ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
RICE LAKE SCHOOL DISTRICT Support Staff)	)	WERC Case 72 No. 66201 INT/ARB-10786 Decision No. 32580-A
And	)	
WISCONSIN COUNCIL 40, AFSCME LOCAL 3286, AFL-CIO	)	

Impartial Arbitrator

William W. Petrie
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Hearing Held

January 27, 2009
Rice Lake, Wisconsin

Appearances

For the Employer	WELD RILEY PRENN & RICCI, S.C. By Stephen L. Weld, Esq. 3624 Oakwood Hills Parkway Post Office Box 1030 Eau Claire, WI 54702-1030
For the Association	WISCONSIN COUNCIL 40 AFSCME LOCAL 3286, AFL-CIO By Steve Hartmann Staff Representative Post Office Box 364 Menomonie, WI 54751-0364

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Rice Lake School District and AFSCME Local Union 3286, with the matter in dispute the terms of a three year renewal labor agreement between the parties, covering July 1, 2006, through and including June 30, 2009, in a bargaining unit of Support Staff employees of the District. After failing to reach full agreement during their contract renewal negotiations, the Union on August 14, 2006, filed a petition with the WERC seeking arbitration of their impasse. After investigation by a member of its staff, the Commission issued Findings of Fact, Conclusions of Law, Certification of the Results of Investigation and an Order Requiring Arbitration on October 6, 2008, and on November 6, 2008, in accordance with selection by the parties, it issued an order appointing the undersigned to hear and decide the matter.

A hearing took place in Rice Lake, Wisconsin on January 27, 2009, at which both parties received full opportunities to present evidence and argument in support of their respective positions, and each reserved the right to close with the submission of post-hearing briefs and reply briefs. Timely post-hearing briefs and reply briefs were exchanged by the parties and sent to the undersigned, and the record was closed effective April 28, 2009.

The Final Offers of the Parties

In their final offers, hereby incorporated by reference into this decision, the parties agreed and disagreed as follows.

(1) They agreed to a three year renewal labor agreement, covering July 1, 2006, through June 30, 2009.

(2) The final offer of the District provides as follows.

(a) "All items shall remain in the 2003-2006 Agreement between the Rice Lake Area School District and Local 3286, Wisconsin Council 40, AFSCME, AFL-CIO, except as follows:"

(b) Revision of the first paragraph of **ARTICLE 18 - HEALTH INSURANCE, Section 18.01**, to read as follows;

"The Board agrees to pay 95% of the cost of the family coverage and 100% of single coverage under the District's standard medical/hospitalization insurance program for eligible full-time employees. Effective July 1, 2008, the Board agrees to pay up to $1,378.63 per month toward the cost of family coverage and $483.73 per month toward the cost of single coverage under the District's standard medical/hospitalization insurance plan."

(c) Revision of **APPENDIX A** to provide as follows:

"Revise all wage rates 3.0% effective July 1, 2006; an additional 3% effective July 1, 2007; and an additional 3.5% effective July 1, 2008."

(3) The final offer of the Union provides as follows.

"All items shall remain in the 2003-2006 Agreement between the parties except as follows:

1. APPENDIX A

Revise all wages rates 3% effective 7/1/06; an additional 3% effective 7/1/07; and an additional 3% effective 7/1/08."

The Statutory Arbitral Criteria

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the undersigned to utilize the following criteria in arriving at a decision and rendering an award in these proceedings.

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

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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

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

f. Comparisons of wages, hours and conditions of employment of

the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 pension, 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 hearing.

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

POSITION OF THE UNION

In support of the contention that its' final offer is the more appropriate of the two final offers, the Union emphasized the following principal considerations and arguments.

(1) In connection with the Financial Ability of the District, it submits as follows.

(a) That the Employer failed to demonstrate that any law or directive prohibits or limits its ability to implement the Union's final offer.[1]

(b) That the economic difference between the two final offers is not great and, over its three year term, amounts to only $10,319.[2]

(c) As was the case with the prior arbitration involving the custodial unit, the greatest weight, the greater weight and the ability to pay cannot be assigned controlling weight in this dispute.[3]

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[1] Referring to the decisions of *Arbitrator Vernon* in Monroe County, Dec. No. 31318-B (12/1/05), and *Arbitrator Levine* in Oregon School District, Dec. No. 28724-A (3/10/97).

[2] Referring to the contents of Employer Exhibit #4.

[3] Referring to the contents of Employer Exhibit #22.

(2) In connection with Internal Comparables, it submits that the only two comparables to the clerical and aides unit, are the food service and the custodial/laundry units.[4]

(a) It urges that the teacher unit is not an appropriate comparable.

(b) The food service employees retained their percentage contribution to the health insurance premium in their most recent agreement, and for SY 2006-07 and SY 2007-08, they received wage increases of approximately 3.0%, the same as the Union in the case at hand, and their wages are above average for the comparables.[5]

(c) The custodial and laundry unit has an insurance premium contribution dollar cap and change in premium share as a result of an arbitration decision. Unlike the clerical/aide bargaining unit, the bulk of its employees are full time, and they are paid above the average of the comparables.

(d) In contrast to both of the above comparables, the clericals, the largest group in the clerical/aide unit, are paid less than the comparables.

(e) The food service unit is the most comparable to the clerical/aide unit, and it voluntarily settled at about a 3% wage increase for all three years of their contract, and had no changes to its health insurance language.

(3) In connection with the External Comparables it submits as follows.

(a) Consistent with the decision of *Arbitrator McGilligan* in Rice Lake Area School District (Custodial and Laundry), Dec. No. 32191-A, it proposes the same *Labor Pool Districts* and *Big River Athletic Conference Districts* identified therein, with one exception.[6]

(b) It urges exclusion of Hudson School District, because its clerical and aide employees are not organized and should not be considered comparable.[7]

(c) It submits that more emphasis be placed on the *labor market comparables* rather than the larger and more distant athletic conference schools.

(d) It urges that consideration of these external comparables does not support the contract language and premium shift proposed by the District, in six major respects.

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[4] Referring to the contents of Union Exhibit #11a.

[5] Referring to the contents of Union Exhibits #13 & #7a.

[6] Referring to the contents of Employer Exhibit #22.

[7] Referring to the decisions of *Arbitrator Baron* in Merton Joint School Dist.., Dec. No. 27568-A (8/30/93), *Arbitrator Johnson* in Potosi School Dist., Dec. No. 19997-A (4/8/83), *Arbitrator Kerkman* in Washburn School Dist., Dec. No. 24278-A (9/9/87), *Arbitrator Kessler* in Webster School Dist,, Dec. No. 23333-A (11/15/86), *Arbitrator Malamud* in West Allis-West Milwaukee Sch. Dist., Dec. No. 21700-A (1/30/85, and *Arbitrator Zeidler* in Madison Metro. Sch. Dist., Dec. No. 27610-B (10/20/93) and in Waunakee Comm. Sch. Dist., Dec. No. 28132-A (3/27/95).

(i) *First*, that the demographic evidence reveals that generally the District is better off than most comparables and its problems are middle of the pack at worst. Referring to its Fund 10 balance, its mill rate and its student population, it urges that nothing therein supports the District's proposal.

(ii) *Second*, that the contract language specifying the insurance contribution of employees does not support the position of the District, in this respect noting that 13.5 of 15 conference and labor market comparables have language providing for percent based health insurance contributions rather than dollar caps.

(iii) *Third*, that the District proposed employee increases for both single and family coverage, is not justified by the comparables, most notably labor market school districts.

(iv) *Fourth*, that the pro-rata formula of the District, results in part time employees paying a higher percentage of their premiums than full time employees, and it is the highest pro-rationing of the comparables in both the athletic conference and the labor market. Since 44 of 52 in the bargaining unit are part-time, they have the highest pro-rationing formula among any of the comparables.

(v) *Fifth*, that many of the comparable employers do not have employee health uniformity among their various bargaining units.

(vi) *Sixth*, while the Union will not argue that the District's plan design benefits are excellent relative to the comparables, the real issue is the premium costs of the benefits. The District's final offer creates an unbalanced situation wherein the total premium cost and its contributions remain below average, the employee contributions become above average. In such situations, arbitrators have not found reason to accept modification of employee insurance contributions.[8]

(e) With the low cost of insurance in Rice Lake, coupled with the below average premium costs incurred by the District, there is no support in the external comparables for the change proposed by the District.

(f) In summary it emphasizes the following: the demographic data reveals a District with positive enrollment growth, a low mill rate and a respective Fund 10 balance; the premium contribution between employees and employer is predominately in the form of percentage splits; thirteen and one-half of fifteen districts have contracts which specify the employer and employee splits as percentage based; the percentage split proposed by the Employer of 95/5 single and 90/10 family, represents one of the highest employee percentage contribution level; the pro rationing formula results in

[8] Referring to the decision of *Arbitrator Rice* in Eau Claire County, Dec. No. 21551-A (10/12/84).

part-time employees in the District paying a proportionally higher percentage than any of the comparables; and the evidence reveals that the actual premiums in the Rice Lake District are already 12th lowest of 15 comparable.

(g) It submits that consideration of the external comparables in no way supports the proposed change from a percentage to a dollar cap, or the increase in employee premium contribution.

(4) The Teachers Bargaining Union is not an appropriate comparable.

(a) The employee makeup of teacher and support staff units vary considerably, not only with regard to part time/full time status, but also in terms of wage rates, degree requirements, job expectations and labor market. Moreover teachers bargain under a different bargaining law, and for these reasons arbitrators have held that comparisons to teachers' units should not be compelling in interest arbitrations involving support staff employees.[9]

(b) Teachers are governed under a separate provision of Wis. Stat.111.70, particularly the QEO, wherein how money is counted, costed and rearranged inside the QEO is very different from bargaining outside the QEO. Arbitrators have generally recognized, where wages are concerned, that external rather than internal comparables play a larger role, unless a definite pattern has been established internally, and have rejected comparisons between the settlements of teachers and support staff units.[10]

(i) The clerical/aide bargaining unit has recognized that the teacher unit has great sway over health insurance, and in the last round of bargaining included the following language: "The Board may from time to time change insurance carriers and/or self fund its health insurance program, provided the level of benefits is identical to the teachers."

(ii) If all that an employer has to do is cut a deal with the teachers on insurance and then show up in front of an arbitrator and assert that insurance premiums are a problem without reviewing external comparables to see if there is support for the assertion, bargaining for insurance by other units will be mere surface bargaining. This is particularly true if others follow the McGilligan dicta that the teachers' agreement represents proof of the reasonableness of its proposal.

(5) The proposed **change to the status quo** must be justified.

(a) The District is seeking both a change in the contract language and in the percentage of employee premium contribution.

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[9] Referring to the decisions of *Arbitrator Baron* in Peshtigo School District, Dec. No. 27288-A (2/8/93), *Arbitrator Grenig* in Racine Unified School District, Dec. No. 21810-A (5/25/85).

[10] Referring to the decisions of *Arbitrator Dichter* in Omro School District, Dec. No. 31068-A (5/5/05), and *Arbitrator Yeager* in Omro School District, Dec. No. 31069-A (6/1/05).

(b) The proponent of change in the status quo ante must normally show with compelling evidence that: (1) a problem exists; (2) that the change will reasonably address the problem; and (3) that a sufficient quid pro quo is offered. This expectation is well established in the Wisconsin interest arbitration process. [11]

(c) Compelling need can be demonstrated in a variety of ways.

(i) The District may try to establish the cost of health insurance is rising at an out of control rate and that change in the premium share is necessary, but this is not the case. The premium costs in Rice Lake for the single plan are the lowest of the comparables, and for the family plan, it is the fourth lowest. Moreover the costs are below average.

(ii) Another method of establishing compelling need may be the lack of *comparable support* for the District's current contribution toward insurance. The evidence is clear, however, that the health insurance costs borne by Rice Lake are less than that paid by the employers in comparable districts.

(iii) The status quo is neither unusual nor out of line in terms of health insurance cost or the employer and employee contribution. Rather, it is the District's position which creates an above average employee contribution in light of low premium costs which may be viewed as extreme.[12]

(d) The contract language proposed by the District caps the dollar amount of its contribution toward health insurance, meaning that any and all future cost increases are the responsibility of the employees unless the parties bargain to increase the dollar caps. This bargaining dynamic would be a significant change from the status quo wherein increases in insurance costs are shared between the employer and the employee.

(i) The first goal of bargaining would now be to adjust the cap numbers, which will be wielded like a hammer over all other Union proposals including wages.

(ii) As noted by the Union, the current contract language has strong support amongst the external comparables.

(e) There simply nothing in the record to show a compelling need to change from the status quo.

(i) The purported need stems from the voluntary agreement of the teachers and the arbitration decision by Arbitrator McGilligan for the custodial bargaining unit.

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[11] Referring to the decisions of *the undersigned* in Mellen School District, Dec. No. 30408-A (3/21/03), *Arbitrator Vernon* in Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (12/24/90), and *Arbitrator Reynolds* in Edgerton School District, Dec. No. 25933-A (11/8/89).

[12] Referring to the *decision of Arbitrator Vernon* in Eau Claire County, Dec. No. 21647-A (12/13/84).

(ii) The teachers are not an appropriate internal comparable and, as such, no weight should be given to their settlement.

(iii) There is no law or doctrine which compels this Arbitrator to follow the rationale or the decision of Arbitrator McGilligan.

(iv) The record in this proceeding is significantly different from that before Arbitrator McGilligan: many of the custodian comparables had dollar caps, but only 1.5 of 15 comparables have such language; the custodian unit is predominately full-time, which the clerical/aide unit is predominately part-time; custodian wages in Rice Lake are higher than the comparables, whereas the clerical employee wages are below average; in the McGilligan decision there is no mention of the low insurance costs enjoyed by Rice Lake, and he may have been unaware of this decisive aspect of the case.

(v) The Employer is seeking to increase the premium payment of employees by five percentage points and also to change the bargaining relationship between the parties, but there is no compelling need for these drastic changes.

(f) Assuming *arguendo* that health insurance costs are a problem which requires addressing, the District's proposal does not reasonably do so.

(i) Health insurance costs in Rice Lake remain below average, and shifting the cost of premiums to the employees will do nothing to contain the rising costs of health insurance, which factor has been relied upon by many arbitrators.[13]

(ii) Cost sharing will do nothing to contain rising health insurance costs, and the Employer's proposal thus fails to meet the second prong of the status quo test.

(g) The third prong of the test requires the evaluation of the quid pro quo offered to measure its adequacy.

(i) The quid pro quo offered by the Employer is not sufficient, given the significant health insurance changes sought by it.[14]

(ii) The highest paid employee in the District, the handicap aides, who will be making $16.00 per hour 2008-2009, must work more than 1500 hours or they will owe the District more money in health insurance costs than the proposed 3.5% wage increase for the year.

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[13] Referring to the decisions of *Arbitrator Engmann* in City of Onalaska, Dec. No. 30550-A (10/10/03), *Arbitrator Malamud* in Middleton-Cross Plains, Dec. No. 282489-A(1996), and *Arbitrator Grenig* in Village of McFarland, Dec. No. 30149-A (1/2/02) and in Milwaukee School District, Dec. No. 31105-A (8/27/05).

[14] Referring to the decision of *Arbitrator Yaffe* in City of Prairie du Chien, Dec. No. 25592-A (11/8/88).

(iii) A grade three employee must work almost 1700 hours and still owe the District their entire 2008-2009 wage increase.

(h) The changes sought by the District do not pass muster of the status quo test.

(i) Under all three prongs the Employer offer fails: there is no compelling need; the proposal does not reasonably address a need; the proposal lacks an adequate quid pro quo.

(ii) The status quo employee premium contribution is supported by food service employees in the District as well as the external comparables.

In summary and conclusion it emphasized/reemphasized the following principal factors in support of its position.

(1) The District proposes to change the form of the parties' health insurance contribution from a percentage to a flat dollar cap, and also proposes to increase the contribution rate by an additional 5% in the form in the form of a dollar cap for 2008-2009, the last year of the agreement from 95% to 90% for families and from 100% to 95% for single employees.

(2) Neither the dollar cap nor the increase in employee premium contribution is supported by the comparables or the other statutory criteria for the following reasons.

(a) As was the case with the custodial unit, greatest weight, greater weight and ability to pay do not warrant controlling weight in this dispute. The difference in the parties offers over three years is trivial and not enough to trigger consideration of the greatest weight or the ability to pay.

(b) The non-teacher internal comparables are split with a dollar cap imposed through arbitration for the custodial/laundry unit and the percentage retained in a voluntary exhibit with the District for the food service unit.

(c) The food service unit is the most comparable to the clerical/aide unit given the part-time status of both the units as well as the low wage rates.

(d) The custodial/laundry unit is a relatively higher paid and overwhelmingly full time group.

(e) While both the food service and custodial/laundry units are paid at a higher rate than the external comparables, the clericals are paid at a lower rate.

(f) In a clerical/aide unit the local labor market comparables should be the most significant.

(g) There is nothing in the demographic data that is supportive of the District's proposal to dramatically alter the collective bargaining agreement's health insurance contract language or to shift more of the cost of health insurance to the employee.

(h) Taken together 13.5 of the 15 conference and labor market comparables have contract language providing for percent-

based health insurance contributions rather than dollar caps.

(i) Premium contributions of Rice Lake clerical and aide employees are currently in line with that paid by employees in the external comparables which average 98.2% employee contributions in the labor market. The increase proposed by the district takes the highest employee contribution in the labor market and doubles it.

(j) The 2008 pro rationing formula for the Rice Lake School District is the highest of all employees in the athletic conference and labor market. This results in part time employees paying a higher percentage of the premium after the normal 5% for full time employees. Since they have the highest pro rationing formula they pay proportionally more per hour worked than part time employees in any other school district.

(k) Among the various support staff units within each of the comparable school districts, it is not uncommon to find variance in the health insurance language and/or the employee premium contributions.

(l) The family premium is lower than 12 of the 15 combined comparables and $59.21 below the average. The District's final offer, however, creates an unbalanced situation wherein the total premium cost and the District contribution remains below average, and the employee's contribution becomes above average.

(m) The teacher bargaining unit represented by the Northwest United Educators is not an appropriate comparable. The employee makeup of teacher and support staff units vary considerably, not only with regard to part-time/full-time status, but also in terms of wage rates, degree requirements, job expectations and labor market.

(n) Teachers are governed under a separate provision of Wis. Stat. 111.70, in particular the statutory provision involving the QEO. How money is counted, costed and rearranged inside the QEO is very different from collective bargaining outside the QEO, and is the essence of why it was placed into the law.

(o) The trade offs between primarily, but not exclusively, wages and insurance may cause the NUE to increase the amount of insurance cost so that they can achieve a higher wage gain under the QEO. As such, the teacher settlement cannot represent a basis for proof of the reasonableness of the insurance premium settlement with respect to other units not under the same portion of the law.

(p) There is nothing in the record to show a compelling need to change from the status quo. Rather the "need" stems from the voluntary agreement of the teachers and the arbitration decision of Arbitrator McGilligan for the custodial unit.

(q) The health insurance costs in Rice Lake remain below average. Assuming *arguendo* that health insurance costs are a problem that requires addressing, the District's proposal does not do so; shifting the cost of premium on to the employees will do nothing to contain the rising costs of health insurance.

(r) The changes sought do not pass muster under the status quo, quid pro quo test. Under all three prongs the Employer offer fails: there is no compelling need; the proposal does not reasonably address a need; the proposal lacks an adequate quid pro quo. The status quo employee premium contribution is supported by food service employees in the district as well as the external comparables.

In its *reply brief* the Union emphasized the following principal considerations and arguments.

(1) In connection with **Section III** of the Employer's brief at pages 3-6, it urges as follows.

(a) That the District asserts that teachers and custodians represent over 75% of the District's represented employees, that they have voluntarily agreed to its proposed dollar cap, and that these voluntary settlements constitute the basis on which the Arbitrator should impose such a cap in these proceedings.

(b) It urges that the custodial unit had the cap imposed through arbitration, but the arbitrator may not have had the benefit of full information relating to the matter then before him.

(c) Although the District places great reliance on the internal comparables, it has been recognized that such comparables need not be controlling.[15]

(i) Internal comparables may be a bargaining tool for an employer to force another unit(s) to simply capitulate to the settlement(s) of another internal unit(s), without recognition of each unit's unique interests, thus having a chilling effect on bargaining and rendering the reality of multiple bargaining units pointless and redundant.[16]

(ii) It has been recognized that unique circumstances surrounding a unit or the bargain itself must be considered in determining the weight given to internal settlement in other bargaining units.[17]

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[15] Referring to the *decision of Arbitrator Vernon* in City of Madison, Dec. No. 21345-A (11/8/84).

[16] Referring to the *decisions of Arbitrator Chatman* in City of Oshkosh, Dec. No. 27273-A (6/7/93), and Dec. No. 27274-A (6/8/93.

[17] Referring to the *decision of Arbitrator Roberts* in Village of West Milwaukee, Dec. No. 31648-A (11/14/06).

(d) In the case at hand, unique circumstances exist which must be considered, including the employee makeup of the other bargaining units within Rice Lake, particularly the part-time nature of the cooks and clerical/aide bargaining units.[18]

(i) There are four bargaining units in the Rice Lake School District, one of which (the teachers) should not be considered an appropriate internal comparison. Of the two relevant internal units, only one has the language sought by the Employer, and that one resulted from an arbitration decision rather than voluntary agreement; the food service unit, with similar characteristics to the clerical/aide unit, maintains health insurance language which supports the Union's final offer herein.

(ii) Adoption of the teacher settlement would mean that a unit of well paid full time employees working within the constraints of a QEO would determine the premium contributions and plan design for a group of lower paid, part-time employees.

(e) A decision favoring the District would essentially eliminate real bargaining over health insurance in this unit, reducing the process to surface bargaining over a mandatory bargaining subject.

(2) In connection with **Section IV** of the Employer's brief, it urges as follows.

(a) Hudson was included in the custodial arbitration comparables because the custodians in that conference district were organized. Since its clerical/aides are not organized, however, Hudson should not be a comparable in this proceeding.

(b) The teacher and the custodial units should be given only limited rather than controlling consideration, because of the differences in job responsibilities, wages, hours, and FTE status. Therefore, the external comparables should be controlling, as they allow for a true comparison of employees performing similar work.[19]

(c) The District disingenuously focuses on the admittedly good level of plan design in Rice Lake, but ignores the low comparable cost of the plan; the District's premiums are 12th lowest of 15 comparables.

Why is dealing with a lower than comparable premium with an already higher than comparable premium contribution, which does nothing to address the asserted concern, a compelling reason for change?

(3) In connection with **Section V** of the Employer's brief, it urges as follows.

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[18] Referring to the *decisions of Arbitrator McAlpin* in New Richmond School District, Dec. No. 30549-A (11/8/03), and *Arbitrator Eich* in Green Bay School District, Dec. No. 31255-A (3/14/06).

[19] Referring to the decision of *Arbitrator Baron* in Boyceville School District, Dec. No. 27773-A (2/22/94).

(a) That the undersigned previously addressed the issue of private sector data, and determined that the weight to be placed thereupon will vary greatly from case-to-case, based upon the individual circumstances, the quality of evidence and the comparability of the employers and employees.[20]

(b) In addition, it urges that the absence of collective bargaining agreements in the record for the private sector comparables, supports a reasonable inference that they are non-union.

(4) In connection with **Section VI** of the Employer's brief, it urges as follows.

(a) The Employer asserts that there is a compelling need for a change to a dollar cap and an additional 0.5% premium contribution for the following reasons: *first*, the high cost of insurance; and, *second*, the need for uniformity in employee insurance benefits.

(b) The District's insurance premiums are low relative to the comparables at 12th lowest of 15, only 13.5 of which require percentage contribution, and 11 of which have a higher employer percentage contribution than proposed by the Employer. This hardly represents a compelling need for a change in the status quo.
The Union is also unable to find arbitral authority for the fact that plan uniformity constitutes a compelling need.

(c) Due to the higher earnings in the teacher unit, the reality of the 0.5% wage increase swap for a dollar cap equal to 90% is clearly less equitable for lower paid employees. The increased premium cost of $840 (family) and the *quid pro quo*, while the same in nominal terms, are radically different in reality.

(5) In connection with **Section VII** of the Employer's brief it urges as follows.

(a) The Union stands behind its wage analysis despite the District's criticism.

(b) If the District believes that the internal comparables are of critical importance, the average wages in this unit, including longevity, are the lowest of any district. The cooks average is $14.01, the custodian average is $16.87, while the teachers are at $49,000.[21]

(c) The Union simply does not see a 0.5% wage increase in return for an $840 insurance cost as an intelligent way of improving our wages.

In conclusion, it emphasized/reemphasized that the bargaining unit is a relatively low paid, part-time group, more similar to the cooks and externals than to the custodians or teachers.

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[20] Referring to the *decision of the undersigned* in Genoa City School District, Dec No. 27066-A (7/15/92).

[21] Referring to the contents of Union Exhibit #11b-e.

(1) It submits that the District has failed to show comparable support internally or externally for the changes, increased premium contribution and dollar cap that it seeks. It has failed to establish a compelling need other than a "consistency" argument, which would essentially eliminate this unit's ability to bargain over a mandatory subject of bargaining, leaving it to the tender mercies of the District and the teachers operating under a different section of the bargaining law.

(2) The District's proposal does nothing to lower health insurance costs, and it does not even bother to argue that it does do so.

(3) There is no basis for the final offer of the District and, accordingly, the final offer of the Union should be selected.

POSITION OF THE EMPLOYER

In support of the contention that its' final offer is the more appropriate of the two final offers, the District emphasized the following principal considerations and arguments.

(1) That 75% of the District's represented employees have the same dollar cap on health insurance that the District is proposing for 2008-2009.

(a) The insurance language contained in the District's final offer is identical to that currently in place for both the teachers and the custodians.[22]

(i) The teachers agreed to incorporate the same health insurance dollar cap language into their 2007-2009 bargaining agreement.[23]

(ii) The District's offer to the custodians for the third year of the 2005-2008 contract sought the same health insurance language change for the same quid pro quo offered in the proceeding at hand. The matter proceeded to arbitration and Arbitrator McGilligan selected the District's final offer.[24] The custodians thereafter agreed to the same health insurance language in the 2008-2011 collective bargaining agreement, with the same dollar contribution offered to the clericals for 2008-2009, with the dollar caps increasing in each subsequent year.[25]

(b) The teachers and custodians constitute about 75% of the District's represented employees. The FTE Report for 2007-2008 shows a total of 211 teachers and custodians out of 280 total FTEs.[26]

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[22] Referring to the contents of Employer Exhibit #13.

[23] Referring to the contents of Employer Exhibit #50, page 16, Article XVI, A.

[24] Referring to the contents of Employer Exhibit #22.

[25] Referring to the contents of Employer Exhibit #54, page 54, Article XVII, Section 6.

[26] Referring to the contents of Employer Exhibit #13.

(c) Only the food service bargaining unit still has a percentage premium contribution. Only five of the nineteen service employees, however, participate in the District's health insurance plan in 2008-2009.[27]

(d) The employment contracts of four non-union employees have health insurance premium contribution dollar caps; while they do not have the same dollar amount as in the District's final offer, they demonstrate the District's effort to place dollar caps on its health insurance contributions for all employees.[28]

(e) Substantial arbitral authority supports internal consistency in wages and benefits.[29] Such consistency is particularly important in connection with health insurance benefits.[30]

(f) Internal consistency supports the District's Final Offer. In addition it submits that while a shift to a dollar cap protects it from unexpected and unbudgeted cost increases, it doesn't automatically mean that employees will be forced to contribute more to health insurance premiums. Future premium increases which exceed the negotiated caps will put the parties into a position where they may negotiate design changes such as modification to deductibles, copays and coinsurance payments, rather than absorbing premium increases.

(2) Rice Lake's health insurance plan design compares, as follows, to those in other comparable districts.

(a) The comparable pool recently established by Arbitrator McGilligan in the custodial case should be maintained.[31]

(i) The primary comparables are the other Big Rivers Conference schools: Chippewa Falls, Eau Claire, Hudson, Menomonie and River Falls.

(ii) The secondary comparables are the following: Barron, Birchwood, Bloomer, Bruce, Cameron, Chetek, Cumberland, Shell Lake, Spooner, Turtle Lake and Weyerhaeuser.

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[27] Referring to the contents of Employer Exhibit #11a.

[28] Referring to the contents of Employer Exhibits #14-#17.

[29] Referring to the decisions of *Arbitrator Eich* in Marquette County (Highway), Dec. No. 31027-A (6/24/05), and *Arbitrator Vernon* in City of Rhinelander, Dec, No. 21231-A (9/25/84).

[30] Referring to the decisions of *Arbitrator Terosian* in City of Wausau, Dec. No. 29533-A (11/16/99), *Arbitrator Vernon* in Oshkosh School District (food service), Dec. No. 31626-A (11/16/06), and *Arbitrator Krinsky* in City of New Berlin, Dec. No. 27293-B (2/12/93).

[31] Referring to the contents of Employer Exhibit #22.

(iii) Arbitrator McGilligan referred to Rice Lake as a "*tweener*" - in terms of enrollment and total income the largest District in the labor market, but the smallest in the athletic conference.[32]

(iv) When comparing other benchmarks - equalized value, tax levy, mill rate and revenue limits, the District falls on the low-end of the conference schools and the high-end of the labor market schools.[33]

(b) Based on comments at the hearing, the sole dispute regarding external comparables will be the Union's argument that Hudson, a primary comparable in the athletic conference, should be removed because its clerical employees are not represented. Because of the District's "*tweener*" status the District asks that it remain as a primary comparable, to give both parties a fixed point of departure in future bargaining.

(c) A number of comparable schools have lower premiums than Rice Lake and a number have higher premiums.[34]

(i) There are three features of Rice Lake's health insurance plan that have significant cost implications, zero deductibles, zero co-insurance and zero office/ER co-pays.[35] The only co-pay paid by Rice Lake's employees is for prescription drugs ($10/$20/$30).

(ii) The other comparable school districts require employee contributions to deductibles, co-insurance; and office/ER co-pays: (1) of the fourteen settled districts, Rice Lake is the only one without health insurance deductibles; (2) an increasing number of Districts have provisions which, after the deductible has been paid, require employees to contribute a percentage of the cost of a medical service (there are eleven comparable districts with coinsurance provisions in 2008, as compared to seven in 2007-2008); and (3), fourteen districts require an ER co-pay, and eight require an office visit co-pay.[36]

(d) Employees in Rice Lake, with no deductibles, no co-insurance and no office/ER co-pays, have not experienced the sort of out-of-pocket healthcare expenses that are designed to make the employees and their family members better consumers.

(3) The District's health insurance plan design compares, as follows, to private sector employers in the District.

(a) The District's health insurance benefits compares favorably to private sector employers in Rice Lake.

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[32] Referring to the contents of Employer Exhibits #23 and #28.

[33] Referring to the contents of Employer Exhibits #25-#27 and #29-#31.

[34] Referring to the contents of Employer Exhibit #8a.

[35] Referring to the contents of Employer Exhibits #18 and #19.

[36] Referring to the contents of Employer Exhibits #41 and #42.

(i) A survey conducted by the District in 2007 reveals that significant premium contributions, deductibles, office, ER and drug co-payments, and co-insurance payments are the norm for private sector employers.[37]

(ii) Twenty-three businesses responded to the above referenced survey: three offer no health insurance; seventeen reported employee contributions of at least 20% of family premiums; all which offer health insurance, require significant employee co-payments, co-insurance, and deductibles.

(b) A 2007 Wisconsin Taxpayer Report reveals that public sector employees now exceed private sector employees in total compensation, and that benefits accounted for 26.4% of Wisconsin public sector compensation in 2006.[38]

(c) Under both final offers, Rice Lake clerical employees' benefits will represent approximately one-third of employee total compensation.[39] The District's total compensation for 2008-2009, wages and benefits, is thus well above the average.

(4) The 3.5% wage increase proposed by the District for 2008-2009, constitutes an adequate quid pro quo.

(a) The District's offer of an extra one-half percent (½%) to 2008-2009 wages to keep the clerical health insurance premiums contributions consistent with what it negotiated with the teachers and the custodians is reasonable, but the Union disagrees.

(b) Arbitrators differ with respect to what constitutes an adequate quid pro quo and/or whether a quid pro quo is needed for proposals designed to manage health care costs.

(i) Generally viewed as out-of-control, health insurance costs have been "singled out" as bringing a different set of expectations and responsibilities to the bargaining table.

(ii) In his recent decision addressing the 2005-2008 custodial contract, Arbitrator McGilligan reviewed arbitral decisions on the need for and adequacy of quo pro quos when health insurance changes were being proposed, including the following:

- *Arbitrator Torosian* in Washington County (Social Services), Dec. No. 29363-A (12/11/98), and *Arbitrator Flaten* in Prentice School District, Dec. No. 25814 (7/3/89), wherein they approved of the need for quid pro quos.

- Later arbitral decisions, however, recognized that a traditional quid pro quo would not be required, including *Arbitrator Torosian* in River

[37] Referring to the contents of Employer Exhibits #48 and #49.

[38] Referring to the contents of Employer Exhibit #39, pages 3-4.

[39] Referring to the contents of Employer Exhibits #46 & #47.

Falls School District, Dec. No. 30959-A (3/22/05), *Arbitrator Eich* in Marquette County (Highway Department), Dec. No. 31027-A (6/24/05), and *Arbitrator Hempe* in Buffalo County (Human Services Clerical Parapro), Dec. No. 31484-A (5/15/06).

- He also cited the decision of *Arbitrator Weisberger* in Pierce County (Human Services), Dec. No.28186-A (4/27/95), wherein she recognized that increasing health care costs paid by an employer may reduce significantly or eliminate the usual burden to provide a quid pro quo, and cited therein the decisions of *Arbitrator Fries* in Pierce County (Sheriff's Dept.), Dec. No. 28187-A (4/24/95), *Arbitrator Rice* in Handicapped Children's Educ. Bd., Dec. No. 27422-A (5/3/93), *Arbitrator Zeidler* in Cornell School District, Dec. No. 27202-B (11/23/92), and *Arbitrator Grenig* in Buffalo County (Sheriff's Dept,) Dec. No. 31340-A (2/8/06).[40]

(c) As in the custodial case, the District has offered its clerical employees a quid pro quo, in the form of an extra one-half percent (½%) on wages in the year in which health insurance contribution caps are implemented.

(d) The 2008-2009 District wage offer to clerical/aides is higher than the wage settlements in other internal bargaining units for the same period.[41] In terms of the external comparables, its 2008-2009 wage offer is higher than most districts; only Chetek and Shell Lake equal or exceed the District's 3.5% wage offer.[42]

(e) Arbitrator McGilligan addressed the adequacy of the District's quid pro quo and, after concluding that teachers' had received no better quid pro quo for implementation of the health insurance premium dollar cap, he concluded that the additional one-half percent wage increase was adequate for the custodians.[43]

(5) The District proposed wage increase in 2008-2009, is above average.

(a) Employer Exhibits #33-#34 examine wage rates within the labor pool and conference schools for Teacher Aides and Secretaries.

(i) Comparison of "Teacher Aide"/"General Aide" wages: Only Chippewa, Cameron and Spooner have higher wage rates than Rice Lake out of the 13 schools settled for 2008-2009. Spooner has an additional longevity boost after 20,800 hours.

(ii) Comparison of Highest Wage Rate for Secretaries:

[40] Referring to the contents of Employer Exhibit #22, pages 10-12.

[41] Referring to the contents of Employer Exhibit #12.

[42] Referring to the contents of Employer Exhibit #32.

[43] Referring to the contents of Employer Exhibit #22, page 19.

Under both final offers, the highest wage rate in the District ($15.76 or $15.69) exceeds that of all other listed entries with the exception of Cameron, Cumberland, Spooner (Spooner secretaries also receive a longevity boost after 20,800 hours) and Turtle Lake.

(iii) "Years to Maximum Wages": Rice Lake's "years to maximum wage" (150 days) is significantly lower than all by one district (Bruce). A number of schools require more than ten years of employment to reach the maximum wage (Barron, Cameron, Chetek and Turtle Lake).

(b) Employer Exhibit #32 lists support staff settlements for 2008-2009 and only Chetek and Shell Lake equal or exceed the District's wage offer for 2008-2009.

(c) Union Exhibits #7b-#7e appear to suggest that Rice Lake clerical wage rates, unlike those for food service employees, custodial employees and aides are below-average; the District, however, disagrees.

(i) The Union exhibits review base year wages (2002-2006) instead of looking at where employees will "end up" under each final offer.

(ii) Its exhibits employ "averages," which don't provide the information needed to determine whether an employee performing the same set of duties in Barron gets paid more or less than an employee in Rice Lake.

(iii) Account Clerk wages (Chippewa Falls) are being compared to Grade I secretaries as well as Grade VI Secretaries. Presumably an Account Clerk performs different tasks than an elementary school secretary but we don't know based on the information provided.

(iv) The Arbitrator has no way of knowing whether a "Grade IV" secretary in Rice Lake performs the same tasks as a "Grade IV" secretary in Eau Claire; the Union lumps all job categories together.

(v) If the Union is suggesting that wages of Rice Lake's clerical workers are somehow "falling behind" other employee groups in terms of comparable positions, doesn't the District's higher wage offer for 2008-2009 address such perception better than the Union's lower offer?

(d) Assorted demographic data from non-school district employers give snapshots that also indicate that the Rice Lake School District's wages are above average.

(i) The District's *after probationary period* wage in 2002, was above the City's mean and median secretarial wages in 2003.[44]

[44] Referring to the contents of Employer Exhibit #36, page 1.

(ii) A County wage report dating from 2006 lists a median wage of $11.86 for "Office and Administrative Support"; the District's lowest probationary wage in 2005 was $12.29.[45]

(iii) A State of Wisconsin report using 2004 data for West Central Wisconsin, indicates average hourly wage for Office/Administrative Support was $12.24, which is below the District's lowest clerical wage for probationary employees in 2005.[46]

(e) The profile which emerges from the above is as follows.

(i) The District's wage rates are very competitive with both comparable school districts and other employers in the school district.

(ii) The District's wage and benefit structure may help to explain the stability of the bargaining unit: in the base year (2005-2006), 23 of our 47 employees had at least ten years of seniority.[47]

(iii) In addition to hourly wages, District clericals and aides also receive longevity payments. The majority of the districts in comparable pool (eleven) do not offer longevity payments.[48]

(iv) All clerical employees and aides receive higher hourly wages under the District's final offer than under that of the Union. The wage differential between the offers (½%) is a tangible increase and serves as a quid pro quo for the insurance language change.

(6) Consideration of the total package proposed by each party supports selection of the final offer of the District.

(a) Wisconsin's QEO law requires cast-forward costing for teacher bargaining, which method provides a good tool for comparing wage and benefit costs between various school districts.

(i) At the hearing the Union noted some of the limitations of cast-forward costing, including the fact that base year employees are assumed to remain employed through the contract's entire three year term. As noted earlier, however, there is significant longevity in this bargaining unit.

(ii) Employer Exhibits #5 to #8 permit comparison of the impact of both final offers on individual employees; tracking the first listed employee with initials S.A., we can track, as follows, the wage and benefits changes under both the Employer's and the Union's

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[45] Referring to the contents of Employer Exhibit #37, page 3, and Employer Exhibit #73, Appendix A.

[46] Referring to the contents of Employer Exhibit #38, page 7, and Employer Exhibit #73, Appendix A.

[47] Referring to the contents of Employer Exhibit #35.

[48] Referring to the contents of Employer Exhibit #35.

final offers.

YEAR	WAGE	TOTAL COMPENSATION	
2005-06	$14.57	$31,078	[Er.Ex. 5]
2006-07	$15.01	$32,133	[Er.Ex. 6]
2007-08	$15.46	$34,368	[Er.Ex. 7]
2008-09	**$16.00**	**$35,513**	**[Dist. Offer, Er.Ex.8]**
2008-09	**$15.92**	**$35,932**	**[Un. Offer, Er.Ex.9]**

(iii) Employer Exhibits #8 to #9, allow us to track the percentage increase in total compensation between 2005-2009 under both final offers (assuming continuation of employee S.A.'s annual hours worked and insurance selection):

% INCREASE IN TOTAL COMPENSATION 2005-2009

District Offer: 14.27% increase in total compensation
Union Offer: 15.62% increase in total compensation

In conclusion it indicates that the District is seeking to extend its health insurance premium contribution cap language to another collective bargaining agreement. In exchange, whether required or not, its' final offer contains a quid pro quo of an extra one-half percent wage increase in 2008 - 2009. Based upon the reasons set out in its brief, as well as in the hearing exhibits and testimony, it submits that its' final offer is the more reasonable, and requests that it be incorporated into the Collective Bargaining Agreement with its clerical employees and aides.

In its *reply brief* the Employer emphasized the following principal considerations and arguments.

(1) The Teacher settlement must be considered in weighing the final offers of the parties.

(a) The Union devotes considerable space in its brief to the argument that the teacher settlement should not enter into the arbitrator's analysis and that the only relevant internal comparable is the Food Service Unit.

(i) In its brief at page 13, however, it indicated as follows:

> "Finally, the clerical/aide bargaining unit has recognized that the teacher unit has great sway over health insurance. In the last round of bargaining we included the following language:
>
> The Board may from time to time change insurance carriers and/or self fund its health insurance program, provided the level of benefits is identical to the teachers."

(ii) The current Clerical/Aides bargaining agreement thus compels consideration of the insurance provisions of the teacher unit in the case at hand.

(b) Internal voluntary settlements should also be reviewed since they serve as indicators of how the parties would have settled had they been able to do so.[49]

(2) Both the teacher and the custodial/aides bargaining units entered into voluntary settlements for their current agreement, contrary to the assertion of the Union in this proceeding.[50] The voluntary settlements with the teachers and custodians are both appropriate consistencies in weighing the reasonableness of the respective final offers.

Based upon hearing testimony, exhibits and arguments in the initial and reply briefs, the District requests that the Arbitrator find its final offer the more reasonable of the two.

FINDINGS AND CONCLUSIONS

It is initially noted that the primary issue in this proceeding is the Employer proposed change in funding of health insurance beginning in the third year of the agreement. Although the parties also disagree with respect to the size of the third year wage increase, with the Employer proposing a 3.5% increase and the Union proposing a 3.0% increase, this second impasse item exists only due to the Employer's intention to provide a *quid pro quo* in support of its proposed change in health insurance.

In their comprehensive briefs and reply briefs in this proceeding, the parties principally disagree with respect to the application and weight to be placed upon various of the statutory criteria to *the health care* impasse item, principally including application of the so-called *quid pro quo criterion*,[51] and the *relative weights to be placed upon external and internal comparisons* urged by the parties in connection with both the *wage increase* and the *health insurance* impasse items.

Application of the Quid Pro Quo Criterion in Health Insurance Impasse Situations

When either party to a labor agreement proposes elimination or

[49] Referring to the *decision of Arbitrator Gundermann* in Oneida County (Law Enforcement), Dec No. 26116 (3/90).

[50] Referring to the contents of Employer Exhibits #50 and #54

[51] The *quid pro quo criterion* falls well within the intended scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

significant modification of a previously negotiated right or benefit, arbitral approval of such a proposal is normally conditioned upon three determinative factors: *first*, that a significant and unanticipated problem exists; *second*, that the proposed change reasonably addresses the underlying problem; and, *third*, that the proposed change is normally but not always, accompanied by an appropriate quid pro quo. In connection with application of the quid pro criterion, it is noted that various Wisconsin interest arbitrators, including the undersigned, have determined that some types of proposed changes in the negotiated status quo ante which are directed toward the resolution of *mutual* problems, may require either none or substantially reduced quid pro quos, depending on individual case-by-case determinations.

(1) The first such decision of the undersigned where *no quid pro quo* had been required, involved a proposed future reduction in the period within which a school district would continue to pay full health insurance premiums for early retirees, and indicated in part as follows.

> "What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. ...
>
> The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes."[52]

(2) Two later decisions in which employer proposed medical insurance changes were determined to require fully appropriate quid pro quos, indicated in part as follows.

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[52] See the *decision of the undersigned* in Algoma School District, pg. 25, Case 18, No. 46716, INT/ARB-6278 (11/10/92).

"Wisconsin interest arbitrators operate as extensions of the contract negotiations process and they normally require the proponent of elimination or substantial change in a previously negotiated policy or benefit to advance a quid pro quo equivalent to that which would have evolved in the give and take of conventional bargaining. An exception to this requirement may exist where *the costs or the substance of a long standing policy or benefit have substantially changed over an extended period of time*, where *they no longer reflect the conditions present when they were negotiated*, and where the proposed change is directed toward *correction of a mutual problem which was neither anticipated nor previously bargained about by the parties.*

In applying the above described principles to the situation at hand, it must be recognized that while there have been continuing increases in the cost of medical insurance since the parties earlier negotiations, this trend was ongoing, foreseeable, anticipated and bargained upon by the parties in reaching the predecessor agreement covering January 1, 1998 through December 31, 2000; indeed, the letter of agreement and the medical insurance reopener clauses were the *quid pro quos* for the medical insurance changes then agreed upon by the parties, which the Employer is now seeking to eliminate. While it is entirely proper for the Employer to have continued to pursue this goal in these proceedings, the record falls far short of establishing that its current final offer falls within the category of proposals which need not be accompanied by appropriate quid pro quos." [53]

(3) In various other decisions the undersigned has determined that ongoing, very significant and continuing escalation in the costs of providing employee health insurance, which escalation has been far in excess of what could have been originally anticipated by parties, represents a *mutual* problem. In consideration of the mutuality of such problems, the requisite *quid pro quo* could normally be less than would have been required to justify reduction or elimination of traditional benefits or advantageous contract language.[54]

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[53] See the *decisions of the undersigned* in Town of Beloit (Police Department) and Town of Beloit (Wastewater, Road & Clerical), Dec. Nos. 30219-A and 30220-A (4/25/02), pp. 13-14).

[54] See, for example, the *decisions of the undersigned* in Outagamie County, Dec. No. 31400-A (2/7/06), Omro School District (Aides/Food Service), Dec. No. 31070-A (7/9/05), Mellen School District (Support Staff), Case 46, No. 60580, INT/ARB 9449 (3/21/03), and Village of Fox Point (Public Works Department), Case 29, No. 60729, INT/ARB 9496 (11/7/02).

Despite Union arguments that the Employer has sufficient financial ability and comparative financial ability to continue the employee health insurance provided for in the prior agreement, it is clear that a compelling need for change in the status quo ante in the health insurance area need not be predicated upon an employer's impaired ability to continue to pay the growing costs of such insurance. To the contrary, the rapidly escalating costs of employee health insurance is widely recognized as a very significant problem, there is no requirement preventing an employee from recognizing and reasonably responding to this problem before it is bereft of the financial ability to continue to pay such premiums, and the Employer proposed changes in its employee health insurance program reasonably addresses this problem.[55]

What next of the Union argument that the District proposed quid pro quo was insufficient because those in the bargaining unit would purportedly be harder hit financially, than the higher paid teachers and other units within the District? If the Union felt that the Employer proposed change in group health insurance had a disproportionate impact upon those in the bargaining unit, it might have considered proposing a higher *quid pro quo* at the bargaining table, and its failure to do so detracts from the persuasiveness of its current arguments. Instead, however, it apparently chose to resist any modification in the employee health insurance program and to actually propose a lower wage increase in the third year of the agreement than proposed by the Employer!

It is also noted that the arguments urged by the Union in support of its position seek arbitral consideration of various *features of work* of those in the bargaining unit, including the number of part-time employees within the unit, versus those in other bargaining units within the District; it also urges arbitral consideration of wages paid within the bargaining unit with external comparables, and ties in these considerations with the merits of the Employer proposed uniform change in employee health insurance. Such

[55] It would be difficult to conclude that the Employer proposed change was unreasonable, due to the fact that it has already been agreed upon and implemented for a significant majority of the District's union represented employees.

arguments, however, ignore the fact that the prior employee health coverage had apparently applied equally to all represented employees in the District, that uniformity of wage increases within the District had also apparently been the norm in the past, and also the fact that its own offer for a 3% wage increase in the third year, reflected the internal wage increase pattern. On the bases described in the following excerpt from the venerable but still authoritative book by Irving Bernstein, such emphasis upon so-called differential features of the work, under the circumstances at hand, is not normally appropriate.

> "*Differential Features of the Work*
>
> This title is phrased with sufficient broadness to embrace a variety of factors that affect wage rates. They include skill, hazard, onerousness, regularity of employment, intensiveness of effort, and the money value of nonrate fringes. These considerations, of course, are vital in wage administration. They lie at the root of internal rate structures, providing the rationale for differentials between jobs and premiums for unusual burdens of employment. Such factors, however, have little to do with general wage movement, the matter of concern here.
>
> * * * * *
>
> The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates. Hence established differentials and premiums are regarded as fixed for purposes of general wage changes. Such movements, in other words, are by definition across-the-board in character, since the criteria that shape them affect all employees equally. The granting of differential adjustments, therefore, would be inherently inequitable. Further, these factors are very hard to measure. Those that directly affect individual rates and premiums, for example, skill, experience, hazard, and onerousness, would draw the arbitrator into the complex and tenuous area of job evaluation. Some others--by way of illustration, a claim that employees in the unit are more skilled than those in the community--are virtually impossible to translate into cents per hour.
>
> Occasionally, a case arises in which the arbitrator feels that the differential argument is so weighty that he must modify the rule. The money consequence is that he grants a bit less than the amount supported by other wage determining criteria. ...In the Reading transit award, already referred to, the neutral stated that the fringes were so favorable, though hardly yielding to precise measurement, that he could not completely ignore them. ..."[56]

On the above described bases the undersigned has determined that the Employer's final offer is fully consistent with the implicit standards governing its proposed change in the negotiated status quo ante. In short, a

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[56] See Bernstein, Irving, The Arbitration of Wages, University of California Press, Berkeley and Los Angeles (1954), pages 90-91. (Referring to *Board of Arbitration Chairman William Simkin* in Reading Street Railway Co., 6 LA 860, 868 (1947), other footnotes omitted.)

significant and unanticipated problem has arisen, its proposed changes reasonably address the problem, and its proposed quid pro quo was clearly the more reasonable of the two proposed third year wage increases contained in the final offers of the parties.

Application of the Comparison Criteria and the Employer Preference for Internal Uniformity

It is next noted that while *external comparisons* (*i.e.*, intraindustry comparisons) are normally the most important arbitral criterion in connection with *wage determination*, this is not normally the case in the arbitration of employee *health insurance disputes*, wherein employers typically tend toward *internal uniformity*. This principle and its underlying rationale are well addressed in the following excerpt from the authoritative book originally authored by Elkouri and Elkouri:

> "...Generally, arbitrators give greater weight to externals in wage disputes, unless it can be shown that a clear pattern has been established for the internal bargaining units.
>
> Benefits issues, such as health insurance benefits, are often resolved through a review of internal comparables. Applying the internal-comparison standard to determine the appropriate health insurance package, one arbitrator explained:
>
> > [B]ecause of risk pooling, economies of scale and the lack of quality data about the coverage, contribution levels and the costs of health insurance benefits to external communities, most Arbitrators give heavy weight to evidence about the instant Employer's internal structure of health insurance coverage/ contributions as opposed to what external practices are in these areas. Clearly, one cannot expect the Employer to offer a different health insurance package to each of its different work groups. By pooling risk and by 'spreading' costs, the individual Employer can buy insurance protection at a far more reasonable price. Hence, in the health area the comparison focus shifts from the 'external' to the 'internal.' This conclusion applies to dental insurance as well.
>
> In another instance, where the dominating issue was an association's request for paid health insurance for retirees, the arbitrator found that the favored position of the internal comparables was not to provide for such insurance, whereas the external comparables favored the position of the association. In agreeing with the employer's position, the arbitrator found that the 'internal comparables reveal that the Employer's other employees would not be getting equity if the arbitrator granted the Association's request for paid health insurance for the retirees.' "[57]

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[57] See *Elkouri & Elkouri* HOW ARBITRATION WORKS, Sixth Edition - 2003, page 1413. The arbitral quotations were from the decisions of *Arbitrator Mario Bognanno* in City of Farmington, Minn., 85 LA 460, 464 (1985), and *Arbitrator Zel S. Rice II* in Manitowoc, Wis., Sch. Dist., 100 LA 844, 848 (1992). (Other Footnotes Omitted)

On the above described bases, the undersigned finds that the Union arguments based upon the various health insurance programs of the external comparables, is simply less than persuasive. Such external health insurance programs are difficult to compare and evaluate, and the Union is attempting to avoid the Employer's attempt to retain what has apparently been an extended past practice of *internal health insurance uniformity*. Equally unpersuasive is its argument that neither the teachers' nor the custodians' settlements, each of which includes the employee health insurance changes resisted by it in this proceeding, should be afforded significant or determinative weight as comparables. The teacher settlement was reached at the bargaining table, the custodian settlement evolved through the decision of Arbitrator McGilligan on April 4, 2008, and was thereafter agreed upon in the parties' renewal agreement covering 2008-2011.[58] Finally, as described above, uniform internal employee insurance coverage is inherently more economical and efficient than a multiplicity of diverse internal insurance plans.

The Employer urged that external private sector comparisons also favored selection of its final offer, relying upon the results of its internal survey and the contents of a 2007 Wisconsin Taxpayer Report.[59] While this documentation generally indicates that the District's health insurance benefits compare favorably with those in the private sector, such comparisons are not afforded as significant weight in the final offer selection process as the more definitive and meaningful public sector comparisons.

On the above described bases the undersigned has determined that consideration of the employee health insurance programs of the *external school district comparables* is not entitled to significant weight in this proceeding.[60] By way of contrast, consideration of the *internal comparables,*

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[58] See the contents of Employer Exhibits #22 and #54.

[59] Referring to the contents of Employer Exhibits #39, #48 and #49.

[60] Due to the facts and circumstances before the undersigned in this proceeding, no current basis exists for excluding the Hudson School District from the primary external comparables. If the issue of its inclusion with or exclusion from the primary external comparables appropriately arises in a future interest dispute involving the parties, this question could then be revisited.

including the teacher and custodian settlements which jointly comprise approximately 75% of the District's represented employees, very significantly favor the position of the Employer in this proceeding.

Miscellaneous Remaining Considerations

After carefully considering all of the remaining statutory criteria, the undersigned finds as follows.

(1) Neither the *greatest weight*, the *greater weight*, the *lawful authority of the District*, nor *the stipulations of the parties* are significantly in issue in this proceeding and, accordingly, will not receive significant weight in the final offer selection process.

(2) There were no definitive or significant arguments advanced by the parties within the *interest and welfare of the public* criterion, including *the District's ability to pay*. Accordingly this criterion will not receive significant weight in the final offer selection process.

(3) There is nothing in the record which suggests that arbitral consideration of *the cost of living criterion*, in the short term, favors the position of either party.

(4) As described earlier, arbitral consideration of *the overall compensation presently received by those in the bargaining unit* is not entitled to significant weight in the final offer selection process, due to the nature of the underlying dispute and the bargaining history of the parties.

(5) There have been *no changes in the underlying circumstances during the pendency of the hearing,* and, with the exception of the *quid pro quo requirements* previously discussed, no *additional factors normally or traditionally taken into consideration* have arisen in this proceeding.

Selection of Final Offer

Based upon a careful consideration of the entire record in this proceeding, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the Impartial Arbitrator has concluded that the final offer of the Rice Lake School District, is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Rice Lake School District is the more appropriate of the two final offers before the undersigned in this proceeding.

(2) The final offer of the Rice Lake School District, hereby incorporated by reference into this Award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

July 14, 2009