

BEFORE THE ARBITRATOR

OCT 13 2010

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RELATIONS COMMISSION

In the Matter of an Interest Arbitration Between

**RHINELANDER SCHOOL DISTRICT**

and

**RHINELANDER EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION  
NORTHERN TIER UNISERV**

Case 69  
No. 68368  
INT/ARB-11249

Decision No. 32990-A

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**Appearances:**

**Mr. Fred Andrist**, Executive Director, Northern Tier UniServ, P.O. Box 1400, Rhineland, WI 54501, appearing on behalf of the Association.

**Mr. Dean R. Dietrich**, Attorney at Law, Ruder Ware, 500 First Street, Suite 8000, P.O. Box 8050, Wausau, WI 54402-8050, appearing on behalf of the District.

**ARBITRATION AWARD**

The Union and Employer named above are parties to a collective bargaining agreement which expired June 30, 2008. The parties filed an interest arbitration petition with the Wisconsin Employment Relations Commission on October 28, 2008. A member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the Investigator by February 16, 2010 and the investigation was closed. On March 4, 2010, the Commission issued an Order appointing the undersigned to serve as the Arbitrator. A hearing was held on June 23, 2010 in Rhineland, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on August 30, 2010.

**FINAL OFFERS OF THE PARTIES**

There are six items in dispute for the 2008-2010 contract. The District proposes no change on five of them, and its only proposal is on wages.

Wages: First year: District – increase all rates \$0.35/hour  
First year: Union – increase all rates \$0.65/hour  
Second year: District – increase all rates \$0.40/hour  
Second year: Union – increase all rates \$0.45/hour

Grievance Procedure Language: The Association proposes to make an editorial change of “in” to “and,” strike the language taking up to 30 days attempting to mutually agree to an arbitrator, and using a coin toss to determine the first strike when striking from a panel of arbitrators.

Holidays for School Year Part-Time Employees: The Association proposes to increase the number of holidays for school year part-time employees by one, New Year’s Day.

Disability Insurance Premium Contribution: The Association proposes that the District increase its premium contribution for disability insurance from \$100 per year employee to \$110 per year per employee.

Night Premium Pay: The Association proposes an increase to the night premium for employees working a majority of hours between 2:00 p.m. and 6:00 a.m. from \$0.15/hour to \$0.25/hour.

Personal Services Compensation: The Association proposes increases the amount paid to paraprofessionals routinely required to perform personal services from \$0.50/hour to \$0.75/hour for hours when they actually perform such services.

### **STATUTORY CRITERIA**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm)(7), Wis.Stats., as follows:

7. ‘Factor given greatest weight.’ In making any decision under the arbitration procedures authorized by this paragraph, except for any decision involving a collective bargaining unit consisting of school district employees, 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, except for any decision involving a collective bargaining unit consisting of school district employees, 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 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 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.

## **THE PARTIES' POSITIONS**

### **The District**

The District says the Association's final offer is overreaching. It has large wages increases that are not warranted, and changes five other benefits. The Association's proposals regarding those benefits do not fulfill the requirements to justify moving away from the status quo. The District is a smaller school district in northern Wisconsin. Rhinelander is considered a "vacation destination," and due to its high equalized value, the District receives little, if any, state aid. During the 2008-2009 and 2009-2010 school years, the District was in financial difficulty. It suffered from failed referenda and was forced to make cuts and other adjustments.

The District submits that the "greatest weight" and "greater weight" criteria should apply to this proceeding. The 2009 Wisconsin Act 28 (the "Act") was enacted on June 29, 2009, and took effect shortly thereafter. The Act removed the "greatest weight" and "greater weight" criteria from consideration by arbitrators in interest arbitrations involving collective bargaining units consisting of school district employees. It has never been clearly stated how the change is to be applied to interest arbitration cases that were pending prior to the Act's enactment. The District submits that because this proceeding was pending before the enactment of the Act, the Arbitrator should consider the "greatest weight" and "greater weight" criteria in this case. The Association filed the Petition for Arbitration in this matter on October 24, 2008, well before the enactment of the Act. At the least, the District believes that the 2008-2009 school year should be viewed under the older statutory criteria as it arises under the same.

Using the greatest weight criteria, the final offer of the District should be selected. It is clear that the District is severely hampered by the levy limitations and cost controls imposed upon it by state statute. The deficits experienced by the District during its budgeting process show that the District is unable to levy sufficient monies to meet the educational needs of the community and its students. Using the greater weight criteria, the final offer of the District must also be selected. The local economic conditions in Oneida County and the City of Rhinelander have been significantly affected by the economic downturn. This region relies heavily upon tourism dollars and the high value of local real estate. The economic downturn has significantly impacted the tourism industry, as well as the economics related to the purchase of vacation homes or second homes in this tourist region. The local economic conditions cannot support the type of wage adjustments sought by the Association.

The parties basically agree on the external comparable pool. In his 1993 decision, Arbitrator Oestreicher deferred to the external comparable pool established by an earlier interest arbitration decision consisting of Antigo School District, Merrill School District, Tomahawk School District, the City of Rhinelander and Oneida County. The parties also use the Wisconsin Valley athletic conference, consisting of the school districts of D.C. Everest, Marshfield, Stevens Point, Wausau, and Wisconsin Rapids, as secondary external comparables.

The only differences are that the Association does not appear to use the Merrill Custodial bargaining unit in its exhibits while the District does, and the District uses all of the units from the City of Rhinelander and Oneida County, while the Association uses only the City Hall and Police bargaining unit from the City and the Courthouse and Highway units from the County.

Based on the District's financial condition and the local economic condition, the District's wage proposal is fair. Wisconsin Statute Sec. 111.70(4)(cm)7r.c requires the Arbitrator to consider the financial ability of the unit of government to meet the costs of any proposed settlement. The District's exhibits show that it has suffered many economic difficulties over the two years covered in this arbitration and had to make various cuts during the 2008-2009 and 2009-2010 school years. The District receives little, if any, state general aid because it is considered a vacation destination. The District also suffers from declining enrollment, and lost more students than any other school district in the primary external comparable pool. It also lost more students than all but two of the secondary comparable pool.

During the 2008-2009 school year, the District faced a \$1.7 million deficit. It ended up taking money from its fund balance, cutting four full-time positions, and utilized other methods to balance the budget. The 2009-2010 year was worse with a potential \$2 million deficit. The District switched health insurance carriers, saving about \$500,000 for the 2009-2010 year. The Board moved from a four period day to a seven period day, and cut 3.22 teaching positions. It reduced graduation requirements from 27 to 22 credits and made reductions in programs and personnel. While the Association believes that the insurance carrier switch means the District has the ability to fund the Association's final offer, the costs savings were already figured in by the District in deciding which cuts needed to be made for the 2009-2010 year. Without those savings, the District would have needed to make more cuts. Thus, the Association has already benefitted from that savings, because more positions may have been cut without them.

In a referendum in April 2008, the District sought \$35.5 million for a new pool and maintenance and upgrades to facilities and operational costs with those improvements. The referendum was defeated. In September 2008, the District proposed a referendum designed to be tax neutral on the levy limit, and it was again defeated. While a referendum passed in February 2010, it will not have any impact on the two school years covered by this interest arbitration. The Arbitrator should put the parties in the position they would have been in had they achieved a voluntary settlement for the 2008-2010 contract.

The District addresses the issue of the fund balance since it was raised by the Association at hearing. The District needs a healthy fund balance because it receives minimal state aid, and other districts in the athletic conference receive larger state aid payments. The District has to pay its costs, including payroll, for long periods of time in between the state aid and tax levy payments. The reserve fund also includes accounts receivables and payments due to the District from county tax collections, so the amount shown does not reflect the actual amount of money the District has in its possession. The deficits in the years at issue here caused the District to borrow from its fund balance and cut numerous personnel, positions, and programs which directly affected students. Despite those sacrifices, the Association has

proposed a final offer that seeks numerous wage and benefit increases, and the financial condition of the District mandates selection of the District's final offer as most appropriate.

The District asserts that the private sector comparables support selection of its final offer. The District surveyed the largest private employers in the District and received four responses that reported wage increases ranging from 0% to 3% for 2009 and 2010. The wages increases under the District's final offer fall right within that range. The responding companies also used other methods to cut costs or curb spending. Three out of the four implemented layoffs in 2009 or 2010, one implemented a wage freeze, and three implemented some other type of cost saving measure, such as changing an insurance plan or the contribution to it, or changes in its 401(k) contributions.

Moreover, wage rates for the District's secretarial and custodial positions compare favorably with wage rates paid in the private sector for those types of positions. Information from Wisconsin's WORKnet shows that the average hourly wage in 2008 for employees in building and grounds, and cleaning and maintenance positions in Oneida County was \$13.01. Under the District's final offer, employees in custodian/general services positions will be making between \$13.99 per hour and \$15.14 per hour for the 2008-2009 school year. The same data from Wisconsin's WORKnet shows that the average hourly wage in 2008 for secretaries was \$13.76 (except for legal, medical and executive positions). Under the District's final offer, employees in the Secretary I position will be making between \$13.69 per hour to \$14.82 per hour in 2008-2009, and employees in the Secretary II position will be making between \$13.26 per hour to \$14.43 per hour.

The District's wage proposal best serves the interests and welfare of the public and is justified by the local economic conditions in the City of Rhinelander and Oneida County. The financial crisis that began in the fall of 2008 has affected all employers and employees in the public and private sectors. The Center for State and Local Government Excellence conducted a survey between November 18, 2009 and December 14, 2009 on the impact of the recession on local government workforces. Between 60-70% of the 396 responding entities stated that they had implemented hiring freezes or pay freezes, over 40% implemented layoffs, and about 30% implemented furloughs. Many made changes to their insurance plans, and 69% increased employee contributions. In April 2009, unemployment in Oneida County was 10.8% (not seasonally adjusted), and in April of 2010, it was 10.3%. Those rates are higher than rates for most Wisconsin counties in that time period. In January 2009, Wausau Paper's Rhinelander mill laid off employees. Solon Manufacturing laid off 33 employees in October 2009. Doctors Foster and Smith laid off 16 employees in March 2010. Mesaba Airlines closed in May 2010, displacing 6 employees. Building permits for private residences in the county fell between 2008 and 2009 from 261 permits to 179 permits. In the last three years, at least 30% of students at each school in the District have been eligible for free or reduced lunch, and that number reached over 51% in September 2009 for one school.

The District states that the external comparable contract settlement dates provide further support for its wage proposal. The Arbitrator needs to keep in mind that many of the

settlements in the primary and secondary external comparables were reached before the full impact of the financial crisis was known. Most of the collective bargaining agreements in the primary external comparable pool were reached before the fall of 2008. In Antigo, the 2007-2009 agreements for both the educational support and professional support units were dated January and February of 2008. The 2009-2010 agreements for both of those unions were dated December 2009 and January 2010, well after the start of the financial crisis, and those units agreed to 0% wage increases for 2009-2010. In Merrill, the custodial unit signed its 2008-2011 contract in September 2008, and the educational support unit signed two two-year contracts in August 2007. Tomahawk adopted its 2008-2010 agreement in September 2008. The only primary external comparable district with collective bargaining agreements entered into after the fall of 2008 agreed to 0% wage increases for the 2009-2010 school year.

For 2008-2009, the District has proposed a wage increase of \$0.35 per hour, which equates to percentage increases of 1.1% to 3.1%, depending on the position. The Association has proposed a wage increase of \$0.65 per hour, which equates to 2.1% to 5.7%. The employees in the primary external comparable pool received percentage increases of 1.7% to 3.7% in 2008-2009, and in the secondary comparable pool, the increases were 1.6% to 4.5% in 2008-2009. For the second year, the District's proposed increase of \$0.40 per hour is a percentage increase of 1.3% to 3.4%, and the Association's proposed \$0.45 per hour equates to increases of 1.4% to 3.7%. In the primary comparables, employees received wage increases of 0% to 4% for this second year, and 0% to 4.5% in the secondary comparable pool. In the local government external comparables for 2008, the City of Rhinelander and Oneida County varied from 1.5% to 4%, and for 2009, the settlements varied from 2% to 4%, and then for 2010 the settlements varied from 2% to 3%. The District's proposed wage increases are not out of line.

The District asks that the Arbitrator note that the lower percentage rates for its proposed wage increases are for the highest paid position in the bargaining unit – a computer technician at \$30.86 per hour. The majority of employees will get between 2% and 3% under each year of the District's final offer. Under the Association's final offer, the majority of employees will receive wage increases of 4% to 5% in the first year and 2.5% to 3.5% in the second year. Those are extremely high and not supported by the external comparables.

Turning to actual wage rates, the Arbitrator should also note that the District's salary schedule has a three year maximum, and other comparables have longer salary schedules. For the head custodian position, the District is in the middle of the primary comparables on wage rates and will continue to be so under its final offer. The head custodian position is paid on the low end of the secondary comparable pool. For the custodian/general services position, the District is in the middle of the primary pool and will continue to be so under its final offer. It leads in wage rates for this position in the local governmental comparables, and again is on the low end in the secondary comparable pool.

With regard to the bookkeeper-administration center/payroll clerk wages, the District is in the middle of the primary comparables but leads when looking at the five year rate for Antigo. It will lead the primary comparables by 2009-2010, and it leads the wage rates for this

position in the local governmental comparables as well as the secondary comparable pool. For the Secretary I position, the District is not the lowest paid in the primary pool and is almost the highest paid in the secondary pool. It is on the lower end for local governmental comparables. As to the account clerk/bookkeeper-high school secretary II position, the District is on the lower end of the primary pool although it improves looking at Antigo's five year rate. It is on the high end in the secondary pool and on the lower end in the local governmental comparables. The District maintains its position among the comparables in almost all instances under its final offer.

Head cook – the District compares favorably in the primary pool, and ranks in the middle of the districts in the secondary pool. For the cook/baker position, the District is not the lowest paid in the primary comparables and improves when looking at Antigo's five year rate. The District ranks in the upper middle of the secondary comparables. For the kitchen helper, the District is on the lower end in the primary pool (again better when looking at the five year rate for Antigo) and is the second highest in the secondary pool. Its position remains the same under its final offer on these positions.

In the next group of positions, the library paraprofessionals/instructional-Title 1-EEN Paraprofessionals, the District is not the lowest in the primary pool (and better when looking at Antigo's five year rate) and ranks in the upper half of the secondary comparable pool. Nothing changes with the District's final offer. As for the interpreter, the District is in the middle of the primary comparables, leads in the secondary comparables, and will continue under its position in its final offer. The Districts leads all of the external comparables for the computer technician position. For the network PC support specialist and software support specialist, it is in the middle of the primary pool, not the lower in the secondary pool, and on the lower end in the local governmental comparables.

Thus, the District notes that for some positions, it ranks at or near the top, for others it ranks in the middle, and for still others it ranks near the bottom. The actual wage rates have been voluntarily negotiated over time, and the parties have not been to interest arbitration since 1993.

The District argues that the Association's wage comparisons do not reflect comparable positions and contain some errors. The Association includes wage rates for 2010-2011 if available in the external school data and includes 2011 wage rates for the City of Rhinelander and Oneida County. The Association lumps all custodial positions together, all kitchen staff positions together, all clerical positions together, all aide positions together, and all technology positions together. The Association has included some positions that the District does not believe are comparable to positions in the District. For example, the Association includes County highway positions such as shop foreman, recycling assistant, equipment operators I & II's, sign painter - and compares these to custodial positions at the District. The Association compares a social service aide in the County to the aides at the District, and uses a parcel mapping/GIS technician in the County to compare to District computer positions.



The District also has found errors in the Association's wage comparisons. The Association says it is comparing Classification 4 for Wausau aides but is actually using the higher paid Classification 1 rate. The Association's wage rates for Marshfield custodians has the wrong years – the rates labeled for 2007-2008 are actually the 2008-2009 rates and all subsequent rates are mislabeled.

The District asserts that the Association's other proposals – on the grievance procedure, holidays, disability insurance, night premium pay, and personal services pay – all fail the test to move away from the status quo. As Arbitrator Petrie stated the Village of Fox Point (DPW), Dec. No. 30337 (11/02), the proponent of change must show that a legitimate problem exists which requires attention, that the disputed proposal reasonably addresses the problem, and that the proposed change is accompanied by an appropriate quid pro quo. The Association has not shown any compelling need for the changes it seeks and definitely not provided any quid pro quos for benefit increases it seeks.

The Association has failed to show a legitimate problem regarding the current grievance procedure language. The external comparables are all over the board on methods of requesting and striking arbitrators for grievance arbitrations. The Association has failed to offer any quid pro quo for its proposal. The same is true for the Association's proposal for increasing the number of holidays for school year part-time employees. Giving the Association a generous wage increase and increasing various benefits while receiving nothing in return would not be the result of a voluntary settlement. The Association also overreaches on its proposal to increase the District's contribution for disability insurance premiums. The contribution has been voluntarily negotiated in the past, and the Arbitrator should not disturb the benefit without a showing that a legitimate problem has occurred. The District makes the same arguments regarding the Association's proposal to increase night premium pay and personal services pay. It notes that the Association's exhibit for premium pay is misleading, because the Association lumps all types of premium pay into its exhibit, such as premiums for other duties, certifications, or work production. For example, the Arbitrator cannot look at what one school district pays a production cook who averages more than 1,400 meals per day and make any determination about the amount that the District should be paying employees working during the evening or work diapering students. As to the personal services compensation, the District cannot fathom why there would be an issue when it is a benefit that no other primary or secondary external comparable has.

The District asserts that the Arbitrator must take into account the overall compensation, including insurance, and the Association enjoys an extremely generous health insurance benefit. A review of the primary and secondary external comparables shows that the Association enjoys an extremely low health insurance premium contribution (\$10/month/single and \$25/month/family) and a generous plan (no deductibles or coinsurance for in-network services). Employees in the Merrill School District pay 10% premium contributions (\$79.84/single and \$180.99/family in 2009-2010 with a \$100/200 deductible). Employees in the Tomahawk School District pay 5% (\$39.07/single and \$88.29/family in 2009-2010 with a \$250/500 deductible). Antigo has a number of plans with differing deductibles and

contributions. Employees in the City of Rhinelander pay 10% of the premiums and County employees pay 5%. Both those entities have deductibles. D.C. Everest employees pay 10% with \$250/500 deductibles. Employees in the Marshfield Auxiliary and Custodial/Maintenance units (hired after December 1, 2006 and July 1, 2009 respectively) pay a \$500/1,500 deductible, and the Auxiliary unit pays 5% of family premiums while the Custodial unit pays 5% of both single and family premiums. Employees in the Stevens Point District's Clerical unit pay 8% toward family plans, while employees in the Custodial and Maintenance unit hired after July 1, 2007, pay 5% on single plans and 9% on family plans. The Food Service unit and the Educational Assistants unit contribute 5% on single plans and 40% on family plans. Wausau School District Educational Support Professionals pay 15% on premiums for the Enhanced EPO plan, while those in the EPO plan pay a \$250/750 deductible and the difference between the EPO premiums and what the District contributes toward the Enhanced EPO premium. Employees in the Wausau Maintenance and Custodial unit pay 10% toward premiums. Wisconsin Rapids School District employees pay \$100/200 deductible for in-network charges. Rapids custodians hired after July 1, 2007, pay 15% of the premium. Food service employees do not pay for the single plan but pay the difference between the family and single plan if they take the family plan. Members of the Office and Professional Employees unit pay 3% on the single plan and 15% on the family plan. Thus, the District states that the evidence overwhelming shows that it offers a generous insurance benefit where the majority of the primary and secondary external comparables require payment of deductibles and larger premium contributions.

The District states that its final offer is more in line with the consumer price index than the Association's final offer. The Nonmetro Urban Areas Consumer Price Index for North Central States/Class Size D was 3% in May 2010, and the National Consumer Price index was 2% for all urban consumers and 2.6% for urban wage earners and clerical workers. The year-to-date increase (from May 2009 to May 2010) for all urban consumers was 2.02%, and the year-to-date increase for urban wage earners and clerical workers was 2.56%. The CPI started falling in the fall of 2008, was negative for a majority of 2009, and started rebounding at the end of 2009. The District's final offer shows total package increases of 3.01% in 2008-2009 and 5.27% for 2009-2010. The Association's final offer shows increases of 4.42% and 5.44% respectively. The Association's final offer exceeds the CPI by a larger margin than the District's just taking into account its wage proposal.

Additionally, the Association has proposed increase to the night premium pay and personal services compensation that will cost the District an additional about \$3,585.15 per year, and there are added costs to the holiday and disability premium proposals. The District's final offer most closely follows the CPI.

### **The Union**

The Union is in basic agreement about the prior arbitration award that established the primary comparables. They are Antigo ESP, Antigo PSA, Merrill ESP, Oneida County Courthouse Employees, Oneida County Highway Employees, Rhinelander City Hall and Police

Department ESP Employees, and Tomahawk NEST. The Union uses the secondary set of comparables of the Wisconsin Valley Athletic Conference, which are the units of D.C. Everest Custodians, D.C. Everest Paraprofessionals, Marshfield Auxiliary Personnel Association, Marshfield Custodial/Maintenance Employees, Stevens Point Clerical Association, Stevens Point Custodial & Maintenance, Stevens Point Educational Assistants, Stevens Point Food Service, Wausau Maintenance & Custodial, Wausau ESP, Wisconsin Rapids Custodians, Maintenance & Computer Technicians, Wisconsin Rapids Food Service, and Wisconsin Rapids Office & Professional Employees.

At hearing, the parties did not agree as to whether the old statutory criteria including “greatest weight” and “greater weight” considerations apply to this case or whether the legislature’s change in removing those for school district employees affects this case. The Union states that based on conversations with people who have had contact with the General Counsel of the WERC, it believes that the revised statute applies.

The Union offered several exhibits that show the District’s ability to pay. While the District will paint a picture of financial gloom, it has the ability to pay the Union’s final offer. The District entered several exhibits about failed referenda and proposed cuts but failed to complete the picture about the referendum that passed April 16, 2010, which was during the term of this contract. The Union has included exhibits that showed the voters’ support for the school system and the effect on the District.

In comparing Rhinelander to other school districts, it is in a middle of the road position in most areas that benchmark a district’s financial picture. The District’s fund balance has grown better than most districts, nearly doubling (92%) while the state average increase is only 25.6%. Rhinelander at 31.7% ranks in the top half of the six schools and is higher than the state average (17.3%) when considering their fund balance as a percent of their budget. Rhinelander at \$12,439.07 ranks in the top half of the six schools but is slightly below the state average (\$12,463.36) when looking at the revenue behind each student. From 1992 to 2009, the change in Rhinelander’s levy rate decreased (54.35%) more than the state average (49.3%) and is only fourth out of the six school districts. Rhinelander’s 2009-10 levy (8.6%) is below the state average of 9.15%. Oneida County’s per capita income increase (32.9%) is better than all but one of the four surrounding counties and the state average (29.6%). Looking at the dollar amount for each county’s per capita income, Oneida County ranks second (\$36,519) of the five counties in the comparison.

The Union states that the District’s ability to pay is the savings the District has reaped from a change in the health insurance carrier. The District has saved \$70,000 a year just on the support staff, and it acknowledges that this savings is an annual savings that will repeat from year to year.

Looking at the final offer, the Union notes that the first editorial change in the grievance procedure is insignificant. The next part of the grievance procedure – to strike the 30 day time limit to agree on an impartial arbitrator – is an unnecessary waste of time with this

District. Four out of eight primary comparables to not attempt to mutually agree to an arbitrator prior to asking the WERC for one, and in the athletic conference, 7 of 14 units make an attempt to agree to an arbitrator.

The Union is attempting to obtain a 6th holiday for school year part time employees. That would compare to 9 holidays for school year full time employees. A review of the primary comparables shows that 4 out of the 8 have 6 or more holidays for part time employees. This does not include two Oneida County units because they have a paid time off provision instead of holidays. Therefore, of the school districts in this set, 4 out of 6 districts have 6 or more holidays for part time people. Antigo ESP increased its paid holidays from 4 to 8, and the Antigo Professional Support Association increased its paid holidays from 6 to 7. In the conference, 10 units out of the 14 units get 6 or more holidays. The Union reminds the Arbitrator that this additional holiday is for people only working as little as 2 hours a day and less than 8 hours a day. It is not uncommon for a district to move more and more people to part time and away from full time.

The Union states that the primary comparables clearly favor its disability insurance proposal for the District to contribute up to \$110 premium per year per employee. Only 2 of the 8 do not have 100% paid by the employer. The Rhinelander City Hall and Police Department ESP do not have LTD insurance. The secondary comparables are similar. Only 4 of the 14 do not have 100% paid disability insurance. Two groups in D.C. Everest and Wisconsin Rapids Food Service Employees have 90% paid by the District.

Regarding the night premium, 4 of the primary comparables do not have custodians within their units and should not be considered. Of the 4 that do have custodians, 2 have night premiums higher than the District. In the secondary comparables, 3 out of 6 units have custodial employees with a night shift premium. Only Marshfield Custodial/Maintenance has a night shift premium higher than the District. They are going through a series of years that will take them from \$0.27 to \$0.30 in 2012. D.C. Everest custodians get ½ hour paid lunch for the second shift, which results in a significantly higher premium.

The issue of compensation for paraprofessionals was addressed at hearing. Paraprofessional Kelly Bushong testified that paraprofessionals only get paid the additional hourly rate for the hour they perform personal services such as catheterizing, diapering, diabetic test monitoring and tube feeding. She used a time sheet to show how they provide the District with this information, and testified to the frustrations of filling it out. In a normal day, an employee may only be compensated a dollar or two extra at the current rate. They are not receiving this extra pay all day long, and with this change, they may receive two to three dollars additional pay for the day.

Turning to the salary schedule, the Union breaks this issue down by classification to more fully examine the effects of its proposed increases of \$.065 and \$.45 on each classification. First, the custodians. Antigo is the only other unit with a head custodian classification, and the Union's offer would not change the relationship between Antigo and the

District in this classification. The District is \$5.96 behind Antigo and the Union offer closes that by on \$0.06 in the first year and by \$.045 in the second year. For custodians, the Union's offer will still keep them below their counterparts in all of the units. The Union acknowledges that the 2008-2009 increase is the highest and will address the reason later. In 2009-2010, the Union's offer is in line with all the primary comparable units except Antigo, which took a pay freeze.

The Union's offer for kitchen staff does nothing to disturb the relative ranking of the units in this classification. With Antigo's wage freeze, all the other units catch up but maintain their relative position. The same is true with the aides. The wage rate increase is right between Merrill and Tomahawk. For the technology staff, the parties have agreed to a much higher base wage rate than the comparables. The Union's offer does not disturb the ranking, although the Oneida County employees will actually catch up somewhat the District's staff over the two years. The percentage increase of the Union's offer is below most others when it is looked at over the two years. On the clerical staff, the Union's offer maintains the relative ranking of these positions. When the wage rate is examined over the two years, the District's increase is second behind Tomahawk.

Looking at other comparables – Wausau, Wisconsin Rapids, and Marshfield – the Union notes that the custodians wage rate increase of \$1.10 over two years is behind Wausau and Wisconsin Rapids. It is \$0.29 cents ahead of Marshfield, but Marshfield's third year increase of \$0.52 is a motivator for the modest increase in the first two years. For the kitchen staff, the first year increase is in line with Wisconsin Rapids but higher than Marshfield. This classification illustrates the difference between settling for a percentage increase as opposed to a monetary increase. Because the aides are typically a lower paid classification, a percentage increase here does not generate the same monetary increase as in other classifications. And for the technology staff, Marshfield and Wisconsin Rapids' monetary increase over the two years are higher than the Union's here. In the clerical staff, Marshfield's 3% increase generates slightly less than the Union's offer here.

The Union realizes that its offer is on the upper end of the comparables in 2008-2009 but is not as high as some. The District's offer is on the lower end of the comparables. The District is choosing to ignore the savings in insurance which it achieved when it unilaterally changed the carrier November 1, 2008. But its own accounting, the District announced to the Board that it would save \$70,000 in the first year with the savings repeating in subsequent years. The Union believes that the employees should share in that savings, given the fact that the District was arguing total package.

There were 98.4 FTE in 2007-2008 based on the spreadsheets provided by the District when this bargain started. Taking that \$70,000 and dividing it evenly among those 98.4 employees allows for a wage increase of \$0.89 an hour per year before any "new" money is introduced. The savings alone covers the District's offer over the two years since it will repeat from year to year since the base is smaller. The Union's second year offer is in line with the comparables, so it limits its argument to the first year difference between the parties. If the

District is ignoring the savings and is offering \$0.35 an hour on its own volition, the difference represents the portion of the savings going to the support staff. In other words, the Union is asking for \$0.30 of the \$0.89 savings. The District can pocket the \$0.59 an hour difference in the first year alone.

The parties have made a conscious choice to express their final offers in a monetary amount rather than a percentage. They have recognized that when settling on a percentage increase, the wage scales get spread further and further apart. A 3% increase on \$12.00 generates a smaller increase than on \$31.00. The parties did not want the aides getting \$0.36 increase with technology employees getting \$0.93 increase. Therefore, one must be careful when comparing wage increases here to other unions. If looking at percentages, do you use the 2008-2010 increase of 2.06%/1.43% in the computer technician position in the Union offer? Or does one use the 1.12%/1.38% of the District's offer? At the low end of the spectrum, the kitchen helper level 1, the Union's offer generates a percentage increase of 5.89%/4.08% and the District's offer is 3.26%/3.73% for this position.

Therefore, it is more appropriate to use a monetary comparison but weigh carefully agreements in other units that were based on percentage because they were not concerned about the increasing spread to the wage scales.

Finally, the Union has noticed that the District is proposing to delete the positions of "Maintenance/Carpenters/Mechanics" without properly showing it. These positions are at the top of page 27 in the collective bargaining agreement. There are not found in the District's final offer. While there is no one in those positions currently, there were people that the District showed in their costing. The Union is unable to determine if the District included this position in its costing because of the lack of information behind the costing. The position does not show up on the District's seniority list. It does show up on the Union's costing. Don Lau held this position. An additional concern is that someday the District may choose to put someone in these positions and the Union will have to reinvent the wheel for them.

### **In Reply, the District**

In its reply brief, the District objects to the Association's characterization of the District's financial condition. The Association argues that the referendum passed on February 16, 2010, should be considered because the referendum occurred during the term of the collective bargaining agreement. The District disagrees and submits that the referendum has no impact on the school years at issue here, and that it will begin affecting the District's finances during the 2010-2011 school years and for two subsequent school years.

The District states that it is not making an inability to pay argument, but has provided exhibits and argument regarding the difficulties it faced in balancing its budget during the two years at issue. The District made numerous cuts and curbed spending during the 2008-2009 and 2009-2010 years. In its brief, the Association states that Rhinelander is in a middle of the road position in most areas that benchmark a district's financial picture. It states that the

District's fund balance has grown better than most districts. The District submits that recurring expenses such as wage increases should not be paid out of the Fund 10 balance. The District, like Tomahawk and Northland Pines – all vacation destinations with high property values and lower state aid – have larger percentage Fund 10 growth when compared to the other external comparables. The District has to keep a large fund balance to pay operating costs for long periods of time in between payments from property taxes as its state aid payments are limited and infrequent. The other vacation destination districts do the same thing.

Regarding per pupil revenue, the District is ranked third out of the six external comparables and is below the state average. It ranks fourth out of six in regard to levy (mill) rate change, and all but one of the external comparables listed have decreased more than the state average. When looking at the external comparables in regard to per capita income by county, all but one increased more than the state average.

The District takes issue with the Association's argument that the money saved by switching health insurance carriers should be returned to the Association in the form of increased wages. There is a grievance currently pending on the decision to switch carriers, and the District believes it had the right to change carriers under the contract language. This is a matter for grievance arbitration, not interest arbitration. Further, the carrier change was one of a myriad of cost saving methods the District used to balance the budget in the years at issue in this matter. With the cost savings from the insurance carrier change, the District would have likely need to cut more positions, including those in the Association. The savings were used up to allow the District to save personnel and programs. There is no stockpile of savings that can be used to fund the Association's wage increases. The Association's entire justification of its 2008-2009 wage increase, which even the Association admits is higher than most of the external comparables, relies on the savings from the carrier switch.

The District asserts that the Association has not made a catch up argument or justified its wage proposal. The Association states that for every single classification of employees, its final offer does not disturb the relative rankings between the primary external comparables and the District. The same is true for the District's final offer. The Arbitrator should keep in mind that the district has a salary schedule with a three year maximum, while many of the external comparables reach salary maximums in much longer lengths of time. Apparently the Association is arguing that it should receive more money when the District's ranking in regard to the external comparables does not slip under either final offer, but it should not obtain the large wage increase it seeks .

In 2008-2009, the Association is asking for \$0.65 per hour, which is 2.1% to 5.7%, with most of the employees getting a 4% to 5% wage increase. Antigo settled for a 2.75% wage increase, Merrill's custodial unit settled for \$0.42 per hour and the educational support unit \$0.40 per hour, and Tomahawk settled for \$0.46 per hour. The Association's \$0.65 is much larger than the other increases received by the primary externals. In the second year, the Association seeks \$0.45 per hour wage increase. Antigo settled for 0%, Merrill custodians settled for \$0.42 per hour and the educational support unit settled for \$0.40 per hour, and

Tomahawk settled for \$0.52 per hour. The wage increases for the local government primary external comparables ranged from 1.5% to 4% for 2008, 2% to 4% for 2009, and 2% to 3% for 2010. The secondary external comparable school districts ranged from 1.733% to 4.5% in 2008-209 and from 0% to 4.5% in 2009-2010.

Settlement dates are also important, and many external comparables settled their contracts before the financial crisis occurred or its impact was fully known. Antigo settled in late November and early December 2009 with 0% wage increases. The 2010-2012 labor contracts for the City of Rhinelander DPW and Fire Unions were dated December 14, 2009 and contained 1.5% splits or 2% on the last paycheck respectively for 2010. The 2009-2011 Oneida County Deputies contract was approved on April 20, 2010 with 2% wage increases in 2009 and 2010, and the Public Health Nurses got 3% in 2009 and 2% in 2010 in a contract approved on February 16, 2010. D.C. Everest School District paraprofessionals signed their agreement on May 10, 2010 with a 1% wage increase for 2009-2010. The Stevens Point clerical unit approved a tentative agreement on May 10, 2010 which contained a 1.5% wage splits for both 2008-2009 and 2009-2010. The external comparables support the fact that the Association's wage increase for 2008-2009 is too high, and more recent settlement show that school districts and local governments are settling on lower wage increases in this uncertain economic climate.

The District notes that the parties have not been to interest arbitration for 17 years and have been able to voluntarily agree on what the wage rates should be for various positions. The Association has not provided any evidence that the District's ranking in regard to the externals has changed. Given the fact that the current wage rates were the product of voluntary negotiations, the Arbitrator should be reluctant to award the Association its extremely large wage increases without any real justification or quid pro quo. There is no evidence that the District's wage offer will result in turnover or loss of job applicants.

The District disagrees with Association on what the externals show for the grievance procedure language, noting that Oneida County Highway requires the parties to first try to agree on an arbitrator, thus taking the number of primary externals supporting the Association's proposed down to three. While the Association called the current language for agreeing on an arbitrator an unnecessary waste of time with this District, it offered no evidence of that. While the Association raises the fact that two Antigo units increased the number of holidays for school year employees, it failed to point out that they got 0% wage increases for that year. The Association has not shown why the dollar amount of the District's contribution toward disability insurance premiums needs to be changed at this time. On the night premium pay, the Association says two primary externals have night premiums higher than the District, and thus two do not. Three of the six secondary externals have no night premium. Finally, on the personal services compensation, the Association seems to be arguing that because its proposal is not very costly, its final offer should be adopted. Regardless of the cost, the District should not have to pay more if the Association has not proven that the increase is necessary now.



### **In Reply, the Union**

The Union notes that the District has asked that the “greatest weight” and “greater weight” criteria be applied to this proceeding. While the District pointed to the October 2008 date that the petition was filed, the order certifying that the investigation was closed and providing for final and binding arbitration was in February and March of 2010. The revisions in the statute apply to this proceeding. The District also asks that the Arbitrator use one set of criteria for the 2008-2009 year and another set for the 2009-2010 year, which minimizes the District’s argument that the date of the petition is the controlling date. The Union believes its position is consistent and correct.

The Union objects to the District’s point that the District is a property rich district that receives little state aid and that puts it in a difficult financial situation over the past few years. It seems to the Union that this fact only determines where the money comes from, not how much there is of it. Given the reductions in state aid to school districts statewide in recent years, this only adds to the financial stability of the District, which was not forced to significantly increase its levy to make up for the reduction in state aids that some districts in northern Wisconsin had to do. The District was able to reduce its levy rate by 54.3% from 1992 through 2009.

The District also argued that it has declining enrollment, and student enrollment is a factor in determining school funding only when receiving state aid. Thus, declining enrollment here is not as big of a factor for the District. Also, there is no District exhibit giving exact numbers, and the Union states that the District failed to substantiate its argument that declining enrollment is a factor in this proceeding. The Union stands by its position that the fund balance is a factor that must be considered in this proceeding. The District increased its fund balance by 92% at the same time it was planning cuts. If it is an inconsequential number, why does the DPI require it to be tracked? While school funding is a challenge, the District is not challenged to the extent it claims, and sometimes it is a matter of priorities, such as fund balance versus services to students.

The Union states that the District’s arguments about school funding culminate with the cuts the District either has made or threatened to make. Since the District was going through a series of failed referenda, it needed to make a case in order to pass a referendum. Some of the cuts were budget driven, some were priority driven, and some were scare tactics to encourage a favorable vote on a referendum. An example of this is when the District points to a number of non-renewals issued in any given year. Some districts give out a large number to keep their options open, knowing that these same teachers may be recalled at any time. Or if a laid off teacher finds another job, a replacement may be secured. Also, if those non-renewals were due to budgetary reasons, they should have been layoffs and not non-renewals.

While the District would like the Arbitrator to put the parties in the position they would have been in had they achieved a voluntary settlement for the 2008-2010 contract, it takes two parties to fail to reach a voluntary settlement and the District played its part well. It has now

introduced another factor not previously mentioned regarding its finance picture. It talked about ARRA funds and recognizes that this funding allowed reductions not to take place. These funds became available during the term of this contract and staved off other reductions and freed up money to be used elsewhere. The Union also disputes the reliability of the District's private sector survey.

On the holiday for part time employees, the Union believes it has shown a need by the comparables and points to the unfairness of the problem. Part time employees work the same number of days as school year employees, just fewer hours per day. Why shouldn't they have the same number of holidays, just fewer hours per day, as other school year employees? Given the fact that they already work fewer hours per day, having fewer holidays than their co-workers sets up a negative dynamic within the workforce that the District should want to avoid. The District is steadily increasing the number of part time school year employees.

The Union maintains that this bargain is about the District's notion that it offers a generous health insurance benefit so it should not have to grant an adequate wage increase. The District maintained a total package mentality throughout this bargain. However, it does not want to recognize that when there is a savings in one level of total compensation, there should be a corresponding increase somewhere else. With a cheaper benefit, more emphasis can be given to wages.

The Union believes that the comparables favor its offer in enough cases to prevail in this matter. The Union's offer does not disturb the status quo in a meaningful way. The District can afford the Union's offer. The stipulated agreements also represent compromises, where the parties agreed to eliminate overtime just for time over 40 hours instead of time over 8 hours a day, and agreed to change vacation accrual from 20 hours during the periods of 2 weeks before and 2 weeks after school to 104 hours.

### DISCUSSION

First of all, there is a question of whether the criteria of "greatest weight" and "greater weight" apply in this proceeding. The interest arbitration petition was filed in October of 2008, the law changed in June of 2009 to eliminate greatest weight and greater weight criteria for school district employees, and the final offers were completed in February of 2010. It is my understanding that the change in the law was effective immediately and included interest arbitration cases that were filed before the law changed. (See also Iowa-Grant School District (Support Personnel), Dec. No. 32684-A (Honeyman, 9/09).) At any rate, the parties had seven to eight months to file their final offers after the law was changed and are not prejudiced by the change. I will not give any consideration to the greatest and greater weight criteria.

This case is really about the wage increases, especially for the first year of the contract. There are some other minor issues. The Association's proposal on changes for the grievance procedure is reasonable enough on its face, but the Association fails to show any need for a change from the status quo. The Association has only said at the hearing that the District has

never agreed to an arbitrator in the 30-day period of the grievance procedure, and that it is a waste of time. The Association does not say whether there have been many grievances and whether the current language has actually caused a problem. The Association also has not given the reason for the change in the disability premium, as there is no information about the amount of the premium and whether the employees would be picking up more of the premium without this change. This information would be important in determining which party's proposal (or lack thereof) is preferred. The proposals on holidays, night premiums, and personal services pay are all minor improvements and not costly, and none of them significantly diminish or enhance the Association's final offer in light of the much larger issue of the wage increase.

The Association's five proposals other than wages – grievance procedure, holidays, disability premium, night premium, personal services pay – may be minor when they stand alone, but when lumped together, they have a somewhat greater impact. The Association has asked for several improvements without showing a compelling need or any quid pro quo. The Association points out that it has made compromises in the stipulated agreements, particularly in the area of summer overtime and vacation accrual. Even if all the stipulated agreements and these minor proposals turned out to be a wash, which is unlikely (the District shows the cost for personal services and night premium to be over \$9,000 for two years), the wage issue would still determine which party's final offer prevails.

The parties agree on the comparability pool. The primary comparables are the school districts of Tomahawk, Merrill and Antigo, and the City of Rhinelander and Oneida County. The secondary comparables are the school districts of Wausau, D.C. Everest, Marshfield, Wisconsin Rapids, and Stevens Point.

Regarding wages – the parties appear to agree that their final offers do not change the historical rankings for positions and classifications on wages. If the individual positions or classifications remain unchanged in the rankings of the external comparables under either offer, it is a mixed blessing. On one hand, one could argue the higher offer is acceptable because there is no undesirable leap-frog effect that causes the external that falls behind to make some catch up and on and on it goes. On the other hand, either party's offer could be acceptable just because there is no change in the rankings. So the ranking of classifications among the comparables is not determinative in this award.

One of the statutory factors to be considered is 7r(j) which directs the Arbitrator to consider "such other factors . . . 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." Timing is important in bargaining labor contracts. Traditionally, when local or general economic conditions are poor, a more costly proposal is less attractive than during good economic times. (See Berlin Area School District (Support Staff), Dec. No. 31161-A, (Grenig, 9/05) and Wittenberg-Birnamwood School District, Dec. No. 29375 (Vernon, 4/99).

When the prior contract expired in the middle of 2008, the country was already in a recession which started in December of 2007 and worsened in September of 2008, when the housing and mortgage situation came fully to bear on lenders, and banks and financial institutions started to fail. Parties in negotiations for collective bargaining agreements were clearly aware that their settlements would reflect lower increases in wages than past contracts, and the evidence bears this out.

There are three primary school district comparables – Antigo, Merrill and Tomahawk. Antigo's educational support unit has a 2007-2009 contract dated February of 2008, and a 2009-2010 contract dated December of 2009. Antigo's professional support unit had a contract for 2007-2009 dated January of 2008 and a 2009-2010 contract dated January of 2010. For the year 2008-2009, comparable Antigo employees received a 2.75% increase and a zero increase in 2009-2010. The Rhinelander District's offer for 2008-2009 is \$0.35, which amounts to a 1.1% to 3.1% increase and the second year is \$0.40, which amounts to a 1.3% to 3.4% increase. The Association's offer is \$0.65 or 2.1% to 5.7% in the first year and \$0.45 or 1.4% to 3.7% in the second year. The two years together would exceed Antigo's settlement under either offer, which makes the District's offer closer than the Association's offer.

Merrill's custodial unit had a 2008-2011 contract signed in September of 2008. Merrill's educational support unit had a 2007-2009 and another 2009-2011 contract signed in August of 2007. The custodial unit got \$.042 in both comparable years (08-09 and 09-10), which was 2.8% to 2.9% in the first year and 2.7% and 2.8% in the second year. The educational support unit got \$0.40 in both comparable years, which amounted to 1.7% to 3.5% in the first year and 1.7% to 3.4% in the second year. Those numbers line up better with the Rhinelander District's offer than with the Association's offer.

The third primary comparable, Tomahawk, had a 2008-2010 agreement adopted September of 2008. Employees got \$.046 or 2% to 3.7% in the first year, and \$0.52 or 2.2% to 4% in the second year. This settlement is also closer to the Rhinelander District's offer than it is to the Association's offer.

Compared to the other districts, the District's offer might be a nickel too low in the first year, but the Association's is a quarter too high. The second year of the parties' offer is not really the problem here, because they are only a nickel apart. It is the first year that is the problem, and the Association even admits that it is a little on the high side. The District notes that the lower increase is for the computer technician who made over \$30.00/hour. So the Association's final offer would give the majority of employees in the unit wage increases of 4% to 5% in the first year of the contract. The Association's exhibit #4-6 shows that the Association's average per cell increase are 4.26% and 2.95% for the two years, while the District's average per cell increase is 2.34% and 2.68%. The numbers for the Association are clearly out of line with the primary comparables for the first year. (There is some support in the secondary comparable districts but then only in the custodial categories in Wausau and Wisconsin Rapids.)

The primary comparables of the City of Rhinelander and the County of Oneida show a similar pattern, that people settling labor contracts in 2008 and 2009 were not getting 4% to 5% increase in wages. The City settled contracts in 2008 and 2009, with the 2008 increases ranging from 1.5% to a delayed 4% in the DPW (0% up front and 4% midyear) and the 2009 increases similar. The County also settled contracts in 2009, and its 2008 increase was a 3% pretty much across the board, with 2009 wage increases running 2% to 3%. The same pattern is true for the secondary comparable pool, with the exception of the Stevens Point custodial and maintenance unit.

The Association failed to take into consideration the timing of the contract, that the recession had gone into full swing and times were looking tough all over. It failed to recognize that its primary comparables were settling for lower wage increases than it was seeking. There are no increases anywhere, in the school districts, city or county, primary or secondary comparables to support the Association's first year offer. The parties should have been settling their collective bargaining agreement sometime around the middle of 2008 or the fall of 2008 or at worst in 2009, and the wage increases being given during period of time were not as high as the Association seeks in this proceeding. There is little or no doubt that the District was struggling at this time with its budget, falling short the first year by \$1.7 million and \$2 million in the second year. There were cuts made to services and personnel in order to balance the budget, and the District took money from its fund balance and used the savings from the change in health insurance carriers.

The Association's main argument is that the District has enough money to pay for the Association's offer because the District has a large Fund 10 balance and it saved a lot of money in health insurance premiums by unilaterally switch insurance carriers. The District's Fund 10 balance grew 92% between 2003-2008, and it is nearly one-third of its budget, while the statewide average is 17%. However, Districts generally consider these Fund 10 reserve monies not available for recurring and ongoing operational expenses such as wages. See Whitewater School District (Support Staff), Dec. No. 3-740-A (Yeager, 9/04). Moreover, the District relies heavily on property taxes for its funding, not on state aids. Since it receives property tax payments only twice a year, it needs to fund its day to day operations through its savings in fund balances.

The savings in health insurance was really not a source for improved wages for a couple of reasons. First, the District used it all to balance its budget and prevent further layoffs and reductions in services. Secondly, no other employee group shared in the savings by getting more in wages, although the teachers' contract for 2009-2010 was also not settled. The District admits that it used the savings to balance its budget and help fill the gap in the budget deficit. The Association notes that there is a \$70,000 savings for the support staff alone, and the District could easily use that money to fund the Association's offer. The Association has figured out that with 98.4 TFE's, there is \$0.89 per person available. If the District has already offered \$0.35, the Association is only asking for another \$0.30 and the District can keep the other \$0.59. The Association is not asking that the health carrier savings be used as any quid

pro quo for wages in exchange for an insurance concession, but is pointing to a source of money that could enable the District to pay for the Association's offer. The District unilaterally changed the carrier and this is the subject of a pending grievance, so the Arbitrator has nothing to say on this matter in this proceeding. It is just worth noting that the District has not claimed that it is unable to pay the Association's final offer, but it believes that it has had financial difficulties that are significant and the Association has picked a bad time to ask for a higher than normal settlement. The Association argues that when there is a savings in one level to total compensation, i.e., insurance, there should be a corresponding increase somewhere else, i.e., wages. This is not necessarily true, because if insurance premiums go up, wages do not go down.

Even where an employer has the ability to pay, a union must have some reasonable basis for asking for a wage increase that is higher than the going rate. In this case, the Association's first year wage offer is higher than the comparables and the Association has not put forth a reasonable basis for its request. If certain classifications of employees are falling far behind the comparables, such as the head custodian position, it is reasonable to ask for a catch up wage for that classification. However, the Association did not do this; instead, it asked for extra compensation for personal services where in fact there is no support in the comparables at all for this classification getting extra compensation. Both parties agree that either final offer keeps the classifications within their historical rankings. Thus, the Association has not made a catch argument or solid offer based on catching up those that need to catch up.

If the Association's higher first year wage proposal is based on the health insurance savings from the change in carrier, the Association has not shown that it should get a share of the savings as any quid pro quo for this change. There is no evidence in the record – and there's plenty of evidence in the record – that anyone has less coverage or more expenses under the change in carrier. If the Association had made a concession in insurance, it would more than likely be entitled to some quid pro quo for it. However, there is no such evidence of any concession. If the District took an action that created a savings but had no effect on employees, there is no reason that the employees should necessarily share in that savings without showing some need for it or some justification for it. The District took several cost savings actions and those were all meant to meet its budget.

Accordingly, based primarily on the fact that the Association's wage offer in the first year is too high and without justification, and the fact that the parties' second year offers would not significantly change anything, the District's final offer is clearly preferred. As noted above in this discussion, the Association's offer is too high compared to the comparables as well as being too high for the time period it covers and the time period in which the contract should have been settled.

Having considered the statutory criteria, the evidence, testimony and arguments, the Arbitrator issues the following

**AWARD**

The District's final offer is selected and shall be incorporated into the parties 2008-2010 collective bargaining agreement.

Dated at Elkhorn, Wisconsin, this 12th day of October, 2010.

  
Karen J. Mawhinney, Arbitrator