**BEFORE THE ARBITRATOR**

In the Matter of the Final and Binding Interest Arbitration of a Dispute Between

CASSVILLE COUNCIL OF AUXILIARY PERSONAL

and

CASSVILLE SCHOOL DISTRICT

Case 24
No. 68292
INT/ARB-11237
**Decision No. 32649-A**

Arbitrator: James W. Engmann

Appearances:

Ms. Joyce Bos, Executive Director, South West Education Association, 906 Washington Street, Platteville, WI 53818-1169, appearing on behalf of the Cassville Council of Auxiliary Personnel.

Ms. Eileen A. Brownlee, Kramer & Brownlee, LLC, Attorneys at Law, 1038 Lincoln Avenue, P. O. Box 87, Fennimore, WI 53809-0087, appearing on behalf of the Cassville School District.

## ARBITRATION AWARD

Cassville School District (District or Employer) is a municipal employer which maintains its offices at 715 East Amelia Street, Cassville, WI. Cassville Council of Auxiliary Personnel (Association or Union[1]) is a labor organization which maintains its offices at 960 Washington Street, Platteville, WI 53818-1169 and which, at all times material herein, has been the exclusive collective bargaining representative for all regular full-time and regular part-time non-professional employees of the District, excluding supervisory, managerial and confidential employees.

The District and the Council have been parties to a series of collective bargaining agreements, the last of which expired on June 30, 2007. The parties exchanged their initial proposals on July 7, 2008. Thereafter, the parties met four time in at attempt to agree on matters to be included in the successor agreement. On September 22, 2008, the Council filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). An investigation was conducted by a member of the Commission's staff on November 4, 2008, which reflected that the parties

[1] Although this is the Cassville Council of Auxiliary Personnel, it self identifies as the Association or Union.

were deadlocked in their negotiations. On or before January 9, 2009, the parties submitted their final offers and stipulation on matters agreed upon, after which the Investigator notified the parties that the investigation was closed. The Investigator also advised the Commission that the parties remained at impasse. On January 21, 2009, the Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of arbitrators submitted by the Commission.

The parties selected the undersigned to serve as the impartial arbitrator in this matter and advised the Commission of its selection. On March 12, 2009, the Commission appointed the undersigned as arbitrator to issue a final and binding award, pursuant to sec. 111.70(4)(cm)6. and 7. of MERA, to resolve said impasse by selecting either the total final offer of the Employer or the total final offer of the Union. Hearing was held on June 4, 2009, in Cassville, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs in electronic and hard copy form, the last of which was received on August 3, 2009, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

## FINAL OFFERS

### District

#### Wages and Wage Structure

Effective July 1, 2007, increase all 2007-08 wage rates by 15¢ per hour as follows:

**2007-08 (per hour)**

| | Head Cook | Cook | Head Custo-dian | Custo-dian | Secre-tary | Gener-al Aide |
|---|---|---|---|---|---|---|
| Step 0 | $ 9.31 | $ 8.42 | $10.31 | $ 9.42 | $ 9.86 | $ 8.42 |
| Step 1 | $ 9.51 | $ 8.62 | $10.51 | $ 9.62 | $10.06 | $ 8.62 |
| Step 2 | $ 9.71 | $ 8.82 | $10.71 | $ 9.82 | $10.26 | $ 8.82 |
| Step 3 | $ 9.91 | $ 9.02 | $10.91 | $10.02 | $10.46 | $ 9.02 |
| Step 4 | $10.11 | $ 9.22 | $11.11 | $10.22 | $10.66 | $ 9.22 |
| Step 5 | $10.31 | $ 9.42 | $11.31 | $10.42 | $10.86 | $ 9.42 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Step 6 | $10.51 | $ 9.62 | $11.51 | $10.62 | $11.06 | $ 9.62 |
| Step 7 | $10.71 | $ 9.82 | $11.71 | $10.82 | $11.26 | $ 9.82 |
| Step 8 | $10.91 | $10.02 | $11.91 | $11.02 | $11.46 | $10.02 |
| Step 9 | $11.11 | $10.22 | $12.11 | $11.22 | $11.66 | $10.22 |
| Step 10 | $11.31 | $10.42 | $12.31 | $11.42 | $11.86 | $10.42 |

Effective July 1, 2008, modify the wage schedule and eliminate longevity as follows:

**2008-09 (per hour)**

| | Head Cook | Cook | Head Custo-dian | Custo-dian | Secre-tary | Gener-al Aide |
|---|---|---|---|---|---|---|
| Step 1 (Starting) | $ 9.50 | $ 9.00 | $11.50 | $11.00 | $11.00 | $ 9.50 |
| Step 2 (Year 2) | $10.50 | $10.00 | $12.50 | $12.00 | $12.00 | $10.50 |
| Step 3 (Year 3) | $11.50 | $11.00 | $13.50 | $13.00 | $13.00 | $11.50 |

Each of the following employees is designated as being off-schedule and shall receive the wage stated below. Thereafter, each of the following employees shall receive his or her wage from the prior year plus the base increase for his or her job category. No additional employees will be designated as off-schedule after 2008-09:

| Employee | 2007-08 | 2008-09 |
|---|---|---|
| Maring | $13.13 | $13.38 |
| Mahr | $12.97 | $13.22 |
| Wildman | $12.97 | $13.22 |
| Kirschbaum | $13.86 | $14.11 |

**Health Insurance**: Status Quo.

**Qualification for District-Paid Insurance**

Effective July 1, 2007, change the current language of 5½ hours per day to

27½ hours per week.

**Hours of Work**

Effective after the award, an employee could chose to make up hours lost in the 2008-09 school year by working hours at the beginning of the next school year provided that the employee agrees to perform any work assigned by Administration.

**Association**

**Wage Increase**

Effective July 1, 2007, increase all 2007-2008 wage rates by 38¢ per hour as follows:

**2007-08 (per hour)**

| | Head Cook | Cook | Head Custo-dian | Custo-dian | Secre-tary | Gener-al Aide |
|---|---|---|---|---|---|---|
| Step 0 | $ 9.54 | $ 8.65 | $10.54 | $ 9.65 | $10.09 | $ 8.65 |
| Step 1 | $ 9.74 | $ 8.85 | $10.74 | $ 9.85 | $10.29 | $ 8.85 |
| Step 2 | $ 9.94 | $ 9.05 | $10.94 | $10.05 | $10.49 | $ 9.05 |
| Step 3 | $10.14 | $ 9.25 | $11.14 | $10.25 | $10.69 | $ 9.25 |
| Step 4 | $10.34 | $ 9.45 | $11.34 | $10.45 | $10.89 | $ 9.45 |
| Step 5 | $10.54 | $ 9.65 | $11.54 | $10.65 | $11.09 | $ 9.65 |
| Step 6 | $10.74 | $ 9.85 | $11.74 | $10.85 | $11.29 | $ 9.85 |
| Step 7 | $10.94 | $10.05 | $11.94 | $11.05 | $11.49 | $10.05 |
| Step 8 | $11.14 | $10.25 | $12.14 | $11.25 | $11.69 | $10.25 |
| Step 9 | $11.34 | $10.45 | $12.34 | $11.45 | $11.89 | $10.45 |
| Step 10 | $11.54 | $10.65 | $12.54 | $11.65 | $12.09 | $10.65 |

Effective July 1, 2008, increase all 2009-09 wages rates by 35¢ per hour as follows:

**2008-09 (per hour)**

| | Head Cook | Cook | Head Custo-dian | Custo-dian | Secre-tary | Gener-al Aide |
|---|---|---|---|---|---|---|
| Step 0 | $ 9.89 | $ 9.00 | $10.89 | $10.00 | $10.44 | $ 9.00 |
| Step 1 | $10.09 | $ 9.20 | $11.09 | $10.20 | $10.64 | $ 9.20 |
| Step 2 | $10.29 | $ 9.40 | $11.29 | $10.40 | $10.84 | $ 9.40 |
| Step 3 | $10.49 | $ 9.60 | $11.49 | $10.60 | $11.04 | $ 9.60 |
| Step 4 | $10.69 | $ 9.80 | $11.69 | $10.80 | $11.24 | $ 9.80 |
| Step 5 | $10.89 | $10.00 | $11.89 | $11.00 | $11.44 | $10.00 |
| Step 6 | $11.09 | $10.20 | $12.09 | $11.20 | $11.64 | $10.20 |
| Step 7 | $11.29 | $10.40 | $12.29 | $11.40 | $11.84 | $10.40 |
| Step 8 | $11.49 | $10.60 | $12.49 | $11.60 | $12.04 | $10.60 |
| Step 9 | $11.69 | $10.80 | $12.69 | $11.80 | $12.24 | $10.80 |
| Step 10 | $11.89 | $11.00 | $12.89 | $12.00 | $12.44 | $11.00 |

Effective upon changing to WEA Trust Preferred all wage rates increase by 61¢ per hour.

**2008-09 (per hour) After Insurance Change**

| | Head Cook | Cook | Head Custo-dian | Custo-dian | Secre-tary | Gener-al Aide |
|---|---|---|---|---|---|---|
| Step 0 | $10.50 | $ 9.61 | $11.50 | $10.61 | $11.05 | $ 9.61 |
| Step 1 | $10.70 | $ 9.81 | $11.70 | $10.81 | $11.25 | $ 9.81 |
| Step 2 | $10.90 | $10.01 | $11.90 | $11.01 | $11.45 | $10.01 |
| Step 3 | $11.10 | $10.21 | $12.10 | $11.21 | $11.65 | $10.21 |
| Step 4 | $11.30 | $10.41 | $12.30 | $11.41 | $11.85 | $10.41 |
| Step 5 | $11.50 | $10.61 | $12.50 | $11.61 | $12.05 | $10.61 |
| Step 6 | $11.70 | $10.81 | $12.70 | $11.81 | $12.25 | $10.81 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Step 7 | $11.90 | $11.01 | $12.90 | $12.01 | $12.45 | $11.01 |
| Step 8 | $12.10 | $11.21 | $13.10 | $12.21 | $12.65 | $11.21 |
| Step 9 | $13.30 | $11.41 | $13.30 | $12.41 | $12.85 | $11.41 |
| Step 10 | $12.50 | $11.61 | $13.50 | $12.61 | $13.05 | $11.61 |

**Wage Structure**: Status quo

**Health Insurance**

The Association proposes changing the insurance play design as follows:

Effective July 1, 2009, move from the two-tier prescription drug card to the less costly three-tiered prescription drug card.

Effective as soon as possible after the award, move from the WEA Trust Front End Deductible insurance plan to the less costly WEA Trust Preferred insurance plan.

The maximum aggregate will be raised from $1,000,000 to $2,000,000.

Add Waiver of Premium to the insurance plan.

**Qualification for District-Paid Insurance**: Status Quo.

**Hours of Work**: Status Quo

## ARBITRAL CRITERIA

Section 111.70(4)(cm), MERA, states in part:

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

7g. 'Factor given greater weight.' In making any decision under the

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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

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

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

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

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

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

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

## POSITIONS OF THE PARTIES

### Association on Brief

The Association notes that in the only previous arbitration between these parties, the arbitrator found the school districts of Blackhawk Athletic Conference as an appropriate comparable pool: Belmont, Benton, Bloomington, Cassville, Highland, Potosi, Shullsburg and West Grant; that both the Association and the District identify as comparables those districts, other than Cassville, which are organized: Benton, Highland, Potosi and River Ridge (a consolidated district of Bloomington and West Grant); that the District adds two school districts which are not in the conference: Southwestern and Wauzeka; that the District fails to show a comparison of bargaining unit staff, equalized value of the taxable property and state aid to these two districts; and that, therefore, the Association's comparable pool should be accepted.

The Association asserts that the District did not state that there was any statutory limitations on expenditures that would prohibit the District from meeting the Association's final offer; that the District has not argued that it lacks the lawful authority to meet the terms and conditions set forth in the Association's final offer; that the Association's evidence demonstrates that the District has the ability to meet the Association's offer; and that the public interest is well served if the citizens and taxpayers of the District are provided with school employees who are well paid and of high spirits and morale.

The Association argues that the total package costing provided by the District is flawed; that total package cast forward costing for support staff have been disregarded by other arbitrators; and that support staff units are not subject to the Qualified Economic Offer (QEO) law which uses the cast forward costing method.

The Association asserts that the comparables clearly favor the Association's final offer; that the District has not provided a quid pro quo for the 3-step wage schedule and eliminating longevity; that such changes are best worked out by negotiations between the parties; that given the lack of a compelling need and comparable support for the District's offer and that these proposals are best left to bargaining, the Association's offer of the status quo is preferred.

The Association asserts districts are allowed to bargain a total package when imposing a QEO for a teacher unit; that any savings of insurance premiums are added to the pool of money used for salary increases to create a total package; that this internal comparable

phenomenon has been occurring in the comparables; and that when support staff associations in the comparable districts have voluntarily accepted a change of insurance plans which results in a savings of premium, the wage schedule was increased beyond the comparable wage increase in districts without an insurance savings.

The Association offer changes the insurance policy from WEA Trust Front End Deductible to WEA Trust Preferred; that had a voluntary settlement for the 2008-2009 school year occurred, 61¢ per hour would have been saved and available to be added to the wage schedule; that as the 2008-2009 year has passed, the Association is only asking for the savings after the switch of insurance plans have been made; that the Association is asking for back pay from the 2008-09 contract year to be 35¢ per hour; that this is well below the comparable average of the comparables of 66¢; and that the District's proposal deviated from the established pattern of paying all employees the same cents per hour increase on the wage schedule.

The Association has no real dispute with the District's proposed changes in Hours of Work; that the Association has a concern with the District proposal to change eligibility for district-paid insurance from 5½ hours per day to 27½ hours per week; that by this change, the District could assign employees to a shortened work week; and that this uneven work schedule would make it difficult for employees to find secondary employment.

In conclusion, the Association asserts that the District has not set forth any conclusive evidence as to inability to pay; that the District's proposals to change the status quo wage schedule and remove a long-term status quo longevity benefit were made without a quid pro quo; and that its Final Offer should be adopted.

**District on Brief**

The District argues that the appropriate comparable group includes the unionized school districts in the athletic conference; that because this is a small pool of comparables and because the previous arbitrator was willing to consider schools outside the conference, the Employer proposes that the Southwestern School and Wauzeka School Districts be added; that Southwestern was proposed by the Union in the previous arbitration; and that Wauzeka is located within 37 miles of Cassville and is similar in average daily pupil membership.

The District argues its wage offer is more reasonable than the Association's and compares favorably to comparable districts in 2007-08; that in support staff units, benchmark comparisons are often of little value because of the wide variance in experience increments; that experience increments among the comparable districts range between three and twenty; and that, unlike any of the comparable districts, Cassville's contract contains a longevity provision that essentially creates a wage schedule that never ends such that looking to benchmarks within the framework of traditional wage schedules is futile.

The Employer concedes that its base offer for 2007-08 is lower than a number of comparables; that other factors influenced the base increases that are not present here; that when employees receiving longevity are included, the District's offer maintains its position in relation to the comparables while the Union's offer deviates substantially from the comparables; that, almost uniformly, the District's wages often exceed the highest wages in other districts by $1 per hour; and that even without the longevity provision, the Employer's offer in 2007-08 maintains the District's rankings.

The District argues that, as ¼ of the bargaining unit retired after the 2007-08, 2008-09 is the logical opportunity to modify the wage schedule to provide higher and more competitive wages to more recent hires; that the Employer grandfathers employees at their current wage and provides a 25¢ per hour increase so that they do not lose ground in this transition; and that those employees who are currently on the wage schedule see substantial increases in their compensation.

The District asserts that as only four employees had insurance coverage, there is no pressing need to change the plan; that the Union's change would save $12,000 in 2008-09; that the Union's addition of 61¢ to the base wages results in a total increase of 96¢ per hour; that adding Social Security/Medicare, WRS and disability insurance premium contributions to the Union's wage offer, the actual cost to the District of changing the insurance would be $14,025; that the Union offers no quid pro quo; and that in all of comparable cases, the change in insurance was a result of negotiations, not arbitration.

The District argues that its offer pertaining to the hours of work required to qualify for health insurance coverage is fair, unambiguous and supported by the comparables; that when the comparables wholly support the stance of a party looking to modify contractual language, the need for a quid pro quo is minimized, if not eliminated; that, therefore, the language proposed by the Employer should be included in the collective bargaining agreement; and that, finally, the cost of living indices support the District's proposal.

**Association on Reply Brief**

The Association asserts that the public wants the best qualified and most experienced employees working in a school system which educates their children; that for the 2007-2008 year, the District's final offer is $6,334 less than the Association's offer; that the District's offer of 15¢ increase per cell per hour is well below the comparable average; that the comparable wage increase for 2007-2008 is 38¢ per cell per hour; that for the 2008-2009 contract year, the Association's final offer is $444 less than the District's offer; that upon the change of the insurance plan, there will be a savings to the District due to the decreased premium; that savings of 61¢ will then be placed on the wage schedule for future years; and that the savings is a savings into the future as well;

The Association asserts that longevity is the reward for the employees who choose to stay in the District; that it is particularly valid to compensate the Cassville CAP employees with longevity in light of their salaries in the years previous being low as compared to the

comparable group; and that the District saved money for ten years when it paid employees that moved through the wage schedule a sub-standard wage which placed them at or near the bottom of the benchmarks and historical rankings.

The Association notes that the cost of living indicators favor the District's proposal in 2007-08 and the Association's in 2008-09; that the District has the ability to pay; that in terms of the cast forward costing method, the District should not be in the business of making money off their employees; that the District costs phantom employees who are no longer in the job positions; that not only is it wrong but it is not an approved costing method for education support staff; that the District is using a costing method that is based solely on the Qualified Economic Offer (QEO) law which no longer applies to teacher units; that it never was appropriate for the costing of a support staff unit; and that the District's computation of costs is significantly higher than the actual cost to the District due to reduced number of employees and reduced eligibility to the District-paid insurance plan.

**District on Reply Brief**

The District argues that its comparables are reasonable and supported by the record; that Southwestern was a district proposed by the Union as being comparable in the previous arbitration; and that for the Union to now claim that Southwestern is not an appropriate comparable is puzzling at best

The Districts argues that its offer is the more reasonable; that the Union's argument that the Arbitrator should disregard the District's total package/cast-forward costing is disingenuous; that what the Union is really arguing is that the cost savings effected by its insurance proposal should be used to fund its wage proposal; and that this is, in effect, a total package cost argument.

The District argues that the Union's offer fails to account for the longevity provisions such that its maximum wage is not near the actual maximum wage; that none of the comparable contracts contain limitless longevity provisions; that the comparables support the reduced number of steps proposed by the Employer in its offer here; that since 25% of the bargaining unit employees retired after 2007-08, this makes the timing propitious for restructuring the wage schedule to provide higher and more competitive wages to more recent hires; that the restructured wage schedule is more closely aligned with the comparables; and that it provides a quid pro quo by giving newer employees a wage that is substantially higher than what the wage schedule currently provides.

The District asserts that since the Union rejects both cast-forward and total package costing, it is ironic that such a costing method was held up as a paradigm for the Union's proposed 61¢ increase; and that the District should not be compelled through arbitration to modify its health insurance plan, particularly when there is no benefit to the District to do so.

## DISCUSSION

### Introduction

This is another one of those cases that cause this arbitrator to question his choice of profession.[2] Again, both parties are seeking things in final offer binding arbitration that they would not have achieved in negotiations. The victor will win something it would not have achieved voluntarily and it will do so without a quid pro quo. Both sides have put a lot on the line in this arbitration. Each side has much to lose and much to gain.

It is a truism in interest arbitration awards that arbitrators are an extension of the parties' collective bargaining process. I am sure I have said it. I know many of my colleagues have said it as well. Another truism is that an arbitrator's goal is to attempt to place the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table. Again, I and many other arbitrators have said this in countless awards.

I now doubt both propositions. I now believe arbitrators serve not as an extension of the collective bargaining process but as referees in a fight to the knock out such that they do not extend the bargaining process but put an end to it. . .until the next time. And in total package interest arbitration, I now believe that, in most cases, arbitrators cannot put the parties in the same position at which they should have arrived but did not. Indeed, if one side's offer represents the position that the parties should have gotten to but did not, that is an easy case. That side wins. Let's go home.

But those cases, usually, don't get to arbitration; instead of two reasonable offers or one reasonable on one unreasonable offer, this arbitrator is seeing most cases as having two unreasonable offers. Maybe, in issue by issue arbitration, it is possible that an arbitrator might be able to craft a reasonable resolution out of two unreasonable offers. But in total package arbitration, how can an arbitrator resolve something which the parties would never agree to at the table? Can't be done. This case proves it to me.

In this case, the Employer is attempting to eliminate a previously negotiated wage structure and longevity plan while the Union is attempting to force the employer to change insurance plans while giving itself a huge raise as a sort of quid pro quo. How to put the parties in the position they would have been but for their failure to agree? As I said, can't be done. One side or the other is going to get stuck with something they would not have agreed to at the table. What else can happen? Nothing. So let's get on with it.

### Easy Issue Number 1: Arbitral Criteria to be Applied

Neither party argued that the "Factor given greatest weight" or the "Factor given greater

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[2]See *Neenah School District*, Dec. No 32643-A (Engmann, 9/24/09), for another such case.

weight" supported its final offer so neither factor has an impact on this decision.[3]

Neither party argued that the following criteria should have any impact on this decision: stipulations of the parties; the financial ability of the District to meet the costs of the Union's proposal; the overall compensation presently received by these employees; and such other factors which are normally or traditionally taken into consideration in interest arbitrations.

Both parties argued that the interests and welfare of the public and the average consumer prices for goods and services, commonly known as the cost of living, supported their final offers such that neither of these criteria truly supported one final offer over the other.

The parties basically agreed that comparable comparisons would decide much of this case. But there is also an issue involving a change in circumstances during the pendency of the arbitration proceedings which will impact this decision.

**Easy Issue Number 2: District's Proposed Language Changes**

The Association stated it has no real dispute with the District's proposed changes in Hours of Work. The Association does have a concern with the District's proposal to change eligibility for district-paid insurance from 5½ hours per day to 27½ hours per week. The Union is fearful that, by this change, the District could assign employees to a shortened work week and that this uneven work schedule would make it difficult for employees to find secondary employment. It seems they may already have that right. In any case, the comparables totally support the District so its offer is preferred here, though this is so minor compared to the major issues that I include it only to be thorough.

**Easy Issue Number 3: Comparable Pool**

The parties have a dispute over the appropriate comparable pool. The Union would have the four units organized for purposes of collective bargaining in the athletic conference: Benton, Highland, Potosi and River Ridge. The District agrees to those comparables but offers two others: Southwestern and Wauzeka.

In the only previous interest arbitration between the parties, the parties disagreed as to the comparable group, as well.[4] The Union proposed Benton and Potosi which were organized

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[3]While these factors have been eliminated by the legislature, such action took place after hearing in this matter but I still want to make an accounting of the consideration I gave these factors in my decision. And, as noted above, I gave them no consideration because neither party asked me to do so.

[4]*Cassville School District*, Case No. 14, No. 53197, INT/ARB-7749 (Rice, 8/6/96).

bargaining units in the athletic conference.[5] As a secondary comparable group, the Union proposed Boscobel, Iowa Grant, Platteville, Prairie du Chien, Riverdale, Seneca and Southwestern, five of which were located in the same county as the District and two of which were in an adjoining county. The Union argued that only districts whose employees were organized for the purpose of collective bargaining should be included. The District proposed a comparable group consisting of all districts in the athletic conference, including two that were not organized for purposes of collective bargaining.[6]

The arbitrator in that case was "somewhat less than satisfied with any of the comparable groups proposed by the parties"[7] In the arbitration before this arbitrator, the parties not only argue as to what comparable group should be used in this case but what comparable group was used in the previous case. Indeed, it is somewhat unclear as to the comparable group that the arbitrator finally decided upon; specifically, whether such group included non-represented units and units outside the athletic conference.

I will be clear. I find the comparable pool to be those districts in the athletic conference which are organized for purposes of collective bargaining. The parties agree to those four: Benton, Highland, Potosi, and River Ridge. The District argues that a larger comparable pool would enhance the process and, if appropriate districts can be found, I would agree.

The District offers Southwestern and Wauzeka. The District chides the Union for not including Southwestern in its list of comparables, as it had in the previous case. But while the District offers some argument as to why Southwestern should be included, it does not indicate how it differentiated Southwestern from the other comparables proposed by the Union in the previous case (Boscobel, Iowa Grant, Platteville, Prairie du Chien, Riverdale and Seneca) and why it decided to include only Southwestern. And the District offers little evidence that Wauzeka should be included, too little to convince this arbitrator to do so.

So for this case, I will stand with the comparables upon which both parties have agreed: Benton, Highland, Potosi, and River Ridge. Perhaps one side or the other can persuade an arbitrator down the road to expand this list, but that did not happen in this case.

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[5]Two other units in the athletic conference were organized but the Union argued to exclude them because they were not affiliated with the Union's state organization, a position which has never been presented to this arbitrator. The arbitrator in the previous case made short shift of that argument, denying such a criteria limitation had any validity. Maybe that is why I have never had that issue before me.

[6]And including the two units that were organized but which did not belong to the Union's state organization.

[7]See *Cassville* at page 3.

**Easy Issue Number 4: 2007-08 Wages**

Money, it seems, is always a hard issue. And so it is here, as we will see in a moment. But the first issue is an easy one: 2007-08 Wages. The District proposes an increase of 15¢ while the Union proposes a 38¢ increase. The District concedes on brief that its wage offer for 2007-08 is lower than a number of comparables. It is indeed. The Union's wage proposal for 2007-08 is preferred. But while this is an important issue in this case, though an easy one, it pales in comparison to the two hard issues coming and, as such, will have little impact on the final determination in this matter.

**Hard Issue Number 1: Money**

As noted above, money always tends to be a hard issue but here it is complicated in that there are several issues, most of which are interconnected: 2008-09 wage increase, 2008-09 wage schedule, 2008-09 longevity payment; and wage increase tied to insurance change which would occur after the contract term. The 2008-09 wage increase, wage schedule and longevity payment are intertwined in ways that it is difficult to look at one issue without considering the other issues. Let's take a look at them one at a time, as best we can.

**2008-09 Wages**

2007-08 Wages were easy. Not so for 2008-09. The Union proposes a 38¢ increase which is supportable by the comparables. The District proposes wage increases ranging from 19¢ per hour to $1.58 with the majority of the increases vastly above the comparable settlements. But the District's wage proposal is tied to the wage structure change it proposes, which includes eliminating longevity.

**Wage Structure**

The District has an 11-step wage schedule with each step after the hire step corresponding to the year of service completed. On the tenth anniversary of hire, the employee reaches the schedule maximum. On the 11th anniversary of hire, the employee receives a longevity payment which ranges from 16¢ to 20¢ per hour. This 11-step wage schedule was agreed to by the parties in the their first agreement in 1990. The longevity payment was agree to by the parties in 1993.

To the Employer, this means it has a wage schedule that is only limited in the number of steps by the number of years the most senior employee has worked. In the 2006-07 school year, it appears their were two employees with 24 years of service. None of the comparable districts have longevity which, the District argues, skews any attempt to compare maximum rates for each position because its employees can earn more than the maximum rate while the comparable employees cannot.

To the Union, this is an appropriate and economical way of rewarding long serving and

hard working employees. The Union also argues that the status quo 11-step schedule is supported by the comparables. But, in reality, its argument is that the number of years to reach the maximum wage rate is supported by the comparables. And the Union is correct in that the years to maximum of the four comparables range from 1 year to 19 years with an average of 10.25 years; therefore, the status quo of 11 steps is closer to the comparable average than the District's proposed three-step schedule, though the status quo schedule with longevity skews this calculation to a certain extent.

But years of service, while they correspond to the steps at Cassville, do not do so in the other units, as seen in Table 1 below. And in terms of number of steps to maximum, the District's offer of three steps is closer to the comparable average of 5.25 than the Union's status quo 11 steps. Score one for the Union and one for the District.

**Table 1**

| District | Years to Max | Steps |
|---|---|---|
| Benton | 10 | 10 |
| Highland | 10 | 5 (start rate plus years 1, 3, 5, 10) |
| Potosi | 19 | 5 (start rate plus 60 days and years 7, 14, and 19) |
| River Ridge | 1 | 1 step |
| Average | 10.25 | 5.25 |
| Union | 11 (plus longevity) | 11 (plus longevity) |
| District | 2 | 3 |

**Effect of District's Wage Proposal**

The effect of the wage schedule proposed by the District is to increase the starting wages and to move the employees to the maximum rate in two years, as opposed to the ten years it takes under the status quo schedule. And, except for the position of Head Cook, the maximum rates are at or greater than the rates under the Union's offer. To get a glimpse of the differences between the two offers, let's compare the rates for the lowest paid job

description, Cook, and the highest paid position, Head Custodian, for 2008-09.[8]

**Table 2 – Cook**

| Cook | District's Schedule | Union's Schedule | Step on Union's schedule which matches or nearly matches District's |
|---|---|---|---|
| Step 0 | $9.00 | $9.00 | Same |
| Step One | $10.00 | $9.20 | Step 5 |
| Step Two | $11.00 | $9.40 | Step 10 |

For the Cook, the start rate is the same. But on the first anniversary of hire, the Cook under the District's schedule is making 80¢ an hour more than the Union's schedule; indeed, under the Union's schedule, the Cook would not catch up to the District's Step 1 until Step 5, four years later. At the District's Step 2, the Cook is making $1.60 more than the Union's Step 2; in fact, under the Union's schedule, the Cook does not catch up to the District's Step 2 until Step 10, the maximum step, eight years later.

**Table 3 - Head Custodian**

| Head Custodian | District's Schedule | Union's Schedule | Step at which Union's schedule matches or nearly matches District's |
|---|---|---|---|
| step 0 | $11.50 | $10.89 | Step 3 |
| Step 1 | $12.50 | $11.09 | Step 10 + longevity |
| Step 2 | $13.50 | $11.29 | Step 10 + longevity |

The figures for the Head Custodian are even more dramatic. At the get-go, the Head Custodian is making 61¢ an hour more to start under the District's schedule, a rate the Head Custodian does not reach under the Union's schedule until Step 3 or three years later. At Step 1 on the District's schedule has the Head Custodian is making $1.41 an hour more than under the Union's schedule, an amount the Head Custodian does not reach on the Union's schedule until Step 8, six years later. The District's Step 2 rate is above the Union's maximum rate achieved after ten years such that longevity would have to be

[8]None of these comparisons use the Union's schedule which includes the insurance addition of 61¢ per hour so that we are comparing apples to apples.

applied for several year to match it.

**Table 4 - Head Cook**

| Head Cook | District's Schedule | Union's Schedule | Step at which Union's schedule matches or nearly matches District's |
|---|---|---|---|
| Step 0 | $ 9.50 | $ 9.89 | Union's schedule exceeds District's |
| Step 1 | $10.50 | $10.09 | Step 3 |
| Step 2 | $11.50 | $10.29 | Step 8 |

The Head Cook position is the only one that does not fare as well under the District's schedule. For example, the Union's start rate exceeds the District's start rate by 39¢. But by Step 1, the District's schedule exceeds the Union's schedule by 41¢, a rate that the Head Cook does not achieve in the Union's schedule until Step 3. At Step 2, the District's rate exceeds the Union's schedule by $1.21, a rate not achieved under the Union's schedule until Step 8. The Union's schedule also exceeds the District's schedule at the maximum rate by 39¢ but, again, it takes ten years to achieve the maximum rate under the Union's schedule while it takes only two years under the District's schedule.

To protect those employees who are currently off-schedule, the Employee grandfathers them and agrees to pay them the base increase for the job category. No other employees would be designated as off-schedule, thereby eliminating longevity.

**Arbitral criteria for changing the status quo**

But before we get too excited, let us remember that the District is proposing to change the status quo in two major ways: first, by condensing what is now an 11-step schedule into a three-step schedule; and, second, by eliminating longevity. Both of those were negotiated and agreed to by the parties.

Arbitrators are reluctant to adopt extensive changes to a wage structure via interest arbitration. I framed the burden on the party seeking to change the status quo as follows:

> ...to show that there is an actual, significant and pressing need for change of the status quo; that the proposed change addresses the need in as limited a manner as possible; that comparables are consistent with and supportive of the proposed change; and that a proper *quid pro quo* is offered to

compensate, at least in part, the party resisting the change.[9]

In this case, the District can show that the current wage schedule does not compare favorably to the comparables which could impact, among other things, hiring ability. The District argues that the status quo schedule is back-loaded such that senior employees are well compensated via the longevity benefit while position maximums do not reflect the wages paid its employee and are lower the comparables. The District's proposal does have comparable support for the number of steps it proposes. And the District's proposal seems to be a boom to most employees while protecting the others.

But still, the District is altering the wage schedule and longevity system and, therefore, the burden is on the District to show the need for a change and that its proposal meets that need is the least disruptive manner. Note that if this was a first contract and the two wage structures were presented to this arbitrator, the District's offer would almost certainly be selected; indeed, it would be more likely to be offered by a union with an employer proposing what is here the status quo. But such is not the case. Here the District's proposed schedule does compensate employees greater and sooner than the status quo schedule and it gives the District attractive hire rates and quicker maximum rates when it seeks new employees. Though the requested change has much to show for it, the Union's status quo position, on first blush and without consideration of the quid pro quo issue, is slightly favored. I will address the quid pro quo issue later.

**Hard Issue Number 2: Insurance**

Everybody reading this Award knew this would be the other hard issue. It almost always is. Here the Association's final offer includes changing the mutually agreed-upon health insurance plan design from the WEA Trust Front End Deductible (Deductible) plan to the less costly WEA Trust Preferred (Preferred) plan. The Employer maintains the status quo in its offer. Of course, that is not all there is to this issue or the District would have agreed to it. In addition, the Association's final offer states that when the change to the new plan design is made, the savings should be changed into an additional wage increase which the Association costs at 61¢ an hour.

The Association is in an awkward position here because, in terms of the wages, it argues vehemently that cast forward and total package calculations are meant only for teachers under the now gone QEO, but in its insurance proposal, the Association argues that, like the teachers in a QEO situation where money not allocated to benefits must be translated into wages to make the appropriate total package increase, so it should be here. In addition to going counter to its argument regarding wages, another problem with this argument is that there is no statutory increase limitation of 3.8% total package designation here as it would have been in a teacher case.

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[9]*Racine Wastewater Commission*, Dec. No. 32643-A (Engmann, 12-20-05).

The District argues that the 61¢ an hour does not represent true savings for the District, that when all is said and done, the actual savings to the District is much less. Thus, the District argues that the Union should not receive such a raise that is not paid for by the change, especially when the District does not concur in the change. Now both sides play a lot with the numbers, but it seems to this arbitrator that the District is correct that the savings does not correspond to 61¢ per hour, especially when costs associated with wages (WRS, etc.) are factored in.

The Union argues that when "support staff Association in the comparable districts voluntarily accepted a change of insurance plans which resulted in a savings of premium, the wage schedule was increased beyond the wage comparable increase in Districts without an insurance premium savings."[10] The exhibits and other evidence shows the Union to be correct. But what the Union glosses over are two key words: voluntarily accepted. That is not the situation here. The Union is trying to impose its preferred insurance plan while also imposing the Union-calculated savings on the salary schedule. That is a world of difference from the comparables. In the comparables, both parties agreed to the change in insurance plan AND to the amount that would be added to the wage schedule to compensate employees for that change. That does not occur here.

A companion issue is the Association's proposals to change from the two-tiered prescription drug card to the less costly three-tiered prescription drug card. This change, according to the Union, amounts to a 19¢ per hour wage increase. Again, the change in the prescription drug card has not been voluntarily accepted by the District, nor has the savings of 19¢ per hour been agreed to by the parties. This issue is further confused in that the insurance carrier "has given notice that the two-tiered drug card is not longer available as part of the Cassville insurance plan upon renewal of the District's health plan on July 1, 2009."[11]

This is the issue involving a change in circumstances during the pendency of the arbitration proceedings that I mentioned above would impact this decision. Such a move by an insurance carrier to unilaterally change a plan consistent with the wishes of one party to an interest arbitration, in this case, the Union, does not sit well with this arbitrator; indeed, I am somewhat at a loss as to how to respond to this unilateral determination by the insurance carrier that the Union's position on this issue is preferred; indeed, if I find for the District, what happens to the three-tier drug card and any savings that accrue because of it? As I also mentioned earlier, each side in this arbitration has much to lose and much to gain.

Again, this is a change from the status quo, though this time by the Union. The parties have agreed upon the plan in the past and now the Union wants to change the plan and have all savings from the change as calculated by the Union applied to the wage schedule. The

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[10]See Union Brief in Chief at page 17.

[11]See Union Brief in Chief at page 19.

Union costs this savings at 61¢ an hour, not an insignificant amount, by any means. The District sees this as an increase in the wage schedule of 61¢ an hour, also not an insignificant amount.

Arbitrators are loath to change insurance plans via interest arbitration. Insurance coverage is a very personal choice and impacts both parties so, again, this is the kind of change that should take place at the bargaining table. In addition, the insurance plan may very well impact more than this bargaining unit. There is nothing in the record as to how the Union's proposal would affect the health insurance plan the District may have with the teachers, for example. As the Union is attempting to change the status quo, the burden is on it to present evidence of the plan change's impact on the rest of the District. But again, not including consideration of the quid pro quo, the status quo, this time the Employer's proposal, is favored.

**Quid Pro Quo**

In terms of a quid pro quo, the District argues that, if one is necessary for the changes it proposes, it is contained in the increased financial payment to the less senior employees. This does not rise to the level of a quid pro quo. The Union, on the other hand, argues long and hard that a quid pro quo is necessary from the District for its proposed changes to the wage structure, but it does not it needs one for the changes it proposes. I have discussed the necessity for a quid pro quo as follows:

> There are times when a lesser quid pro quo or even no quid pro quo is needed for a change to be made. Such cases include the situation of when a contract clause or benefit has caused or will cause a significant problem, unseen at the time of agreement, to one or both parties, or the clause or benefit is so significantly out of line with the comparables as to be an aberration, or the clause or benefit is of such a nature that there is a mutual interest and benefit to changing it because it no longer serves the parties well, but only one party has offered a reasonable resolution.[12]

Neither party meets the criteria for being excused from providing a quid pro quo. But neither party offers a quid pro quo for the changes in status quo it desires, while arguing that the other side needs to have one and the one it has is not enough.

So I am back at the Introduction. How can I put these parties in the position they would have been but for their inability to reach an agreement? How can I find common ground when both parties have elements in their final offers that the other side would not agree to at the bargaining table. The District rejects the Union's insurance offer and does not include a valid quid pro quo for its wage schedule offer. The Union rejects the District's wage schedule offer and does not include a valid quid pro quo for its insurance offer. As I noted

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[12]*City of Oshkosh*, Dec. No. 32150-A (Engmann, 4/25/08)

above, I cannot put these parties in the position they would have been but for their failure to reach agreement at the bargaining table. One party is going to get stuck with something it does not want and would not agree to. But what else can happen? What else can I do?

**Conclusion**

The District is proposing to compress the wage schedule from 11-steps to three steps and to eliminate longevity while grand-fathering those employees impacted by the change. There is much to like about the District's wage schedule. Most employees have a higher start rate and all employees achieve the maximum rate which, in most cases, is greater than the current rate, within two years, eight faster than under the status quo. Most employees will received a higher wage and, in some case, a much higher wage increase with the District's schedule than under the status quo schedule. The schedule compares very favorably with the comparables, providing the District with a wage incentive to hire and retain employees. In many ways, except for it requires a change in the status quo to be imposed upon the Union, it's a win-win schedule.

The Union is proposing a change to a more economical health insurance plan, something many employers are seeking agreement with their unions to do. There is much to like about that idea. In a time when insurance costs are rising way beyond the rate of inflation, it is refreshing to have a Union which desires to make changes in the insurance plan that lessons the cost of the premium. As noted by the Union, other comparable districts have made changes and the savings, in whole or in part, was passed on to the employees through the wage schedule. But the fact that the change in insurance sought by the Union and the accompanied increase in the wage schedule were determined unilaterally by the Union and that these changes will occur after the expiration of the contract before us and become part of the status quo for the next agreement makes this arbitrator leery about accepting the proposal. This is vastly compounded by the insurance carrier's unilateral change consistent with the Union's position that just does not feel right or sit right, or whatever metaphor you to use, with this arbitrator.

Therefore, though the Employer is proposing a change to the structure of the wage schedule, including the elimination of longevity, its proposed wage schedule has much that is attractive about it in that it will increase the wages of many employees and allow them to reach maximum pay much sooner than the status quo such that I find it more reasonable than the Union's proposal to unilaterally change the health insurance plan and give itself what it has determined unilaterally to be the savings from this change to the wage structure, especially when compounded by the unilateral change in the drug card by the insurance company. While I discussed other issues above, these are the two main issues and the side that succeeds on its main issue will prevail in this case.

Both parties, especially the Union, made other arguments in this case, too many to answer individually but all of which were considered and found wanting in one way or another.

Therefore, based upon the testimony and exhibits presented at hearing and the argument by the parties made in their briefs, and for the reasoning stated above, this arbitrator finds

**AWARD**

That the final offer of the District is the more reasonable of the two offers and shall be incorporated into the parties' 2007-09 collective bargaining agreement.

Dated at Madison, Wisconsin, this 6th day of October 2009.

By James W. Engmann
James W. Engmann, Arbitrator