BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

LOCAL 1752-D AFSCME
WAUSAUKEE SCHOOL DISTRICT EMPLOYEES

And

SCHOOL DISTRICT OF WAUSAUKEE

Case 56 No. 66997
Int/Arb-10952
Dec. No. 32479-A

INTEREST ARBITRATION AWARD

Appearances:

Mr. Dennis O'Brien, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO.

Attorney Scott Mikesh, Wisconsin Association of School Boards.

The above-captioned parties, hereinafter referred to as the Union and the District respectively, have been parties to a series of collective bargaining agreements throughout the years. The parties were able to resolve several issues for the 2007-2009 successor agreement with the exception of wages, health insurance and subcontracting. The Union filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Union. The Union requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Wausaukee, Wisconsin on November 10, 2008. A stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on February 24, 2009. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

<u>FINAL OFFERS OF THE PARTIES:</u>

<u>UNION'S FINAL OFFER</u>

Wages

07-08	08-09
$0.29 per hour	$0.29 per hour

Health Insurance [Contribution]

07-08	08-09
Employer/Employee	Employer/Employee
96/4	94/6

Status quo on remainder of Agreement

<u>DISTRICT'S FINAL OFFER</u>

Amend Cover Page to Read**:** July 1, 2007 to June 30, 2009

Amend Article 3 – Subcontracting to Read:

The parties agree that if and when the District contemplates subcontracting, it shall notify the Union and provide the Union with an opportunity to negotiate over the decision and impact of subcontracting.

Should a dispute arise, any impasse shall be resolved by mediation/arbitration, pursuant to Section 111.70(4)(cm), Wisconsin Statutes.

<u>The District may subcontract its transportation services. The provisions of this Article, above, will not apply to the District's decision to subcontract transportation services, nor to the impact of that decision.</u>

Amend Article 15 –Health, Life and Disability Insurance to Read:

A. The School District shall make payment of health and dental insurance premiums for twelve (12) Months. The fringe benefits year shall be from July through June. <u>For individuals employed by the District on July 1, 2008, and for individuals that, on July 1, 2008 are on layoff status, have remaining recall rights, and are recalled, the health and dental insurance premiums will be paid on the following basis:</u>

1. <u>Ninety percent (90%)</u> of such premiums for employees working thirty-five (35) to forty (40) hours per week for at least nine (9) months;
2. <u>Sixty-three percent (63%)</u> of such premiums for employees working thirty (30) to thirty-five (35) hours per week for at least nine (9) months;
3. Fifty percent (50%) of such premiums for employees working fifteen (15) to thirty (30) hours per week for at least nine (9) months;
4. None of such premium for employees working less than fifteen (15) hours per week; <u>Until such time as the District subcontracts its bussing services,</u> the school District shall pay <u>fifty percent (50%)</u> of such premiums for bus drivers who have had one (1) consecutive prior year of employment with the School District.

(new Section B) and Re-Letter Current Section B and C to Read C and D as follows:

B. For individuals hired by the District after July 1, 2008, the District will pay health and dental insurance premiums on the following basis:

1. Eighty percent (80%) of such premiums for employees working thirty-five (35) to forty (40) hours per week for at least nine (9) months;
2. Fifty-six percent (56%) of such premiums for employees working thirty (30) to thirty-five (35) hours per week for at least nine (9) months;
3. Fifty percent (50%) of such premiums for employees working twenty (20) to thirty (30) hours per week for at least nine (9) months.
4. None of such premium for employees working less than twnty (20) hours per week;

Amend Article 25 – Duration – Negotiations – Termination to read as follows:

This Agreement shall become effective as of July 1, 2007 and shall continue in full force and effect for two (2) years until midnight, June 30, 2009, and from year to year thereafter, unless notice of termination is given in writing by either party hereto by registered or certified mail, postmarked not later than February 1, 2009, or any subsequent annual expiration date.

Amend Exhibits A & B – Wage Schedules as follows:

Modify any date references to correspond to the current term of this contract

For the 2007-2008 school year, increase wage schedules by zero (0%)
For the 2008-2009 school year, increase wage schedules by zero (0%)

2007-2008 Compensation: The District will compensate individuals employed during the 2007-2008 school year with a bonus of up to $1,000 per employee. Bonus payments will be prorated based on 2080 hours.

2008-2009 Compensation: The District will compensate individuals employed during the 2008-2009 school year with a bonus of up to $1,000 per employee. Bonus payments will be prorated based on 2080 hours.

Bus Driver Severance Benefits: In addition to benefits available under Article 13, Section D.2., Bus Drivers who will no longer be District employees pursuant to the above modifications to Article 3, will receive a severance payment of up to $1000. Severance payments will be prorated based on 900 hours.

SUMMARY OF DISPUTE:

The dispute between the parties for a successor agreement is limited to a disagreement on wages, subcontracting and employee contribution towards health insurance.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., as follows:

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.

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 under subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in 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 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.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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.

POSITION OF THE PARTIES:

<u>District's Initial Brief</u>

The District agrees to accept the Union's proposed external comparables as set forth in a previous arbitration award by Arbitrator Honeyman in Decision No. 29976-A. However, it argues that its unique financial situation is untenable and requires significant and meaningful union concessions, noting in particular that the District was the only district in Wisconsin to have a deficit in its general fund at the end of the 2007-2008 school year. Noting the drastic decline in student enrollment which led to an actual decrease in revenue limit funds available for District use during an eight year period beginning in 2000-2001, the District points out that its financial shortcomings forced it to spend down its fund balances and that enrollments will continue to decrease or stagnate resulting in decreasing revenue limit funds in the foreseeable future.

The District has regularly levied the maximum amount of property taxes possible under state-imposed revenue caps, yet has been forced to make deep cuts in personnel, programming and student services. The District's offer provides bargaining unit employees with the same frozen salary schedule offered and agreed to by the teachers, administrators, and other non-union personnel. Notwithstanding the frozen salary schedule, the compensation bonuses equate to 3.48% of the compensation received in 2006-2007 and the District's offer on health insurance provides the same contribution levels as agreed to by the teachers and other non-Union employees. Furthermore, the District's offer provides bus drivers with severance benefits, increased wages and increased benefit possibilities in exchange for working for a subcontractor rather than as a District employee.

According to the District, the Union's final offer ignores the significant concessions made by the teachers and other non-union personnel. It ignores the freeze in teacher salary schedules for two years, as well as the fact that administrative employees' wages were also frozen for the same period. Instead the Union's salary offer increases the salary schedules for non-bus drivers by nearly 5% over the two-year contract term, although there is a salary schedule/wage freeze for bus drivers during the same period.

The Union's offer also adds significant health insurance benefits that did not exist in prior years because employees will now contribute 4% and 6% in 2007-2008 and 2008-2009 while many employees were required to contribute up to 30% or 50% depending on their hours of work each week. This proposal increased 2008-2009 health insurance costs between 24% and 44% and could cost up to $80,000, a considerable deviation from contractual contribution rates existing in the previous agreement. The

Union's offer in its effort to maintain the *status quo* ignores the realities of the District's need to replace its aging bus fleet, the need to find a suitable replacement for the District's transportation director, the need to find a suitable in-house mechanic or continue paying for outsourced bus repairs and the need to either purchase a bus building or spend thousands to build a new structure. Even without the increase in the health insurance contribution, the Union's offer will cost the District between $378,648 and $531,042 over the next 4-year period. Adding in the additional health insurance costs, the Union's offer would cost the District between $688,348 and $840,742 over the next four years. These costs would necessitate additional cuts in staff, programming and student services that can be avoided with selection of the District's offer. The District's offer is the best it could make when acting in a fiscally responsible manner.

Viewing the external comparables, the District asserts that the District's wages for the support staff are regularly at or above the average wages found in comparable school districts. Moreover the Union's assertion regarding comparable district wage offers fails to give adequate weight to the Wausaukee School District's dire finance situation as compared to the finances in comparable districts. Furthermore, only one of the school districts in the athletic conference utilizes in-house busing and 73% of the comparable districts subcontract their transportation services. These comparable school districts are able to enjoy significant cost saving not available to the District. The District cannot achieve any semblance of the status quo without a significant outlay of money that it does not have because of the need to begin purchasing new buses and because of the resignation of the transportation director/chief mechanic and the condition of its bus building. None of these costs will occur under the District's offer.

In evaluating the factors to be considered, the District argues that the statutory revenue limits, the greatest weight factor requires selection of the District's offer. Because the District can expect less money due to declining enrollments and cannot reduce fixed expenditures proportionally, the District's offer is preferred. With declining student enrollments exacerbated by the number of students leaving the District through open enrollment, there is no means by which the District can catch up with high revenue districts and the disparity continues year-to-year. The District's problem with declining enrollment under the revenue limit formula goes a long way toward explaining why it cannot afford to pay the additional $688,348 and $840,742 in costs required to fund the Union's final offer over the next four years.

The District lags behind its comparables with regard to revenue limit per member, being $208 less than the average of the comparables. Because of the statutory revenue limits, the District has little hope of catching up with the districts in the comparable group. The District is also incredibly low with regard to its receipt of State aid as compared to its external comparables. It has gone from receiving 51% funding in 1999-2000 to 10% funding seven years later, resulting in a drop of 41% while districts in the athletic conference have decreased only 11% and contiguous districts decreased by 24%. The declining enrollment problem has forced it to deficit spend every year since 2000-2001. It has been forced to spend down its fund balance to a negative balance of $129,401 at the end of the 2007-2008 school year. The District's fund balance to revenue ratio as contrasted to comparable districts is in the negative and has caused it to incur significant additional interest on its annual short-term borrowing needs. If the District could raise its fund balance to revenue ratio to the 15% to 20% range it could avoid the annual interest payments on its short-term borrowing. As the situation stands now, the District's financial problems have seriously hampered its ability to short-term borrow during the summer prior to the 2008-2009 school year. Had two local banks been unwilling to provide the assistance, the District would not have been able to make payroll or pay its real estate taxes.

These financial problems forced the District to go to a referendum three separate times and to begin the process of dissolving the District. According to the District, the public defeated the referendum the first two times because it wanted to see sacrifices and concessions from the school district employees. Noting that employee compensation costs for teachers and support staff comprise 80% of the District's annual operating expenses, the District points to cuts and concessions made by the teachers' bargaining unit and administrators. The District consolidated the positions of full-time principal, dean of students, and District Administrator in one person, rather than employing two or three employees, saving approximately $105,000 per year. The District has cut back on expenditures, such as textbooks, and has not replaced buses since 2003. The District reduced the teaching staff by 6.2 FTE. Prior to 2008-2009, it eliminated a ½ time art position, all of its business education programming, its family and consumer education program and reduced its technology education program down to 62.5%. It also reduced its English FTE's and library media specialist position from 100% to 75%. It made numerous reductions in its extra-curricular offerings; and during 2007-2008, it eliminated 3.5 FTE support staff positions. It redesigned teacher schedules to maximize the efficiency of the remaining teachers.

The District notes that as part of the teacher settlement, the teachers voluntarily agreed to freeze their salary schedule for two years, receiving step and lane movement during the 2007-2008 school year capped at a $1000 increase over their 2006-2007 wage. Those not receiving a step or lane increase received a $1,000 bonus. For 2008-2009, all teachers received a $1000 bonus. In addition to frozen salary schedules and step and lane advancement, the current teachers agreed to pay 10% of their health insurance premiums with new hires to pay 20% of the premium, with pro-rata amounts for part-time teachers.

Administrative staff wages were frozen and they did not receive a $1000 bonus. Currently administrative staff contributes 10% of the health insurance premium with new hires paying 20%. The Union cannot argue that the District has singled out the support staff to shoulder a larger portion of the sacrifices than other employees.

Acknowledging that a 10-year, $675,000 per year referendum passed on the third attempt, the District maintains that it was necessary to stabilize the District over the long term. Despite the passage, the District argues that it remains in dire financial straits. Regardless of which final offer the arbitrator selects, the District projects that it will be forced to deficit spend at some point in the future. The Union's offer would accelerate the rate at which the District spending outstrips its meager resources. Selection of the

Union's offer will result in a greater budget imbalance than already exists and necessitate significant additional budget cuts the District could avoid with selection of its offer. The District is currently having financial difficulties and it is taxing at the maximum possible rate. It regularly levies the maximum amount of property taxes allowable under Wisconsin's revenue limit law. The severe decline in student enrollments have led to devastating deceases in revenue limit funds. Selection of the Union's offer will force the District to hire a transportation director and to purchase or build a structure, to repair the bus fleet, or spend thousands to replace its fleet. The projected four-year cost difference of between $688,348 and $840,742 is a significant sum of money. Because of these added expenses, the costing difference between the two offers far exceeds $54,622. By subcontracting its bus services in 2009-2010, the District stands to save between $123,091 and $175,927.

The District also points out that the Union's final offer with regard to health insurance contributions includes significant cost increases and could add immediate costs of $77,425 annually. Even under the District's offer, the District will be forced into deficit spending during the 2012-2013 school year. Regardless of which party prevails, the District will need to continue making substantial cuts in student services, activities and programs to balance the budget. Selecting the Union's offer will only make the cuts deeper. Given the revenue limit situation, the District's offer reaches a more appropriate balance between labor costs and further staff/program reductions.

In addressing the Union's argument that the District offered the teacher's bargaining unit additional years of retirement health insurance to accomplish their salary freeze, the District maintains that the savings overshadowed the additional costs. Had the teachers not agreed, the District would have been obligated to lay-off the least senior, least expensive teachers. By encouraging the retirement of older teachers earning larger salaries, the District retained younger less expensive teaching staff, saving in unemployment benefits which would have resulted from lay-offs.

Given the District's revenue limit problems, the statutory greatest weight factor favors the District and should be dispositive in this case. The Union's offer exacerbates the District's financial problems and ignores the sacrifices of other District employees.

The District stresses that its unique financial crisis necessitates a finding that the subcontracting component of the District's final offer is more reasonable than the Union offer's attempt to maintain the status quo. The District's decision to subcontract is also the result of the culmination of numerous factors such as its bleak financial picture, the need to replace its current bus fleet, the need to purchase or build a structure to house/repair the fleet, and the need to hire a transportation director and mechanic to replace the previous individual or provided those services. The District insists that it is highly unlikely that the Union would ever contemplate or agree that its financial problems are grave enough to justify subcontracting. The District is in dire need of replacing its bus fleet. Transportation problems were exacerbated when its transportation/director mechanic resigned with the end of the 2007-2008 school year. Leasing buses was not an option due to the geographic size of the District.

The District argues that it will be better off under its offer. There will be a significant cost saving and better transportation services with the subcontractor. These include a cap on future rate increases for transportation costs and allowing the District to forgo the significant cost outlays of buying buses and purchasing or constructing a bus building. According to the District, the bus drivers will be better off working for the subcontractor. Current drivers will have the option to continue working as District drivers under terms of the agreement with the subcontractor. They will earn considerably more in wages than they would under the wage freeze in the Union’s offer. As employees of the subcontractor they will enjoy additional benefits not available to them presently. Under the Union’s offer, the bus drivers receive a wage freeze for 2007-2008 and 2008-2009. Under the District’s offer, each driver would receive approximately $346 in bonuses each year. Under the subcontractor, drivers would receive an additional average $1.76 daily rate if employed by the subcontractor. They would have earned 3% more if employed by the subcontractor. Other benefits available to them under the subcontractor but not available under the collective bargaining agreement are attendance bonuses, vision insurance, a 401(k) plan and affordable health insurance.

In the District’s opinion, the increased health insurance costs contained in the Union’s offer are not reasonable and should be rejected. The Union’s offer adds a significant health insurance benefit and will increase costs. Currently four employees opt for no insurance benefits. Assuming that they opted for a family plan, the District would have to pay $66,072 in new health insurance benefits. With regard to two employees prorated at 70%, under the Union’s offer, costs would increase by $4,884.48 for these two individuals. With respect to the one employee prorated at 50%, costs would increase to $6,468 for this individual. Contrasting the teachers’ agreement to contribute 10% and 20% to premiums with the Union’s offer, the Union offer will increase costs by approximately $77,425 over their current levels. The Union has offered no justification for these increased costs.

The Union’s offer does not coordinate health insurance benefit contributions with either internal or external comparables. The District’s offer does a better job at reducing health insurance costs, at coordinating benefit levels amongst the internal comparable groups and amongst the external comparable group. The District provides significantly larger contributions for employees working less than 1080 hours. At the 540 annual hour level, only two school districts offer any health insurance benefits and each is prorated more heavily than Wausaukee. At each hour level, the District provides higher contributions than the average school district external comparables. By focusing on maximum employer percentage contributions, the Union’s exhibit fails to recognize the significant disparity that exists in the comparable group regarding the number of hours that employees must work in order to be eligible for health insurance benefits. Although Wausaukee allows for employer insurance contributions of 50% for an employee who works only 15 hours per week during the school year (540 hours per year), average comparable districts to do not permit participation until an employee works 887 hours per year. Five bargaining units in the comparable group do not allow employer contributions until an employee works 1080 hours per year.

The greater weight factor, local economic conditions, also favors the District offer. When Oconto, Marinette, and Forest counties' economic conditions are considered, they support the notion that there will be a continued decline in the enrollment of school-age children. To the extent that the Union might argue that the District should utilize the funds received through the passage of its third referendum attempt to fund the Union offer, the District makes three arguments. First, this is an implicit admission that the greatest weight factor heavily favors the District. Second, a primary reason why the District was able to succeed in the passage of its third referendum attempt in 6 months was the cost savings and concessions achieved through the settlement with the teachers. Third, another reason that the District was able to succeed in the passage was the School Board's vote to dissolve the District effective July 1, 2010. Community sentiment demanded employee concessions on wages and benefits. It would be a violation of public trust to provide the Union with significant salary increases and health insurance contribution benefits after all other employees made deep cuts.

The District offer maintains its internal settlement pattern and this should be granted paramount consideration. The Union's offer would disrupt the District's internal settlement pattern, increase the District's administrative burden and create "lone holdout"/fairness issues among District employees. The internal pattern of settlements should not be upset by the arbitrator, which the Union is asking the arbitrator to do. The Union's offer would also significantly expand the current health and dental benefits offered to the unit's part-time employees. The Union offer would create a situation where support staff would have better insurance benefits than their teacher and administrator counterparts. Even assuming that the Union's health insurance proposal finds support within the external comparables, internal comparables and settlement patterns should be granted greater consideration than external comparables.

The District's internal settlement pattern reflects a need for the proposed health insurance changes and supports the District's contention that the need is so overwhelming that a formal quid pro quo is unnecessary. Acknowledging that arbitrators have not universally agreed on one standard for changing the *status quo* in an interest arbitration proceeding, the District cites arbitral precedent suggesting that a *quid pro quo* is unnecessary where health insurance is concerned. The District's health insurance premium contributions are higher than the average of the comparable districts' contributions across the board. The District did not give the teachers or administrators a quid pro quo for the wage freezes or health insurance changes that they accepted. Therefore the Arbitrator should find that a quid pro quo is not necessary and select the District's offer.

The District anticipates that the Union will argue that its final offer did not intend to give a two year wage freeze to the bus drivers or to remove the 50% and 70% pro-ration levels in health insurance contributions. However, the District argues that the Union is bound by the clear and unambiguous language in its offer, and that its offer is unacceptable. It is not the arbitrator's role to insert parties' intentions into poorly drafted final offers. Under the Union's poorly drafted offer, the Union will receive benefits that are out of line with the District's other groups of employees and out of line with external comparables as well. The Union's final offer will cost the District between $688,348 and $849,742 more than the Board's offer over the next four years and would be a proverbial slap in the face to other employees who sacrificed to help the District. Selection of the Union's final offer would drive a wedge between employee groups and between the community and the Union. The District's final offer allows the District to focus on it main purpose, educating students, and should be selected.

<u>Union's Initial Brief</u>

The Union acknowledges that the District has had serious financial problems operating on a deficit spending plan which lowered its Fund 10 reserves into a negative balance and that these difficulties have entered into the parties' negotiations. While the District recognized the need to increase revenue, it was also convinced that it needed concessions from District employees. Although it sought to increase revenue through a referendum, it was apparent that the Board itself did not support the referendum and the defeat of the first referendum reinforced the District's determination to seek concessions from its employees.

The District did impose significant benefit reductions on its non-represented employees and reduced support staff in the instant bargaining unit. It sought concessions from both teachers and the support staff. The inability to pass a funding referendum led to a serious discussion about the dissolution of the District. While it is unclear whether Board members offered unqualified support for the second referendum, it also failed. The dissolution process continued in earnest, and faced with the imminent dissolution of the District, voters ultimately chose to pass a funding referendum. This third referendum has restored the District's financial condition to, at least, a stable situation, and ended discussion of dissolution.

The Union proposed the same comparables as utilized by Arbitrator Honeyman in the 2001-2002 interest arbitration. There is no real reason to alter the external comparables after only five years.

The Union insists that there is no evidence that any claim by the District supports its offer under the "greatest weight" factor in this dispute. Because the voters agreed to a referendum which offered $675,000 per year for 10 years from 2008-2009 through 2017-2018, which is approximately 9% of the District annual budget, the ability to rely upon this additional funding places the District in a unique or at least quite unusual situation. Citing the District's own exhibits, the Union notes that the District Fund 10 balance prior to the passage of the referendum was -$55,280 in 2007-2008, which would grow to $182,239 in 2008-2009. Furthermore, as the Fund 10 balance had declined at slightly more than $210,000 per year on average since 2004-2005, the projected $182,000 deficit for 2008-2009 has been eliminated and the District has $490,000 additional funds available for its business needs. The Union notes that District Administrator Dooley admitted that the District is on secure financial footing as a result of the passage of the referendum. This representation was made one month prior to the arbitration hearing in this dispute.

The District has fixated on its admittedly difficult financial status prior to the successful referendum. It has failed to recognize the substantial effects of the additional revenue. Rather the District is forcing a very aggressive offer by refusing to acknowledge that things have changed since the passage of the referendum.

Citing arbitral precedent, the Union notes that employers relying on the "greatest weight" factor must produce meaningful evidence as to the relevancy of the economic and non-economic aspect of the final offers. The "greatest weight" factor does not give employers *carte blanche* to determine what is and what is not in collective bargaining agreements with their employees. Nor does it mean that an arbitrator has to accept the municipal employer's proposal, no matter how unreasonable or arbitrary, because the employer has cloaked said proposal under the coverall of "limitations on expenditures that may be made or revenues that may be collected by the municipal employer." This factor does not mean that an employer automatically sways an arbitrator to its position when it says that it wants to lower the cost of a program or previously agreed upon benefit because, even though it can pay it, it wants to spend that money elsewhere, if not now, then later, and, therefore, the employees should forgo the benefit that the employer no longer want to pay.

According to the Union, the "greater weight" factor does not compel selection of the District offer. The Union does not assert that this criterion offers significant support for its offer, but marginally the Union's concessionary final offer is more reasonable than the draconian reduction in compensation and tremendous alterations to the *status quo* embodied in the District's final offer. There are no significant differences between the counties of Forest, Oconto or Marinette, where the District and its external comparables are located. Additionally, the data from the Wisconsin Department of Public Instruction and the Wisconsin Department of Revenue demonstrate that there is nothing that allows the Wausaukee District to claim that it is uniquely in a more difficult position than those to whom it is compared.

Noting that many arbitrators use the external settlement pattern to assist in establishing a comparison of the local economic conditions, and the reasonableness of the final offers under the greater weight factor, the Union submits that its offer requests the lowest wage increase of any of the comparable districts. The District's final offer, by comparison, asks for a two-year wage freeze, something not supported by any of the external comparables. While Factors 7r a or b are not applicable, the Union addresses the remaining factors under 7r.

With respect to factor 7rc, the interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement, in the Union's view, employers almost always take the position that lower costs are in the interest of the taxpayer. There is, however, no such thing as a free lunch; and if something sounds too good to be true, it probably isn't true. The District's offer contains three elements which are unusually aggressive and therefore extraordinary in Wisconsin interest arbitration. It proposes a wage freeze. It also proposes a very significant alteration for employee contributions for health insurance premiums, including a provision requiring new employees hired after July 1 2008 to pay 20% of the premium, and adjusting pro-rations for less than full time to significantly lower levels of employer contributions. Finally, the District seeks to eliminate by the selection of its offer, almost 45% of the remaining Union positions.

Any one of these proposals would require that the District meet a fairly heavy burden of proof. All three demands are unprecedented. The interests of the public are best served by the selection of the Union's offer because there could hardly be a job where a reliable, prudent, experienced individual would serve the society's interest more than those to whom we entrust out children. The continuity and long-term relationship between the District and the Union, through the collective bargaining agreement foster just such employment. The elimination of these positions will not serve the public.

Although the District offered voluminous testimony and evidence into the record, their assessment of the effect of eliminating the bus drivers' position and subsequent subcontracting of the bus operations are unrealistically optimistic. Citing an Ohio study of school bus operations in Ohio, the Union stresses that this study showed that based on expense and reimbursement reports over five years, schools that rely exclusively on contractors bear a higher percentage of their transportation operating costs than Districts that provide transportation service in-house or rely only partially on contracting.

Citing an award by Arbitrator Greco, the Union argues that despite real financial difficulties, after the District sold its bus fleet, it would be in a precarious position in future negotiations with the subcontractor. The passage of a $675,000 additional revenue referendum for each of the 10 years allows the District to easily meet the cost of the Union's modest concessionary offer. The interest of the public is better served by the retention of the *status quo* and the Union bus drivers.

Looking at internal comparability, the Union makes several arguments. Although the support staff does not consider itself comparable to the professional teaching staff, wages and working conditions differing substantially, it disputes the District's attempted reliance upon the teachers' settlement. There are significant differences between the teacher's settlement and the District offer to this bargaining unit in this dispute.

The teachers were offered an increase for steps and lanes in the first year, 2007-2008 or $1000. They were offered $1000 in 2008-2009, with pro-ration for part-time teachers. However, most teachers are full-time employees. The support staff was offered $1000 in each year but the pro-ration was based on a 2080 hour per year standard which reduced compensation for the majority of the support staff employees.

While there were layoffs and reduction in FTE's, not a single teacher actually lost employment. The laid-off teachers were rehired because a significant number of teachers retired based upon the District agreement to pay for three additional years of retiree health insurance for teachers who retired in 2007-2008, and two additional years for those who retired in 2008-2009. There was no such inducement offered to the support staff. Rather, there is a proposal to decimate the Union through subcontracting.

The District admits that it did not believe that it could secure agreement from the teachers without the additional health insurance for retirees. Nevertheless, with the exception of those teachers who receive the additional retiree health insurance, the teacher's union made a poor deal for itself. There are reasons why they may have chosen to do so. The settlement or tentative agreement occurred on March 19, 2008, long before the August 19 referendum. It is possible that the teachers believed that there was hostility throughout the community toward their deal. They may have acted in the belief that they were preserving their jobs. Whatever the reasons, the Union believes that the teachers made a poor deal. The Union's offer provides a significant concession to the District, for the first time support staff will contribute to health insurance premiums, 4% for 2007-2008 and 6% for 2008-2009. This contrasts with the District's proposal of an immediate 10% plus reduction in the employer's contribution for employees working 30-35 hours per nine months from 70% to 63%. The teachers are generally not affected by these pro-ration factors because they are almost universally considered full-time employees.

The Union also maintains that the District proposes to establish a two-tier premium contribution system with new employees paying considerably more. It has the burden to prove the need for a change in the *status quo*. While some change here may clearly be required, the District has failed to present a compelling case for the substantial changes that it has proposed. Likewise, it has failed to provide a rationale as to how its proposal reasonably addresses the problem and has not offered an adequate *quid pro quo*.

Acknowledging that the teachers agreed to create the two-tier system, the Union wishes to avoid this, believing that it will eventually lead to internal dissension within the bargaining unit. Rather, the Union's proposal offers a concession to the District to be uniformly applicable to all unit members. The Union's health insurance proposal is preferable under comparability criteria. No external comparables require a 20% premium contribution for either the teachers or the full-time support staff. Furthermore, the District already has the lowest premium costs of any comparable school district. The District's offer attempts to shift further costs to employees.

The County's proposal for a wage freeze might have some merit had it been accompanied by a *quid pro quo*. A low-wage offer combined with a concessionary proposal for health insurance is too draconian. Several arbitrators facing the issue of low wages and increased employee contribution toward health insurance have been unwilling, despite the increasing costs of health insurance, to choose such proposal when both issues were involved. Under comparability criteria, the Union offer is again preferable because it seeks to retain the status quo on the employment status of the Union employees while the District seeks to eliminate 10 Union bus drivers from a group of 23 employees. Changes of this magnitude should not be obtained through arbitration.

The Union points out that the District seeks an ability to subcontract, which is nonexistent in any comparable districts. The Union cites arbitral authority to the effect that the issue is not whether comparable districts subcontract their bus operations but whether comparable school districts have the same kind of subcontracting language sought in the instant case. With respect to Factor 7rg, the Union asserts that both final offers are concessionary in nature. The Union stresses that its request for $.29 in each of the two years of the dispute is closer to the CPI for Midwest Size D and is preferable under the cost-of-living criterion.

With respect to 7r.,(h), the Union offer is also preferable because it requests a modest wage increase below the external comparable settlement pattern, offers a premium contribution for the first time and retains the status quo on the remainder of the agreement. In contrast, the District offer is well below the external settlement pattern because it offers a wage freeze and bonus and requests 20% health insurance premium contribution for new employees. The benefits available to laid off bus drivers would be far inferior should they accept employment with the subcontractor.

With respect to 7ri, there was a very significant change during the pendency of the arbitration proceedings, a successful referendum held on August 19, 2008. The District wishes to spend the substantial increase in available funds to pay off an unfunded pension liability. The Union insists that the District cannot choose to pay off long-term debts, and simultaneously offer a two-year wage freeze while concurrently attempting to jettison 10 of its Union Employees. While it is admirable that the District is seeking to reduce costs, the District's position is analogous to parents who decide to accelerate their mortgage by declining to purchase food and clothing for their children. The results may be desirable, but the means are reprehensible. The District has the funds to meet the modest final offer of the Union.

With respect to 7r, the Union contends that the District's offer is not within the norm, even for difficult times. Although the Union has made concessions, they have been rejected. The subcontracting proposal change in the status quo is radical and should be rejected. If instead of proposing that the work of 45% of the unit, but, instead, all of the work performed by all of the bargaining unit members be subcontracted, the District's offer would more surely be rejected. Why then should it be acceptable to eliminate 45% of the bargaining unit positions? If the District prevails, there will be 13 or less bargaining unit members. While there should be a balancing of the employer's interest in efficient operations and the Union's interest in protecting jobs and maintaining stability in the bargaining unit, where it is likely to replace current employees or there is substantial harm to the unit, it is less likely to be upheld. The District's offer here demonstrates no consideration of the Union's or its employees' interests.

The District witnesses were vague on their understanding of the true cost of savings for the District by eliminating the busing operation and subcontracting the work. The Union relies on the following facts adduced at hearing. The District presently owns and uses for the in-house busing operation, a fleet of busses that all passed a state inspection in the summer of 2008. The fleet is aging and several buses are nearing the end of their useful life. The District has declined to purchase any buses since 2003. The useful life of a bus is approximately 12 to 15 years and approximately 225000 miles. District buses have averaged slightly less than 20,000 miles per year. A large selection of used buses with mileage ranging from 10,000 to 100,000 miles and costs from $70,000 to $110,000 are available. The in-house busing operations were directed by an employee universally accepted as a highly dedicated employee, who had his wages reduced within the last three years. When he sought to restore the $10,000 wage cut, and the District declined to offer the increase, he resigned. The District also rented the bus garage facility from this individual for $7,200 per year, which had been used for over 15 years and proved adequate previously. The District budgeted $116,000 for mechanical subcontracted repair work previously performed by the director. The District currently stores the buses on the school campus and has considered spending $10,000 for grading and electrical work in the bus storage area.

Based upon these facts, the Union maintains that the District seeks to eliminate the Union, piece by piece. It has not demonstrated a need for the significant change nor has it provided a *quid pro quo*. The burden is on the District and it has failed to do so. There is no pressing need, except the self-imposed deficiency of the District's decision-making. The referendum passed and the District has the funds to meet the Union's offer. The proposal to address the perceived problems is radical. Why a wage freeze? What is the cost to an employee to lose his job and benefits. No real *quid pro quo* has been offered. Citing a strikingly similar case[1], the Union argues that like that case, no *quid pro quo* has been offered for such a sweeping departure from the *status quo.* An arbitral award should be conservative to mimic a voluntary settlement, causing the least disturbance to the bargaining relationship of the parties. For these reasons, the Union's offer should be selected.

District Reply Brief

The District disputes the Union assertion that the passage of the third referendum has restored the District to a stable financial situation. The District claims that it will incur between $378,648 and $531,042 in additional transportation costs over the next four years along with an immediate annual health insurance fringe benefit cost increase of $77,425. According to the District, over the next four year period, even assuming zero percent increases in health insurance premiums, the Union offer would cripple the District with additional costs ranging from $688,348 to $840,742 and will require the District to begin deficit spending before the 10-year referendum is even four years old. The District's offer will eliminate the need for the District to spend between $100,00 and $180,000 each year to purchase new buses and $35,000 to replace its transportation director.

The District's financial stability rests directly with this arbitration and not with the District's successful referendum. If the arbitrator selects the District's offer, it will avoid these costs and have the ability to work on building its fund balance while eliminating wasteful spending on unfunded liability interest.

[1] Mineral Point Education Support Personnel, Dec. No. 28879-A, (Baron, 7/15/97)

The District asserts that the Union has not refuted its evidence as to the District's historic and future financial instability. The District predicts that if the Union's offer is selected, it will need to pass additional referenda that would most likely fail and force the District to file for dissolution a second time. The District insists that its financial forecasting models are unchallenged by the Union and that it has satisfied the arbitral test of speaking to affordability, economic prudence and budgetary choices. Economic prudence demands extreme caution and care in spending present and future resources. Textbooks will remain outdated and teachers will continue to be laid off or reduced with program cuts.

This interest arbitration is not merely a situation where the District "wants to spend the money elsewhere." The District finds itself in potentially the worst financial shape of any school district in Wisconsin. Only massive concessions on the part of all employees coupled with the generosity of the community will allow it to survive beyond July 1, 2009.

In addressing the Union's subcontracting argument, the District fails to understand how moving its current group of bus drivers from positions as District employees to positions as District bus drivers employed by the subcontractor will make any difference in the reliability of the drivers. The District points out that eight of the eleven school districts subcontract their transportation services. The Union has not provided any evidence of problems with the subcontractors or that Districts with subcontractors saw an increase in transportation costs per mile. It stresses the substantial savings the District would achieve through its contract with the subcontractor, the average cost of in-house busing increasing by 10.76% from 2000 to 2007 in the external comparable group whereas the average cost of subcontracting for comparable districts increased only 3.44% over the same period. Because the District has shown that it has a clear and convincing financial need to subcontract its transportation services, that subcontracting will address its financial need by eliminating the need to purchase new buses, hire new personnel and build new facilities; that the contract with the subcontractor will insulate the District from significant annual cost increases; and it has not only offered its bus drivers an adequate *quid pro quo*, but also guaranteed employment with the subcontractors at better wage rates with comparable benefits, the District offer is preferred.

In response to *School District of Sturgeon Bay*, Dec. No. 30884-B (2004) where arbitrator Greco opined that the district in that case would be in a precarious bargaining position with its subcontractor after it sold its fleet, the District maintains that the specific contract negotiated with the subcontractor addresses those concerns and there is more competition based upon Wausaukee's geographic location.

While the District concedes that its electors sacrificed to save it from dissolution by passing a multi-year referendum, the District disputes that it can "easily" meet the cost of the Union's offer based upon decreased future revenue due to declining enrollment. Should the arbitrator select the Union's offer, the timeline to deficit spending will not only accelerate, but also require the District to incur much greater costs than it would under its final offer.

The District insists that the facts in this case are akin to those presented in *Florence School District*, Dec. No. 31023-A (Greco, 2005) rather than to those presented in *School District of Sturgeon Bay*, Dec. No. 30884-B (Greco, 2004.) The Florence School District was in dire financial straits, although it still had a positive fund balance and had not started dissolution proceedings. It precarious financial picture and continued decline in enrollment forced it to offer a wage freeze as well as a health insurance proposal that would require significant health insurance concessions from its employees. The Union proposed 2.5% and 2.75% along with a health insurance proposal requiring concessions from some but elimination of a provision requiring drivers to pay for 25% of the cost of their health and dental benefits. The Florence District did not grant its teachers any across-the-board increases and provided the teachers and non-union employees with the same insurance benefits as those proposed. While concluding that the internal comparables did not support that District's offer, the arbitrator selected the District's offer because the union's health insurance proposal for bus drivers was very costly and not supported by either internal or external comparables. The District likens the case here with that in Florence but claims that the District has proposed to its support staff, the same wage freeze/bonus compensation structure as that accepted by the teachers. The District's financial crisis is worse than that experienced by Florence; its offer contains the internal wage parity absent in the Florence case, and the District's health insurance proposal is supported by the internal comparables because teachers and all unrepresented are paying what the District proposes here. The Union's proposal should be rejected as a "ticking bomb."

With regard to the Union assertion that the teachers made a poor deal for themselves, the District asserts that the teachers' bargaining unit simply chose to make a reasonable, responsible deal that took into account the past, present and future financial situation of the District. Because the Union has already characterized this as a "bad deal," it has created bad blood between it and the teachers' bargaining representative. Although the Union may wish to ignore any link between employee concessions in compensation and referendum support, it is clear that concessions made from teaching and the other employees were the catalyst for this level of turnaround in voter approval of the referendum. After the community and the teachers took the brunt of the financial burden on their shoulder, the Union proclaimed that the teachers simply made a "bad deal."

The District points out that nowhere in the Union's offer is there any delineation of which "employees" receive the benefit of 94% District contribution on health insurance. The District insists that the Union's final offer is not a concession at all but a significant increase in health insurance benefits for the Districts' "employees," demanded without a compelling case for the change proposed. The District claims that the Union failed to present any information regarding external teacher comparables contributing 20% towards health insurance and that this representation should be disregarded.

The District submits that the reality of its situation is that its proposals address a dire financial need that has never existed in prior interest arbitration decisions. The arbitrator should not allow the Union to be the "lone holdout" in the District effort to establish uniformity in benefits. With respect to the Union argument that the District failed to offer a *quid pro quo*, the District claims that its offer provides each employee with $.48 per hour 2007-2008 and $.48 per hour in 2008-2009, $.19 more than offered by the Union. For the full-time employee, this translates to $790.40. It exceeds the Union's CPI measure in 2007-2008 and comes .73% closer to reaching the CPI measure in 2008-2009. The compensation bonuses provide the same dollar compensation amount that the District settled upon with the teachers' bargaining unit and a quid pro quo for accepting a salary schedule freeze.

The parties' collective bargaining agreement provides that interest arbitration will determine whether subcontracting is appropriate. Contrary to the Union's assertion, the ability to subcontract does exist in nearly every comparable school district. Eight of the eleven comparable school districts enjoy considerable cost saving of subcontracted transportation services. While comparable agreements do not specifically address the District's ability to subcontract, the Union's argument is disingenuous. The fact that 87.5% of comparable school districts subcontract their transportation services is the critical factor to be considered. Instead the Union would ask the arbitrator to consider the language inserted into collective bargaining agreements when they were first negotiated. The Union seeks to penalize the District because comparable school districts failed to draft transportation subcontracting guarantees into their contracts, although they already enjoyed the right to subcontract by virtue of their situation when their union was formed.

Contrary to the contentions of the Union that the District's plan to pay off its unfunded pension liabilities demonstrates an incredible callousness towards the employees' interests, the District believes that cutting out wasteful spending is in the best interest of the District's employees, the community, and the students. In fact, it is obligated to focus its efforts on paying off its unfunded prior service liability as has nearly every district within the comparable group. Paying off the unfunded liability weighs heavily on the District's mind as being not only financially prudent but also necessary to honor the electors' expectations and will permit the District to avoid additional cuts to staff and programs.

District witnesses were clear as to the possible savings attained in the future under a number of given scenarios. The District's dismal financial situation for nearly the last decade has not permitted the District to purchase buses. The District was not guilty of fiscal mismanagement and the arbitrator should give no weight to the Union's argument that the transportation director's departure from employment was the result of poor decision-making. He resigned from his position. There is nothing in the record to suggest that the transportation director was trying to restore his compensation. Had the Union produced him for testimony and cross-examination, there would have been a better understanding of why he left the District's employ. The transportation director, who also owned the bus garage put it up for sale. It is being sold for $45,000, far greater than the $7,200 rent the District had been paying. If the District is unsuccessful in its arbitration, it will need to hire a new transportation director/mechanic and the mechanic will need a garage in which to work on the buses. The Union has offered no evidence to establish that the current transportation system is remarkably efficient or cost-effective

The District is not motivated by union animus but rather by the financial circumstances in which it finds itself. It points out that the Union voluntarily agreed to allow interest arbitration to decide such a dispute. Now that it finds itself in the situation where the District seeks to utilize the provisions of this article, it claims that the exercise is per se evidence of anti-union animus.

The District believes that it has demonstrated the pressing need for change. The school funding formula, not poor decision-making on the District's part, have destroyed the District's ability to purchase new buses and has led to the buses falling into disrepair. The District's financial crisis coupled with notions of fairness and equity to all employees forced the District to reject the former transportation director's demands for a 30% salary increase with a reduced workload. The District's crisis requires the subcontracting of bus services which will save thousands of dollars. If the Union's offer is selected the District may literally not be able to meet the cost. It will require the District to make additional staffing cuts to support staff and teacher positions. Selection of such an offer will only serve to change which employees lose their jobs with the District. Unlike the bus drivers, these individuals will not have the benefit of guaranteed employment with higher wages.

In addressing the *Mineral Point* decision,[2] the District avers that the facts in that case were considerably different. Mineral Point had a positive fund balance with a ranking of 7th out of 10 comparables, the savings were considerably lower and did not offer any *quid pro quo.* Mineral Point was in much better shape than the District here and failed to offer anything which Wausaukee has provided. Arbitrator Baron's analysis may have been dramatically different had the circumstances and offer more closely resembled the circumstances facing Wausaukee and the District's offer.

The Union believes that because the referendum passed, its members should be treated differently. Through its final offer the Union asks that its members avoid sharing in the responsibility for the District's continuing financial struggles and grant its members greater health insurance benefits than it was able to bargain for through negotiations. With respect to its offer, the District attempts to make the best of a bad situation while being fair to employees, even those who will be leaving its employ if the District's offer is selected. Under all of the statutory criteria, its offer is the more reasonable.

Union's Reply Brief

The Union stresses that there is no support from the external comparables for any of the District's three proposals, any one of which places a significant burden on the District to demonstrate reasonableness under the statutory criteria. Much of the documentary evidence entered into the record by the District is irrelevant to the

[2] Dec. No. 28879-A (Baron, 1997).

disposition of the issues. The greatest weight and the greater weight criteria do not support the District's offer. While the District experienced difficulties in the past, much of what the District asserts is about speculative costs for the future and the District's demographics that are not part of the instant dispute. Even by the District's own costing, it does not include claims of hundreds of thousands of dollars for future operations, only the $54,622 which is the actual cost of the dispute.

The District cannot "right the ship" on the back of its lowest paid workers. When choosing the most reasonable final offers, arbitrators give far more weight to the actual cost differences than to speculative claims of future possibilities that may or may not occur. Therefore, to ask the arbitrator to somehow attribute to the Union's final offer the cost of a building for the bus operation, the cost of replacement buses or the retention or hiring of a transportation director/bus mechanic is totally inappropriate. The Union's offer is a modest wage increase of $.29 per hour in each year of the agreement for all employees, and a concession to pay part of the health insurance premium for District employees for the first time.

The District's financial condition will easily allow it to meet the Union's final offer. While it appears to make a vague inability to pay argument, these claims should be rejected because they are not part of the Union's offer to the District. The District had a personal agenda of demanding concessions and the financial difficulties of the District offered an excellent opportunity to obtain such concessions. Within this context, whatever discretion the District exercised to allow its transportation operation to deteriorate to its present state, should hold no weight in the determination of the dispute. For the arbitrator to allow poor planning on the part of the District to assist it in choosing the District's offer could have very serious consequences in other interest arbitrations throughout the state. If simply refusing to address the legitimate business needs of an enterprise such as busing would successfully allow the elimination of Union positions involved in its function, then an employer could simply refuse to maintain or replace equipment and claim it can replace an operation because it is too costly to continue. This method is clearly not in the District's interest.

The mood of the voters is not a criterion which the arbitrator must consider. Any claim that voter sentiment should support selection of the District's offer has no basis in the criteria and should be rejected. The District has grossly misstated the Union's final offer concerning health insurance contributions from District employees. The Union never represented to the District that it intended to increase the District's contribution to health insurance premiums for less than full-time employees, nor did the Union request such an increase in the mediation session. The Union never requested that the pro-rated contribution for part-time employees be altered either before or during the arbitration hearing. There is no evidence to suggest that the Union's offer is to have the effect of eliminating pro-ration levels for part-time employees from the contract. Throughout the proceedings the Union was unaware of the District's interpretation of its offer. Neither in bargaining nor in preparation for the case did the District interpret the Union's proposal to be one which eliminated pro-ration. In looking at various District exhibits, it is crystal clear that the District believed the Union's final offer maintained the *status quo* for part-time insurance benefits. If the District truly believed the Union's health insurance proposal would cost $80,000, this would have been shown in the costing data. There is little difference in the health insurance costs between Union and District proposals for 2007-2008 and 2008-2009. It has never been the case that the Union's offer seeks to eliminate pro-ration for part-time employees. The mischaracterization by the District is evident in the District's own exhibits.

The teachers' bargaining unit and non-represented employees are not internal comparables and do not create an "internal pattern." The teachers are only one unit who bargained under the umbrella of different constraints, namely the qualified economic offer. Even if the teacher unit is an appropriate comparable, the settlement offered by the District and accepted voluntarily by the teachers varies substantially from that proposed to the support staff. The District is seeking dramatic concessions from one bargaining unit under the guise of financial problems while agreeing to a new, expensive benefit improvement of additional years of retiree health insurance for the other bargaining unit. Therefore no internal settlement pattern can be found to be in place. As there are only two represented groups, only those two represented units should be considered. Accepting the teachers' settlement as determinative will create a situation wherein the support staff unit will lose all bargaining power. The Union cites arbitral precedent that comparisons to teachers' unit should not be compelling interest arbitrations involving support staff employees. Particularly with the implementation of the QEO statutes, arbitrators have rejected comparisons between the settlements of teacher and support staff units. Because there is only one voluntary settlement of one unit of professional employees subject to a very different labor market and bargaining law, the arbitrator should not find the teachers' settlement determinative in the instant dispute.

The external comparables make the Union's offer more reasonable. With respect to the District, budgeted salaries in 2007-2008 were down by 12.7 % as compared to 2000-2001. Benefit costs were down 4.7% from 2007-2008 to 2006-2007 and benefit costs in 2007-2008 were the lowest in the last five years. The actual cost of insurance for 2007-2008 is the lowest since 2000-2001. Health insurance premiums for both the single and family plans have decreased for the third straight year. There has been a significant decrease in staffing costs, benefit costs, and health insurance rates over recent years. Given this, the District is hard-pressed to justify that major concessions are needed in order "to save resources instead of adding new benefits and costs." Savings are being attained and wage and benefit costs are not sky-rocketing out of control. Based on the record evidence there is no compelling need for the drastic wage and health insurance concessions sought by the District.

In looking at the external comparables, the Union's offer of a 6% contribution by employees working 1260 hours or more is much more in line with the average 6.22% contribution that the District requested 10% contributions. This is the case although Wausaukee's rates are significantly lower than the comparable school districts. No compelling need for significant health insurance concessions has been established. The District cannot point to any other school district that has achieved such a drastic employee contribution.

With regard to wages, the Union's proposal is more reasonable because the effect of a wage freeze will permanently reduce the pension benefit, as well as the wages, and reflect beyond four years. In considering the external districts, the Union offer is quite modest and the District must justify its request for a wage freeze, which it cannot do. The effect of the Union's offer is to cause the Union ranking for maintenance, secretary and teachers' aide to loose one rank, two ranks for building custodian and three ranks for the cook position. The very essence of wage comparability is consideration of external units and the settlement pattern, and the Union's offer is more comparable. The Union proposal with respect to wages is far more similar to the external pattern that the District's 0% increase. The only employees in a comparable school district who did not receive a wage increase in the last two years are the non-represented Lena support staff.

The Union contends that the District's unrealistic projections on the costs of future busing operation should be viewed very skeptically. It could not have run a more efficient transportation operation than it had run under the previous transportation director, yet it chose to set conditions which caused him to leave the employ of the District. Any claims that the subcontractor will run a less costly operation are pure fantasy. Although the District made much of the supposedly poor condition of its bus fleet, it was apparent that the subcontractor intended to use many, if not most buses, at least for the near future. While the District has a fleet of buses, it maintains some leverage with a potential subcontractor. When the buses are gone, the balance of negotiating power shifts to the subcontractor. At some time in the future, the subcontractor will demand more. District claims to the contrary, if Union bus drivers are eliminated, they will suffer immediate degradation in the terms of employment with a subcontractor.

With respect to declining student enrollment, the District is not unique. No less than four of the comparables have experienced greater declines in enrollment that Wausaukee since 2000-2001. The same is true on other demographic comparisons. If the District is unique, it is because it passed a substantial funding referendum which allows it to easily meet the Union's offer. The interest of the people is best served by the maintenance of the long-standing status quo. The Union's offer should be selected.

DISCUSSION:

The Current Contract Language and the Offers of the Parties

Under the expired agreement, the District agreed to pay 100% of the premiums for employees working 35 to 40 hours per week for at least nine months, 70% for employees working 30-35 hours per week for at least nine months, 50% for employees working 15-30 hours per week for at least nine months, and none of the premium for those working under 15 hours. It also agreed to pay 55% of such premiums for bus drivers who have one year of prior employment with the District.

With regard to wages, the expired agreement provided Wage Schedules attached as Exhibits A, B, and C, which provided steps of 1-2 years, 3-4 years and 5+ years in all positions. Also of particular note is the compensation for bus drivers set forth as follows in Exhibit C:

Bus Driver*	1-2 years	3-4 years	5+ yrs
Monthly:	236.86	265.79	294.72
Mileage:	.37	.40	.44
Hourly:	8.37	9.4	10.42
Mileage:	.37	.40	.44

* 2. Minimum trip payment shall be the greater between the mileage rate and the hourly rates.

One time payment of $100 per employee, July 1, 2006.

The District argues that the Union's offer is fatally flawed on two counts. First, it argues that the Union's offer to split the costs of health insurance premium contributions has abolished the pro-rata language in the expired agreement creating a significant departure from the *status quo* whereby all employees in the bargaining unit are subject to the contributing of just 4% of the premium the first year and 6% the second year without the pro-ration. Second, it maintains that the Union made no proposed wage increase for bus drivers who are paid based upon mileage, rather than on an hourly basis.

The Union did not provide initial costing data at the hearing. However, the District did, in Exhibits 4, 5, and 6. These documents, in particular Employer Exhibit 6, pp. 13-18, contain costing data which show the District was costing the Union's health insurance proposal based upon the pro-rata language existing in the expired agreement. These tables list the support staff employees and the pro-rated health insurance contribution that the District pays based upon their election of health insurance and the hours each employee has worked. The issue of defects in the Union's offer and the allegation that it has abolished the pro-rata language was never raised during the hearing, but only for the first time in the District's initial brief. In its reply brief, the Union made it clear that it was not proposing a departure from the pro-rata language in the expired agreement, pointing to its reliance on the District's own costing documents. The Union's offer does not contain a proposal departing from the current contract language with regard to pro-rata contribution based upon hours worked.

The District makes a similar argument about the Union's wage offer as it applies to bus drivers. It maintains that bus drivers are paid by the mile and not hourly so that what the Union has proposed is a freeze on bus driver wages. This argument was raised for the first time in the District's initial brief. The Union did not respond to this argument in its reply brief. The expired agreement makes it clear that bus drivers receive the greater sum of the hourly or the mileage rate. Furthermore, Exhibit 6, pp. 8, 9, 11, and 12 demonstrates that the District costed the $.29 increase per hour for the bus drivers. Pages 14, 16, and 18 show increases in the daily rates of the bus drivers, but not the mileage rates, presumably reflecting the Union's proposal of $.29 for bus drivers for each year of the agreement. Because the expired agreement contains an hourly rate, the proposal does not specifically exclude any category of employees, and the District understood the proposal to include the wage increases for the bus drivers along with other bargaining unit employees, the undersigned views the Union's offer as including the $.29 each year for the bus drivers along with the other support staff.

Comparables

The parties agreed to external comparables from a previous arbitration. These districts are the following: Beecher-Dunbar-Pembine, Coleman, Crivitz, Gillett, Goodman-Armstrong, Lena, Marinette, Niagara, Peshtigo, Suring, and Wabeno.

Background

As with all of these cases, both parties introduced substantial evidence regarding the financial state of the District. There is no question that the District was in extraordinary, dire straits prior to the passing of the third referendum in August of 2008. The Annual Financial Report of June 30, 2007 sets forth the poor financial condition of the District at that time. As the District Administrator succinctly summed it up for the community in October of 2007, the overall tax levy would be dropping by 3.44% or 3.12% in spite of a drop in state aid by 2.66% over the previous year. Declining enrollment and significant increases in equalized value had resulted in a massive loss of state aid since 1996-1997, decreasing from 58.6% to 14.98% in 2007-2008. Property values were rising, student enrollment decreasing and state aid funding dependent upon property value per student was decreasing. As of June 30, 2007, the general fund had a fund deficit of $55,280. Certain portions of the governmental fund balances are reserved and not available for appropriation or are legally restricted for use for a specific purpose. As of June 30, 2007, various fund balances were reserved as follows: (1) General Fund Prepaids - $25,227, (2) Debt Service - $158, 664, and (3) Community Service - $31,886 totaling $215,777.

As of October 2007, the District could not balance its budget as total revenue had dropped by $66,685 while expenses dropped by $2,030 over the previous year's revenue and expenditures.

In March of 2008, the teachers' bargaining unit tentatively agreed to the concessions. By June of 2008, the District had commenced dissolution proceedings, concluding that, absent the voters passing a referendum, the District must enter into some form of bankruptcy. According to Exhibit 23 and the testimony of the District Administrator, the District currently owes $743,600 as of March 27, 2008 in principal in unfunded pension liability which must be retired by March of 2023. The District has been paying approximately $77,000 a year in interest on this amount. If there is no pay down on this amount, interest costs from 2009 to 2023 will be $392,213. The Board's Treasurer testified that the District wanted to pay approximately half of the principal remaining, $330,00, in 2008-2009 and the second half of the principal in the next year, thus saving the District the interest payments in future years.

Furthermore, at the end of the 2007-2008 school year, the District ended up with a negative Fund 10 balance of $129,401, which affected the interest costs on short-term borrowing. The Business Manager confirmed that the projected deficit before the referendum passed was approximately $230,000. Finally on the third try, on August 19, 2008, a referendum was approved to exceed the revenue caps on a non-recurring basis in the amount of $675,000 for ten (10) years. The District's Business Manager testified that as a result for the 2008-2009 year, the District projected a surplus in the fund of $129,000 so that after this year, the net fund balance would be at zero.

The District took out short-term loans of $2,400,000 for the 2009-2010 year with interest costs of about $103,000.

However, with the passage of the third referendum, the representations of both parties as to the District's current and future financial status must be thoroughly examined. Furthermore, in light of the dramatic negative impact that the District's proposal will have on the bargaining unit as a whole, but especially the bus drivers, it is appropriate to view the District's financial status vis-à-vis its proposal with especially strict scrutiny.

Wages

With the exception of Lena, a District where the support staff is not represented by a Union, all of the comparables have settled for hourly amounts in excess of the $.29 per hour requested by the Union for both 2007-2008 and 2008-2009. Only Lena took a wage freeze for both years. For 2007-2008, Niagara and Peshtigo agreed to $.30 per hours with Marinette, Coleman, and Crivitz agreeing to ranges depending on job classification from $.30 to $.50. Wabeno agreed to $.50, Gillett, $.55, Beecher-Dunbar-Pembine, $.35, and Suring $.70. For 2008-2009, based upon Union Exhibit 12 A, Lena and Peshtigo are either unknown or at $ .00, while all other settled support staffs have agreed to increases between $.30 and $.70. The undersigned has reviewed the tables set forth by the District and considered its argument that its wages are regularly at or above the average wages found in comparable districts. Accepting the District's offer will result in erosion of Wausaukee's ranking among the comparables for various job classifications, especially at the base rates, e.g., base wages for building custodians, building secretaries, teacher's aids and cooks. Notwithstanding the District's contention, there is no question that the external comparables with regard to wages favor the Union's offer.

Internal comparables with respect to wages, however, strongly favor the District. There are only two represented bargaining units in the District, the teachers,' or professional unit, and this support staff unit. Recognizing that the District intended to dissolve, the teachers agreed to a wage freeze for both years along with the $1000 per year bonus. It may have been a "poor bargain," as the Union here argues, but nevertheless, it was and is the agreement that the teachers ratified based upon the circumstances at the time they settled, i.e., no referendum had passed and the District was taking steps towards dissolution.

The average teacher's salary for 2007-2008 was $49,981. For 2008-2009, it was $46,914. Under the teachers' settlement, the average bonus per teacher for 2007-2008 was $653 and for 2008-2009, it was $878. For the teachers' bargaining unit, the bonus compared to salary was 1.13% for 2007-2008 and 1.87% for 2008-2009.

In contrast, the average salary per employee of the support staff for 2007-2008 was $14,844. In 2008-2009, it was $15,317. The average bonus under the District's offer per employee was $510 for 2007-2008 and $527 for 2008-2009. For the support staff, the bonus compared to salary was 3.43% for 2007-2008 and 3.44% for 2008-2009. The District offer provides each employee with $.48 per hour in 2007-2008 and $.48 per hour in 2008-2009.

The health insurance for teacher retirees benefit must also be costed into the wages settlement for the teachers' bargaining unit. The extra three years health insurance for retirees for 2007-2008 cost approximately $129,00 extra. In exchange for the teachers' agreeing to reduced salary costs of $413,000, the District paid $129,000 in additional health costs. Even including the employee retirement health benefits agreed to with the teachers, the support staff received a larger percent increase based upon the bonuses offered. Therefore, it is concluded that the internal comparables with respect to wages favor the District's offer.

Health Insurance

The same analysis generally applies to health insurance. The Union's last exhibit sets forth the cost of health insurance premiums and the percentage paid by the comparable employers/employees. There is no information on this document as to whether employees working less than full time in comparable districts are eligible for health insurance and the pro-ration if they are eligible. The District, in its brief, addresses that aspect of the health insurance benefits offered by the comparables.

Under the District's offer for current support staff working in excess of 1820 hours (full-time employees) who elect the single premium, the District will pay 90%. For new support staff hired after July 1, 2008, the District will pay 80%. Three of the comparable districts pay 100% and two pay 90%. The remainder range from 92.5% to 95%. For those opting for the single premium, the comparable average is 93.8%. Looking at those working 1260 hours, the District would pay 90% (80% for new employees) while the comparable average is 89.44%. At 1080 hours, the District's contribution would be 63% (56% for new employees) while the comparable average is 68.34%. For family premiums, a similar analysis finds that for 1820 hours, three districts pay 100%, two pay 90 % with the remainder ranging from 95% to 92%. The comparable average is 93.88%. For those employees working 1260 hours, one district pays 100%, one pays, 92.5%, six pay 90% and the remainder range from 64% to 87.5%. The comparable average is 88.67%. The District would pay 90% or 80%. At 1080 hours, one district pays 100%, one pays 95%, two pay nothing, four pay 90%, and the remainder range from 52% to 79%. The comparable average is 67.68% as contrasted to Wausaukee's 63% or 56%. The District's offer is especially troubling with respect to the percentage that it is willing to pay for new employees in this bargaining unit. New employees will have to contribute much more than employees employed by comparable districts. Based on the above information and considering that Wausaukee's premiums are much lower than those of the comparables, it is concluded that the external comparables support the Union's offer.

The internal comparables, however, support the District's offer. The teacher's bargaining unit agreed to the 90% contribution for current teachers and 80% contribution for new teachers. Notwithstanding the health insurance benefit for retirees, this is a significant concession by the professional bargaining unit and strongly weighs in favor of the District's offer to the support staff.

Total Costs of Wage and Health Insurance Proposals

The District costed its offer and the Union's offer. The Union did not provide independent costing information. Relying upon the District's costing (without considering its representations as to costs associated with abolishing pro rata contributions for health insurance and considering a $.29 hourly raise for bus drivers each year), the total package costs of the District's offer for 2007-2008 will be $606,132 versus the cost of the Union's offer at $609,243. The difference for 2007-2008 is $3,111. For 2008-2009, the cost of the District's offer will be $522,585 versus the Union offer's cost of $574,096, the difference being $51,511. For the two years, the difference in total package costs is $54,622.

Sub-Contracting Proposals

The District strongly asserts that the cost of the wage and health proposals is not the real cost of the Union's offer because, should the Union's final offer be selected, the District will be forced to spend substantial sums of money to update it buses, transportation facility, and to hire management personnel. In fact, it concludes its brief by arguing that accepting the Union's final offer will cost the District between $688,348 and $840,742 more than the Board's offer over the next four years. A substantial amount of this sum is premised upon assumed savings from subcontracting the bus operation to a private contractor or, in the alternative, having to update transportation facilities and the buses themselves.

Four points should be made with respect to the District's proposal to subcontract. Much of the evidence that it presented at hearing is speculative, based upon forecast models with attendant costs. It is also based upon anticipated savings in the future from subcontracting. This will be addressed below. Second, approximately 73% of the comparable districts do not have in-house bus drivers and do not have to maintain buses, and facilities for their care and upkeep. The record is unclear as to whether or not they have transportation managers or directors but they clearly do not have to employ mechanics for the upkeep of buses. Third, there is no external comparable which possesses the subcontracting language that the District proposes and it is clearly a departure from the *status quo*. Finally, the right to subcontract the bus driving, in this instance, eliminates forty-five percent of the positions within this bargaining unit and is not likely to be a proposal to which a union could agree at the bargaining table even if it were offered a very substantial *quid pro quo*.

The Union would have the undersigned accept some version of the following: Although the District was in bad financial shape, voters have now passed a referendum funding it for the duration of this agreement. Because the District is now solvent, the Union's modest wage offer, along with its concession on health insurance, should be found more reasonable and the arbitrator should reject the District's subcontracting proposal under a traditional failure to meet its burden to change the *status quo* and insufficient *quid pro quo* analysis.

The District, on the other hand, insists that this unit involuntarily accept the same sacrifices made by the teachers, the only other represented unit employed by the employer. It asks the undersigned to project much farther than the term of the collective bargaining agreement both expenses and savings to be incurred with regard to its transportation operations. To support these concessions, the District argues that it is uniquely situated among its comparables with respect to its poor economic future. In its view, this unique situation justifies and makes its offer the more reasonable.

Hyperbole and simplicity aside, both the subcontracting proposal and determinations about the reasonableness of both offers rest in ultimate conclusions and analysis about the financial state of this District as compared to other comparable districts in the past, at present, and as best as can be anticipated, in the near future.

Both parties agree that prior to the passage of the third referendum, the District's financial picture until August of 2008 was bleak and, in fact, bleaker than its comparables. The parties introduced inconclusive data comparing the District to its comparables for 2006-2007 with respect to total revenue per member. Union Exhibit 8d appears to show that Wausaukee is ranked fifth out of twelve comparables in total revenue per member and eighth out of twelve in state revenue per member. The District's Exhibit 44X ranks Wausaukee 4th in total costs per member. This difference in data notwithstanding, the District has made a persuasive case that it lags behind its comparables because its revenue limit per member is $229 less than the average of the comparables for 2006-2007. It has shown that its enrollment is declining and is projected to continue to decline as a result of open enrollment and other factors, which affects the state aid formula now and into the future. The formula is based upon $6,300 in state aid for every student. In 2006-2007, the gap between the District and its comparables in revenue limit funds increased from $136,240 in 2005-2006 to $144,957 in 2006-2007. Because of the declining enrollment, the District has been forced to deficit spend for each year since 2000-2001, spending down its fund to a negative balance of $55,280 at the beginning of 2007-2008 with a negative fund balance of $129.401 at the end of the 2007-2008 school year. The negative fund balance and other District financial problems affected its ability to short-term borrow during the summer prior to 2008-2009. This difficulty in securing short-term loans has been heightened due to the status of the economy and financial markets as a whole.

Not as clear, and certainly subject to dispute by the Union, is the present financial status of the District after the passage of the third referendum. One clear measure of current financial status of the District as compared to its comparables is the extent to which all of the districts continue to have unfunded pension liability obligations. Review of the comparables shows that Beecher, Crivitz, Niagara, Pestigo, Suring, and Wabeno have all paid off their unfunded pension liability. Information for Marinette is unknown. Coleman joined a consortium which refinanced their $728,000 in unfunded liability debt making once a year payments on the principal. As of 2006, Coleman has refinanced at a fixed rate of 6% for the life of the loan. Goodman-Armstrong borrowed in 2003 to pay off their $261,449.77 unfunded liability as of February 2003 at a rate of 5.25% for 10 years. Lena refinanced its $410,000 twice, the last time being in August of 2006 at a rate of 6.25% with a balloon at maturity in 2011. Six of the ten comparables were sufficiently stable financially to pay off their unfunded pension liability entirely. While Marinette's status is unknown, Coleman and Goodman-Armstrong have made significant payments in paying off some of the principal. Because Wausaukee was in such bad financial shape during the period in which these other districts were beginning to address their unfunded pension liability, it was not able to reduce the principal. Should the District continue to make minimal payments on this debt, it will incur over $400,00 in interest costs. Furthermore, the District does not have 15 to 20 percent of its expenditures in its general fund balance which has affected its ability to engage in short-term borrowing. When Wausaukee's desire to retire its principal on the unfunded pension principal within two years with the referendum monies, and to maintain a larger general fund balance ratio to debt, so as to save on the interest payments, is viewed in this context, it is reasonable.

Transportation costs and transportation aid must also be considered. Union Exhibit 9e makes it clear that Wausaukee, from 2001-2002 to 2006-2007, has consistently ranked 2nd or 3rd (with the exception of 2002-2003 when it ranked 4th) in receipt of transportation aid. Wausaukee possesses the largest area in square miles of all the comparables at 420.66 square miles, the second largest being Wabeno at 327.45. Due to the large distances that it must cover in the transportation of pupils, its transportation costs including fuel alone will be larger than those of comparable districts. For 2006-2007, the District had total transportation costs of $337,504. The District spent no monies since 2003 in upgrading its fleet of buses. The District has a signed contract with the subcontractor for $323,162 in 2009-2010, for $334,472 for 2010-2011, for $346,179 in 2011-2012, and $358,295 in 2012-2013, capped at 3.5% increases for the next three school years. Even assuming the undersigned permits the District to subcontract its transportation service, Exhibit 31 projects a Fund 10 Deficit of $221,386 by 2012-2013. This projection also includes an unfunded pension liability payment of $343,677 in 2009-2010. Under various other scenarios with the same pension liability payment, were the District to purchase two buses at $83,000 each and to outsource bus repair (Exhibit 30), the projected deficit for 2012-2013 will be much higher, $323,260. With the purchase of two buses at $50,000 each, in-house bus repair and the purchase of extra space for a bus garage, the deficit would be $333,450 (Exhibit 31B). With two buses purchased at $65,000 each and the outsourcing of repairs, the deficit would be $287,260 (Exhibit 31A)

The District has introduced evidence that suggests that comparable districts with "in-house" transportation systems have experienced an average annual cost increase of 10.76% per year as compared to 3.44% average annual increases from those who subcontract their services.

It should be noted that all of these scenarios extend out four years and that they are simply projections, it being well nigh impossible to forecast exactly what will occur in a four-year period of time. It should also be noted that under all of these projections the District remains solvent until 2012-2013.

Greatest Weight

From an accounting standpoint, it is obvious that now that the referendum has passed, the District has the funds to meet the Union's offer but feels the need to pay off the unfunded pension liability, to maintain a better general fund to borrowing ratio, and to deal with known transportation costs offered in the contract with the subcontractor. The District wishes to spend the referendum money to get its financial house in order so as to have a more favorable general fund balance of 15 to 20 percent. What appears to be equally evident is that, if the District's projections are accurate, it will have a Fund 10 deficit by 2012-2013 no matter which scenario or offer is selected. The only difference will be the amount of the deficit by the end of 2012-2013. Although the referendum was passed granting $675,000 per year which allows the District to remain solvent, this sum does not permit a great degree of discretionary spending given the unfunded pension liability which the majority of comparable districts have paid off, the expectation of continuing loss of state aids because of continuing loss of enrollment, the small ratio of general funds to expenditures making borrowing difficult, and the need to purchase essentials such as textbooks and other indispensable educational materials which the District had deferred based upon its poor financial condition in the past.

The voters passed the referendum after the third try in large measure as a result of "shared sacrifices" on the part of the teachers and the administration. The "greatest weight" standard, under these circumstances, requires the undersigned to consider the delicate balance between all of these interests. Should the Union offer be selected, it is highly likely that the teachers unit, which sacrificed during this bargaining cycle, will come back seeking to be treated as favorably as the support staff in the next cycle. Moreover, there is a good possibility that the Union's having reaped the benefit of holding out will interfere with the trust the voters had in approving the referendum on the assumption that everyone would "share the pain." Looking at the totality of the situation, the District's offer is preferred over that of the Union under the greatest weight criterion.

Greater Weight

The “greater weight” criterion also favors the District because it has shown that its situation substantially differs from that of the other comparable districts especially with regard to its previous financial state, its large geographic area, and its projected declining enrollments. It is a poor district in one of the poorest geographical areas with declining enrollments and continuing declining state aids based upon those enrollments. In the absence of a change in the state aid formula or new-found prosperity in the counties in which the district is located, the state of the local economy also favors the District’s offer.

Other Factors

Section 7 r., (a) and (b) are not the subject of any arguments of the parties. Under (c) the “interests and welfare of the public” factor weighs in favor of the District’s offer as it contains future costs, especially transportation costs, much better than does the Union’s. Furthermore, given that the same individuals will be driving the same buses, but for the private contractor, at least in the near future, the interests and welfare of the public with respect to the quality of transportation services provided will not be adversely affected by acceptance of the District’s offer.

Subsection 7r., (d) favors the Union’s proposal on both wages and health insurance. Neither offer is favored with respect to the subcontracting issue inasmuch as it appears that over 75% of the comparable districts do not have in-house busing but utilize subcontractors, although the language proposed by the District is definitely a departure from the *status quo.*

Subsection 7r., (e) strongly favors the District’s offer with respect to both wages and the health insurance proposal. The fact that the professional bargaining unit accepted the wage freeze and the District’s health insurance proposals weighs heavily for the District’s offer. Subsection 7r., (f) is not determinative.

Subsection 7r., (g) does slightly favor the Union’s offer as the Consumer Price Index for Midwest Size D as of June 7, 2008 and June 8, 2009 is considered.

It is subsections 7r., (h), (i), and (j) which are determinative in the instant dispute. They will be dealt with below.

Subsection 7r., (h) requires the arbitrator to consider “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.” With the wage freeze, bonus, and health insurance concessions contained in the District’s offer, bargaining unit employees will lose ground in comparisons with the comparable bargaining unit employees. But it is the District’s subcontracting proposal which impacts the continuity and stability of employment, at least for the bus drivers in this bargaining unit. The Union urges that a traditional departure from the *status quo* analysis be employed, correctly noting that the District has failed to offer a meaningful *quid pro quo* in the form of the severance bonuses. While a traditional analysis may be appropriate in normal financial times, these are not normal financial times.

Since the hearing in this case, the general economy has gone into a serious recession. There are foreclosures, job losses, and shrinking sources of revenue within the state of Wisconsin. Credit has all but dried up. This unanticipated turn in the general economy is a factor to be considered under subsections 7r.,(j) and (i). No one anticipated the severity of the recession even as of the date of the arbitral hearing in this matter. The District has established that throughout the 2007-2008 school year it was experiencing significant budgetary pressures that affected its ability to pay before the referendum and way before the turn of the general economy. Although there has been an intervening subsection 7r., (i) factor, the voters passage of the third referendum, the general economy has "tanked." Although the referendum has passed, the District has convincingly established that its position remains precarious, more precarious than that of comparable districts, for the future under either offer. The District's offer attempts to pay down debt to save interest costs and to ensure future borrowing at the lowest rates to keep the District financially viable. Under Subsection s 7r., (j) and (i) it is preferred.

The undersigned is mindful that this decision removes forty-five per cent of the employees in the bargaining unit from public employment with the auxiliary benefits arising therefrom. They will be assured of employment for the time being under the District's contract with the subcontractor, but the loss of job security and other benefits that they have enjoyed as a result of Union representation will be lost. But for the current economic environment and the compelling case presented by the District of its need to cut or at least assure known, predictable " transportation costs," such a subcontracting proposal without a substantial *quid pro quo* would doom such an offer.

In light of the economic climate as it currently exists, the District has demonstrated that it has taken measures, other than simply failing to provide the average percentage wage increases offered by the other comparable districts, to address its financial difficulties. It has laid off employees, deferred necessary expenditures for textbooks, borrowed short-term and delayed making capital expenditures such as buying new textbooks and buses, and delayed paying the principal on its unfunded pension liability. Given the state of the current economic climate, the District has shown the necessity for its proposed departure from the *status quo* with respect to the subcontracting language that it seeks. It has succeeded in persuading the only other bargaining unit in its employ to "share the pain." Given these factors, but in particular the teachers' bargain, the unfunded pension liability, and the future financial projections under both offers, the City's conservative offer in conjunction with its proposed economic strategy is found to be more reasonable.

CONCLUSION

The District's offer with respect to wages and health insurance and total compensation under the greatest weight and great weight criteria is favored. The Union's offer with respect to wages and health insurance as compared to the external comparables is favored as more reasonable. The District's offer with respect to wages and health insurances in so far as the internal comparables is favored. The District's subcontracting proposal is reasonable in view of the financial condition of the District. Because the undersigned is satisfied that the District has shown how the revenue limits, the state aids, and its current situation after the passage of the referendum have affected its budgetary choices and desire to act with economic prudence in the current economic climate, the District's offer on balance is preferred.

AWARD

The District's final offer is to be incorporated into the 2007-2009 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

Dated this 31st day of March 2009, in Madison, Wisconsin.

/s/Mary Jo Schiavoni
Mary Jo Schiavoni, Arbitrator