or selecting the new cash pool/403(b) match program.

The Employer proposes the following language:

Article XIV – <u>Retirement</u>

B. WITC Retirement Plan for Office and Technical Support

1. Eligibility:

The WITC Board is offering an Early Retirement Program to qualifying Office and Technical Support staff. To qualify, an OTS staff person must be currently employed by the College; have at least 15 years of benefit eligible service with WITC; and be eligible to receive WRS benefits. Six months prior to the date the OTS staff person wishes to retire, the OTS staff member must provide his/her administrator with an irrevocable letter announcing his/her intent to retire.

2. Participation:

Participation begins the first of the month following retirement. If the employee does not enroll in the WITC Retiree Medical Plan when he/she retires, future participation in the WITC Retiree Medical Plan will not be permitted.

3. Medical Insurance:

IF HIRE DATE IS PRIOR TO JULY 1, 2008

The exchange of seven and a half (7.5) hours of accumulated and unused sick leave the retiree has at the time of retirement will be given for one month's single medical insurance coverage in the Retiree Medical Plan. This exchange will be allowed for up to 120 months (900 hours) or at the point the sick leave hours runs out, or to the end of the month that the retiree attains Medicare eligibility, whichever comes first. Family medical coverage may be purchased at the retiree's expense by paying the monthly premium difference between Single coverage and either Single Plus One or Family Coverage.

Employees with a hire date prior to July 1, 2008 will have the option to accept the above stated benefit or to opt for the retirement benefit for those hired after July 1, 2008. If the employee opts for the benefits for those hired after July 1, 2008, all rights are forfeited for the one month of single medical insurance for each seven and a half (7.5) hours of sick leave.

IF HIRE DATE IS AFTER JULY 1, 2008

An Office and Technical Support benefit eligible employee can elect to participate in the 403(b) match program beginning with the third full year of employment. The match will be a dollar for dollar match up to 1.5% of their annualized salary (hourly rate x number of hours regularly scheduled). Eligible OTS will elect participation each fiscal year. Only one company can be elected each fiscal year with no change of company during the fiscal year. The match will be made monthly as long as the employee has had deducted the equivalent of the 1.5% match of their annualized salary. Employees can elect to have deducted from their pay an amount greater than the match up to the amounts allowed by the IRS, but no more than 1.5% of the annualized salary will be matched. All employee deductions will be made over 24 pay periods, the first two pay periods of each month.

In addition, a cash pool will be established at the time of retirement based on the hourly rate at the time they retire times 1.5 and the number of sick leave hours accumulated and unused to a maximum of 900 hours provided the employee meets the retirement eligibility requirements established in Article XIV.B.1. The OTS employee may purchase employee, single plus one or family medical insurance coverage under the Retiree Medical Plan and will have the appropriate premium deducted monthly from their cash pool until such time the pool is exhausted or the retiree attains Medicare eligibility plus five (5) years or the retiree has had coverage for 120 months, whichever occurs first.

4. Once the benefit is maximized depending on the category the retiree falls under, the insurance will end unless the retiree pays the entire cost of the monthly premium.

   Medical insurance terminates and will not be extended to family members on a paid basis if the retiree dies. However, coverage may be extended for up to 36 months at the survivor's expense under COBRA.

5. Other insurances (e.g., dental, life, disability) are not included in this early retirement program.

Basically, the Employer's final offer changes the early retirement health insurance benefit in two ways:

1. It replaces a fixed period of time (up to 10 years) when a retiree can receive employer-paid health insurance with a fixed "cash pool" that the retiree can use to purchase health insurance.

2. It makes OTS employees eligible to participate in the Employer's 403(b) match program beginning in their third year of employment.

III. STATUTORY CRITERIA

Wis. Stat. § 111.70(4)(cm)

. . .

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

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

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

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. POSITIONS OF THE PARTIES

A. THE UNION

The union contends its final offer is the more fair and reasonable of the final offers for four basic reasons:

1. The Employer is attempting to make a substantial change to the status quo without offering an equivalent quid-pro-quo.

2. The changes proposed by the Employer make the benefit substantially less than is seen in comparable agreements.

3. The changes proposed are not the same as were offered and accepted by the faculty bargaining unit at the college, despite what the Employer contends.

4. Despite the Employer's presentation of GASB information, there is no pressing financial need for this issue to be resolve immediately, and there's no reason to believe that it won’t be addressed by the parties themselves in future negotiations.

According to the Union, the statutory “factor given greatest weight” is not a factor in this case. With respect to the statutory “factor given greater weight,” the Union argues that the economic conditions in the jurisdiction favor its position, and give support to the Union’s contention that there is not a pressing immediate need for the employer to resolve this issue in the manner the employer proposes. The Union notes that, since 1993, the property valuation for the in the property College district has increased in value more than the total levy has increased. The Union says this means there is an increased property valuation that the Employer has not touched in 15 years.

The Union asserts that the Employer is not in bad financial shape, and is in fact in better financial shape than most technical college districts, and has chosen not to levy taxes at anywhere near the levels other districts have, even though property valuations in the district have risen and they could have levied at a higher level. The Union claims there is no pressing financial need for the Employer to be seeking the change it wants at this moment in time. According to the Union, this is an issue that will not go away, and the Employer will have opportunities to modify the early retirement health insurance plan in future negotiations between the parties at the bargaining table, where the issue should be resolved.

The Union says it has demonstrated above that the district is in good financial shape. The Union asserts that the Employer has never said it could not afford to keep the early retirement health insurance benefit as it is.

It is the Union’s position that there is an important difference in what is being offered to the support staff and what the faculty group agreed to with respect to early retirement. The Union explains that the offer agreed to by faculty allows, for the first time, for employees with only ten years of service to receive some early retirement health insurance benefit. As the bargaining representative for the faculty (as well as for the OTS unit), the Union asserts that this improvement in the benefit was crucial in getting the faculty to accept the revised benefit. Had a similar offer been presented to the support staff, the Union says it is possible they would also have agreed. Because the Employer’s final offer to the support staff does not contain this important piece, the Union claims it is considerably different from the offer accepted by the faculty.

Asserting it is obvious that the comparable technical colleges have a wide range of plans for early retirement health insurance, the Union says that all but one of the seven comparable technical colleges have a richer early retiree health insurance benefit than that offered by the employer, with several of them being richer by a substantial margin.

The Union argues that unions don’t normally give up, concede, or substantially reduce benefits during bargaining, barring extraordinary circumstances, without getting something in return. It says the Employer’s final offer substantially reduces the value of early retiree health insurance without offering something even close to equal in value. The Union contends that, because bargaining unit incomes are much lower than faculty or management, the OTS employees will not be able to participate in the 403(b) benefit to a great extent, and therefore they put a lower value on it. The Union also notes that the Employer's wage offer of three percent is at the bottom of recent wage settlements at the seven comparable technical colleges.

The Union points out that its president testified at the hearing that the Employer made its strongest push in bargaining for changes in health insurance—which it got. The Union observes that some of these changes are very unpopular with the OTS members, but the Union bargaining committee agreed to them based on the employer's desire to see some changes in premium share, in prescription drug coverage, and in deductibles. The Union says it never saw retiree health insurance as a key issue that absolutely had to be dealt with during these negotiations. The Union states that there was considerably less discussion around this issue, and its position was a consistent one—the changes in health insurance are enough for this round, let's deal with retiree health insurance later.

Although the faculty union agreed to modify the benefit at issue (although not in the same way proposed by the employer in this final offer), the Union declares that was a separate bargaining process, one characterized by a deeper level of discussion and eventual inclusion in that agreement, for the first time, of language dealing with two issues of importance to the faculty union: alternative delivery and intellectual property rights. The Union says this made it easier for the faculty union to agree to a change in the early retiree health insurance benefit.

The Union claims it has shown a willingness to bargain and come to agreement on difficult issues at the table with the Employer. It says the items tentatively agreed to by the parties—especially the changes in health insurance—attest to that. It reasons that bargaining works best when the parties themselves work out agreements and that an agreement should not be imposed from an outside party lightly.

Declaring there are many different ways to shape the early retirement benefit, the Union says it has told the Employer it is not opposed to discussing the issue in future negotiations. Contending there is no pressing need to make the change proposed by the Employer right now, the Union believes the issue is better left to the parties themselves to resolve.

B. THE EMPLOYER

The Employer says its proposal to change the benefits for employees who retire prior to age 65 is driven by the escalating and uncontrollable cost of providing health insurance benefits to employees who retire early. According to the Employer, it has approached the problem of its liability for retiree health insurance in two ways: (1) funding the liability, and (2) negotiating alternative retirement benefits for its employees in order to reduce its future liability.

The Employer believes the magnitude of its liability for the growing cost of providing health insurance for employees who retiree early requires action. It argues that an 84% increase in actual payout for retiree health insurance benefits every four years, as was the case from 2004 to 2008, is unreasonable and not sustainable. The Employer asserts that the existing contract language, providing one month of single health insurance coverage for each day of accumulated sick leave for up to 10 years, was bargained long before the cost of health insurance skyrocketed to become one of the primary cost issues, if not the primary issue, facing public sector employers today. The Employer says it has become so significant that wage increases are necessarily dependent on the increased cost of health insurance.

The Employer states that the cost of health insurance has escalated so rapidly in recent years that it far surpasses the value of a day's wages. We know that from the 1997-98 fiscal year to the 2008-09 fiscal year, the hourly wage rate for the OTS unit increased just over 37%, while at the same time the cost of the monthly health insurance premium for single coverage increased 400%—from $156.09 to $781.75 per month.

The Employer highlights the growth in disparity between the value of one day of sick leave for Level 1, 2 and 3 employees and the monthly cost of single health insurance. It explains that the cost of single health insurance in 2008-09 is $781.75 per month, and the $150.38 daily wage for a Level 1 employee in 2008-09 is equivalent to only 19% of the single premium. The Employer also explains that the $122.23 daily wage for a Level 3 employee in 2008-09 is equivalent to only 16% of the single premium. The Employer argues that trading one day of sick leave for one month of single health insurance is no longer reasonable or economically viable. The Employer states it simply has no control over the cost of its future liability for retiree insurance by continuing with the existing trade off. The Employer explains that its proposal for employees hired on or after July 1, 2008, is to move from a defined benefit plan, whereby single health insurance is provided without any control over the cost of that health insurance, to a defined contribution plan, which is designed to significantly reduce the unknown factors that affect the Employer's liability while still providing all employees with a generous benefit upon retirement.

The Employer says its proposed change for employees hired on or after July 1, 2008, is twofold. First, the employer states that it provides a cash pool based on hours of sick leave accumulation and the employee's hourly rate that can be applied toward the payment of health insurance premiums at retirement. The Employer reasons that one of the advantages of the cash pool option, over the existing contract language, is that employees who need more than single coverage can use the cash pool fund to pay for the full single plus one premium and avoid having to pay the difference between the single premium and the single plus open premium at the outset. According to the Employer, even those employees who only need single coverage at the time of retirement would benefit by the cash pool option, which would allow them to pay for continued coverage after age 65, saving the retiree from having to acquire supplemental health insurance along with Medicare benefits.

The Employer says the second benefit proposed for employees hired after July 1, 2008, is the 403(b) matching program, whereby, beginning with the third full year of employment, the Employer will match an employee contribution to the 403(b) plan, up to 1.5% of the employee's annual salary.

The Employer believes that the cash pool, in conjunction with the benefits received through participation in the 403(b) matching program, will provide a sizeable sum that employees can apply toward the purchase of health insurance if they elect to retire early, but that provides a valuable benefit even if the employee chooses to work until age 65 or longer. The Employer believes it is a reasonable proposal providing employees with a valuable retirement benefit.

The Employer notes that, under its proposed language, employees hired prior to July 1, 2008, have the option of selecting the retirement benefit proposed for those hired after July 1, 2008. It says that option provides a benefit to current employees who have elected or will elect to work to an older age. The Employer observes that, under the existing language, all health insurance coverage ends at age 65. The Employer stresses that the value of the cash pool option is not limited to existing employees who are already close to age 65. It asserts that even much younger employees could benefit from choosing the cash pool and 403(b) match option.

It is the Employer's position that, not only does the Employer's proposed cash pool and 403(b) program provide a reasonable option for new hires, but it also provides a potentially valuable alternative for employees hired prior to July 1, 2008, who believe it is likely they will be working longer than 55 years of age.

The Employer argues that its proposed change in benefits for retirees is consistent with internal settlements and should be selected on that basis alone. The Employer believes that internal consistency must be maintained.

The Employer states that its final offer provides a three percent wage increase, equal to or exceeding all other College employees, and a total package increase exceeding all other employee groups, while at the same time offering an entirely new 403(b) retirement benefit, at a new annual cost, for employees who select the 403(b) match program. The Employer argues it cannot treat the OTS unit better than its faculty unit, its custodial unit, and its management employees, by continuing to maintain the very costly existing retirement benefit for newly hired OTS members as well as existing employees, yet still providing them with the three percent wage increase per year.

According to the Employer, the Union's proposed external comparables provide support for neither offer. The Employer does not disagree with the selection of the primary and secondary external comparables proposed by the Union, however the Employer explains that it has offered no external comparisons because it believes the internal comparables must be the primary consideration in this dispute.

The Employer claims that an analysis of the proposed external comparables demonstrates that early retirement benefits differ significantly. However, the Employer points out that the external comparables know at the time of the employee's retirement the exact amount they will be required to pay in each year of retirement. In addition, because the employer contribution is set at the time of retirement, the Employer says an employee pays the cost of any premium increases each year of retirement.

It is the Employer's position that its proposed change for new hires does not require a quid pro quo. The Employer points out there would be no loss in benefits for existing employees. It explains that Employees hired prior to July 1, 2008, are grandfathered to retain the benefits earned during their tenure with the Employer, but will, in addition, have the option of a new benefit should they elect to work beyond age 65.

For employees hired on or after July 1, 2008, the Employer acknowledges its proposal is undeniably a change, and a change that reduces the Employer's costs. However, the Employer says its proposal includes a 403(b) benefit requiring an Employer contribution of an additional 1.5% of participating employees' salaries each year, beginning with the employee's third year of employment.

The Employer reasons that this is clearly a case where the early retirement benefit bargained years ago has become a significant and cost prohibitive problem which was unseen at the time of agreement. The Employer suggests the Union will argue that all the Employer has to do is raise taxes since it is not taxing to its maximum allowable levy limit under Wisconsin Statutes. The Employer responds that it is irresponsible and short cited to simply ignore the problem itself and place an increasing burden on its taxpayers. Given the nature of the change proposed by the Employer, which affects new hires only and provides a reasonable alternative, a quid pro quo is not required.

With respect to the bargaining process, the Employer recognizes that health insurance changes may have been the primary focus during initial negotiations, but it says they were not the only issue. The Employer says the Union admitted at hearing that the Employer's early retirement proposal was included in the Employer's initial proposals. The Employer says the Union negotiating team refused to discuss early retirement changes because it had agreed to the health insurance changes and was unwilling to go back to its membership with a change in early retirement as well. The Employer claims that bargaining ended because of the Union's unwillingness to enter into further discussion over the Employer's early retirement proposal.

The Employer says the parties' tentative agreements demonstrate the reasonableness of the negotiated health insurance changes as well as additional Union gains. When bargaining for the 2007-09 contract term for all three units, the Employer says it proposed to all three units changes in health insurance coverage and contributions as well as a change in early retirement benefits for new hires. It says all three units voluntarily agreed to health insurance changes creating consistency in coverage and contributions (with some minor exceptions for employee contributions). It asserts the voluntary settlements with the faculty and custodial units included health insurance changes, similar to those included in the tentative agreements with the OTS unit, designed to provide greater internal consistency in benefits. The Employer acknowledges that the health insurance changes for the OTS unit include first time employee contributions for many employees. However, it says that all employee contributions are capped at a maximum dollar amount, and employees receive an increase in the cash credit applied to the Flexible Spending Account Program for health care reimbursement, which covers part of the premium cost for some employees and results in a reduced cost for others. Explaining that the highest cost increase any OTS employee will face as of January 1, 2008, is $13 a month, the Employer says the added $500 a year wellness benefit for each covered employee and each spouse more than covers the increased cost toward premiums.

The Employer believes that the tentative agreements demonstrate its willingness to negotiate changes advantageous to employees. It submits further that the tentative agreements, in conjunction with the Employer's final offer, demonstrate a fair and reasonable settlement to both employees hired prior to July 1, 2008, as well as those hired thereafter.

V. FINDINGS OF FACT

A. Lawful Authority of the Employer

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

B. Stipulations of the Parties

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

C. 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. There is no contention that the Employer lacks the financial ability to pay either offer.

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. What constitutes fair treatment is reflected in the other statutory criteria.

D. 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

a. Introduction

Once an interest arbitrator has determined comparable employers, disruption of the established comparables should be discouraged. An established comparability group should be maintained and the burden of persuasion to change an established comparability group rests on the party that wants to make the change. *See Janesville School Dist.*, Dec. No. 22823-A (Grenig 1986). Continuity and stability of the comparables is important to provide the parties with an appropriate grouping upon which to base its comparisons from year to year. The use of different comparison groups from contract to contract encourages the parties to go comparable shopping. *City of Marshfield (Firefighters)*, Dec. No. 29027-A (Grenig 1997). The Association has not demonstrated a change in circumstances since 1989 justifying a change in the comparable communities.

b. Discussion

In two prior arbitrations involving the parties, the arbitrators determined that the first tier of internal comparables includes three districts contiguous with WITC (Chippewa Valley, Nicolet and Northcentral), and the second tier is composed of four other districts from the middle of the state (Western, Mid-state, Fox Valley, and Northeast).

No two of the comparables have the same early retirement health insurance benefits. At Chippewa Valley Technical College, the employer contribution for insurance after retirement is limited to the premium amount at the time of retirement. Nicolet Technical College provides a fund to pay insurance based on years of service, accumulated sick days, and the cost of the lowest health insurance premium at the time of retirement. Northcentral Technical College provides a fixed amount based on a "breakeven calculation." Northcentral determines the difference between the salary of the retiree and the salary of the new hire. It then divides that dollar amount by 12 months to determine its monthly contribution toward health insurance. For all three primary comparables, the monthly amount of the employer's contribution is a set amount determined at the time of retirement; the employer's contribution does not increase every time premiums increase.

3. Internal Comparables

a. Introduction

Interest arbitrators usually find that internal comparables rather than external comparables determine the outcome of fringe benefit disputes. *Walworth County Handicapped Children's Board*, Dec. No. 27422-A (Rice 1993); *Monroe County*, Dec. No. 29593-A (Dichter 1999). Internal comparables have been given great weight with respect to basic fringe benefits. *Winnebago Village*, Dec. No. 26494-A (Vernon 1991). Significant equity considerations arise when one unit seeks to be treated more favorably than others. Ordinarily, employers try to have uniformity of fringe benefits for all their bargaining units because it avoids attempts by bargaining units to whipsaw their employers into providing benefits that were given to other bargaining units for a very special reason. *Village of Grafton*, Dec. No. 51947 (Rice 1995). *See also City of Manitowoc*, No. 17643-A (Stern 1981) ("[M]ainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings."); *City of New Berlin*, No. 7-27293-B (Krinsky 1993) ("If arbitrators break patterns, why then should bargaining units voluntarily agree to terms if they have reason to think that by holding out until after other bargains have been reached, they will obtain more favorable settlements from an arbitrator?"); *City of Tomah*, No. 31083-A (Yeager 2005) ("An employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight."); *Marquette County*, No. 31027-A (Eich 2005) ("[S]uccessful negotiation of voluntarily agreed to terms with other unions is to be given great if not controlling weight in assessing the employee's offer of identical terms in the arbitration.")

b. Discussion

In the present case, the Employer and the unions representing two other bargaining units voluntarily agreed to eliminate provisions giving retirees a month of health care insurance for a day of sick leave for all new hires. Both of these bargaining units found the cash pool an acceptable alternative to paying for health insurance at retirement. For the faculty bargaining unit there is no 1.5 multiplier because their hourly wages are higher than the employees in the custodial and OTS bargaining units. The Employer has offered the OTS bargaining unit the 403(b) matching program agreed to by the faculty.

E. 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." With respect to the issue in this proceeding, changes in the cost of living are immaterial.

F. Overall Compensation Presently Received by the Employees

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

Under either offer, the OTS bargaining unit would receive a total package increase greater than that received by any of the other Employer bargaining units. Custodians received a total package increase of 6.15% in 2007-08 and 5.07% in 2008-09. Faculty received 5.71% in 2007-08 and 5.47% in 2008-09. Under the Employer's offer, the OTS bargaining unit will receive a total package increase of 6.72% in 2007-08 and 6.45% in 2008-09.

G. Changes During the Pendency of the Arbitration Proceedings

No material changes during the pendency of the arbitration proceedings have been brought to the attention of the Arbitrator.

H. 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). The Employer's offer proposes a change in the benefits for employees retiring before age 65. The Union seeks to maintain the status quo.

The Employer's offer recognizes a serious concern about a benefit that provides for exchanging one day of sick leave for one day of health benefits. In 2008 an actuarial study showed an unfunded liability for retiree health insurance of $6,474,931 at the end of the 2006-07 fiscal year—an increase in liability of $800,000 in slightly over two years. Between 1997-98 and 2008-09, single health insurance premiums increased 400%.

In 2008-09, the cost of a monthly single health insurance premium is $781.75. The daily wage for a Level 1 OTS employee in 2008-09 is equivalent is $150.38 per day—representing 19% of the single premium. In 1997-98, the cost of a monthly single health insurance premium was $156.09. The daily wage for a Level 1 OTS employee in 1997-98 was $109.54—70% of the single premium. If a Level 1 OTS employee banked one day of sick leave in 1997-98 with a value of $109.54 and that employee retired in 2008-09, the employee would be entitled to payment in the amount of $781.75 for one month of single health insurance. Obviously, over a period of 15 years or more, the disparity between the one day of sick leave and the single health insurance premium will be even greater.

Because the Employer pays the full cost of the single health insurance premium for qualified retirees for up to 10 years, it has no control over premium increases and no way of forecasting the future cost of the health insurance. At one time, the idea of providing one month of health insurance for one day of sick leave appeared more reasonable given the closer relationship between the cost of one month single health insurance premium and one day's wages. Today, the situation has changed and the reasonableness of exchanging one day's banked sick leave for one month of retiree health insurance is in question. *See* Lowenstein, WHILE AMERICA AGED HOW PENSION DEBTS RUINED GENERAL MOTORS, STOPPED THE NYC SUBWAYS, BANKRUPTED SAN DIEGO, AND LOOM AS THE NEXT FINANCIAL CRISIS (2008).

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. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed on that offer, by applying the statutory criteria.

B. Retiree Health Insurance

It is clear that substantial increases in health insurance benefit premiums present a legitimate and significant problem. *Village of Fox Point (Public Works)*, Dec. No. 30337-A (Petrie 2002) (data clearly establish the existence of a legitimate and significant problem requiring attention); *Waukesha County*, Dec. No. 30468-A (Dichter 2003).

While there is authority for the view that a proposed change in the status quo should be supported by some quid pro quo, arbitrators have held that quid pro quo is not necessary when dealing with changes in health insurance. *See, e.g., Cornell School Dist. (Food Service)*, Dec. No. 27292-B (Zeidler 1992); *Walworth County Handicapped Children's Education Bd.*, Dec. No. 27422-A (Rice 1993); *Pierce County (Sheriff's Dept.)*, Dec. No. 28187-A (Friess 1995). Others have concluded that the need for and size of the quid pro quo is reduced when rising health insurance premiums are being addressed. *See, e.g., Village of Fox Point (Public Works)*, Dec. No. 30337-A (Petrie 2002); *Waukesha County*, Dec. No. 30468-A (Dichter 2003).

When a public school employer proposed a reduction in employee retirement benefits, the arbitrator rejected the argument that the there must be quid pro quo for the reduction:

> What, however of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)j. of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated or previously bargained about by the parties. . . .
>
> The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retires in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes.

Algoma School Dist., Dec. No. 272390A (Petrie 1992).

As in the situation in *Algoma School District*, when the parties here agreed upon the employee retiree health insurance benefit, they did not contemplate the meteoric escalation in the cost of health insurance. The increase in the cost of health insurance has exceeded all reasonable expectation, and there is a continued prospect for continued escalation. The situation represents a significant mutual problem and an attempt to remedy the situation does not require quid pro quo.

The record does not justify postponing resolution of the problem until after the next round or bargaining. The parties had a reasonable opportunity to bargain a solution during the present negotiations. The record shows the Union rejected the Employer's proposal without even making a counterproposal. The parties thereafter agreed they were at impasse. While a voluntary agreement is certainly preferable, the parties did not resolve the matter during negotiations. The matter has now been submitted to the Arbitrator for resolution.

The Employer's final offer is a reasonable response to the parties' mutual problem. That offer protects the reasonable expectations of current employees. In addition, the Employer's final offer gives current employees in the OTS bargaining unit the option of using the cash pool proposed by the Employer and receiving Employer contributions to a 403(b) account. With respect to the benefit the final offer provides new hires, the Employer's proposal provides those employees with a significant retiree health care benefit plus a significant 403(b) match program. the cash pool provides retired employees with more flexibility than the present system—permitting them to pay for dependent coverage or to extend coverage past age 65. At the same time, the Employer's offer takes steps to significantly reduce unknown factors affecting the Employer's liability while providing a reasonable retiree health benefit, making it easier for the Employer to comply with GASB, and avoiding serious fiscal problems that impact on bargaining unit members, retired bargaining unit members, and taxpayers alike.

Although the Employer's final offer is not identical to the offers accepted by the other two bargaining units, it is similar in essential points. In addition, it provides OTS unit employees who select the new provision and new hires with a benefit not provided members of the custodial bargaining unit—an Employer contribution to the 403(b). Second, the Employer's final offer provides OTS unit employees who select the new provision and new hires with a benefit not provided members of the faculty bargaining unit—a 1.5 multiplier.

C. Conclusion

The Employer's final offer provides a reasonable approach to the escalating and uncontrollable costs of providing retiree health care benefits. While making it easier to estimate and provide for the costs of retiree benefits, the Employer's offer also provides new hires as well as current employees electing to use the plan with a 403(b) match program including a 1.5 multiplier and more flexibility in paying for retirement health care. Finally, the settlements with the other two bargaining units provide a compelling reason for selecting the Employer's final offer.

VII. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the Employer's final offer is more reasonable than the Association's final offer. The parties are directed to incorporate into their collective bargaining agreements the Employer's final offer together with the previously agreed items.

Executed at Delafield, Wisconsin, this twenty-sixth day of December, 2008.

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Jay E. Grenig