

BEFORE THE ARBITRATOR

In the Matter of the Petition of

MILTON SCHOOL DISTRICT

To Initiate Arbitration Between Said Petitioner and

MILTON EDUCATION ASSOCIATION

Case 27
No. 69502
INT/ARB-11476

Decision No. 33020-A

Appearances:

Lathrop & Clark LLP, Attorneys at Law, by Shana R. Lewis and Richard F. Verstegen, 740 Regent Street, Suite 400, Madison, Wisconsin 53715, on behalf of Milton School District.

Ted M. Lewis, UniServ Director, Rock Valley Educational Professionals, 1215 Suffolk Drive, Janesville, Wisconsin 53546, on behalf of Milton Education Association.

INTEREST ARBITRATION AWARD

The Milton School District, hereinafter the "District," petitioned the Wisconsin Employment Relations Commission to initiate interest arbitration with the Milton Education Association, hereinafter the "Association," with respect to an impasse between the District and the Association pursuant to Sec. 111.70(4)(cm)6, Stats. The Association is the exclusive collective bargaining representative for "all contracted teaching personnel, counselors, psychologists, and librarians, ... except for the following: Superintendent, Director of Instruction, Business Manager, Principals, Assistant Principals, High School Athletic Director, Director of Special Education, Network Administrator, and all non-instructional personnel ..."

The parties selected the undersigned, David E. Shaw, to issue a final and binding award, and he was appointed by order of the Commission dated May 5, 2010. A hearing was held before the undersigned on June 24, 2010 in Milton, Wisconsin, at which time the parties were given the opportunity to present testimony and documentary evidence, as well as argument, in support of their respective positions. The hearing was transcribed and the transcript was received July 14, 2010. The parties submitted post-hearing briefs, the last of which was received September 7, 2010.

Based upon consideration of the statutory criteria set forth in Sec. 111.70(4)(cm)7r, Stats., the evidence,

and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES:

The parties have three issues in dispute:

(1) Preparation time for part-time teachers. Article X, add new to paragraph F:

District: Each regular part-time teacher shall be allowed a pro-rated amount of preparation time based on the teacher's FTE.

Association: The district shall grant part-time teachers preparation time that is prorated according to the percent of a full-time teaching schedule that the part-time teacher has. The District shall adjust the part-time employment status of any such teacher to account for the inclusion of this preparation time and any other relevant assigned time, such as homeroom.

(2) Salary:

Using the cast forward method of costing, the District costs its salary offer as an average of 2.93% for 2009-10 and 3.23% for 2010-11.

Using the cast forward method of costing, the Association costs its salary offer as 3.1% for 2009-10 and 3.17% for 2010-11.

(3) Health Insurance:

District: All eligible members and their eligible covered dependents may participate in the health insurance plan, including the cafeteria and flexible spending account plans. The District will pay the full premium for the health plan.

From July 1, 2009, through as soon as practicable after the arbitrator's award, the health-insurance plan shall be the WEAIT Preferred Provider Copayment Option (as described in Appendix J, attached hereto). Thereafter eligible members shall be required to choose between the DeanCare POS or the MercyCare POS plans (also described in Appendix J, attached hereto).

Association: Through August 31, 2010

All eligible members and their eligible covered dependents may participate in the WEAIT Preferred Provider Plan Copayment Option (as described in Appendix J, attached hereto) , including the cafeteria and flexible spending account plans. The District will pay the full premium for the health plan.

Effective September 1, 2010

All eligible members and their eligible covered dependents may participate in

the WEAIT Preferred Provider Plan Copayment Option (as described in Appendix J, attached hereto), including the cafeteria and flexible spending account plans. The District will pay ninety eight percent of the premium for the health plan. The WEA Trust Value Choice drug plan shall be implemented either on September 1, 2010 or as soon as is practicable after issuance of the arbitrator's award.

STIPULATIONS:

(See attached Appendix A).

POSITIONS OF THE PARTIES:

District

Regarding the criteria under Sec. 111.70(4)(cm)7r, Stats., the District notes that neither final offer would require it to exceed its lawful authority.

With regard to the stipulations of the parties, the District asserts that the parties reached numerous tentative agreements that provide greater benefits for the Association members, including increasing compensation, enlarging the scope of the members' job security protections, and expanding certain leave benefits. These tentative agreements demonstrate the District's willingness to address the Association's concerns where a proven need for change existed. The Association having already accomplished many gains in the negotiation of the tentative agreements, the parties' stipulations support the District's final offer.

The District next asserts that the interests and welfare of the public and the financial ability of the District to meet the costs of the proposed settlements favors the District's final offer. It notes that some arbitrators have suggested that this factor is merely an ability to pay argument, while others have taken a more expanded view of the factor and consider the interests of the public as something other than just the employer's ability to pay. The District asks that the Arbitrator take this more expanded view of the factor. Regarding the District's ability to meet the cost of the Association's offer, the District asserts that the Arbitrator must consider the current economic climate and the fact that the District has already taken steps to reduce costs in order to fund its final offer. These steps include a delay in technology purchasing (\$200,000), not replacing two retiring elementary teachers (\$110,000), cutting 1.5 FTE custodians and reducing maintenance budgets (\$110,000), reducing building budgets (\$100,000), and delays in purchasing textbooks (\$49,000). The District should not be required to take additional steps in order to fund the Association's final offer, especially since it only serves to benefit the WEA Trust. The Association has an interest in maintaining the WEA Trust as the District's health insurance carrier especially since the WEA Trust has lost 155 school district plans and only gained 34 new ones since 2006.

The District asserts that the difference between the final offers is substantial. Using the "cast forward" method of costing, the District costs the Association's final offer as increasing costs on a cumulative basis by \$1,997,228 for the 2009-2010 and 2010-2011 contract years, while the District's final offer will increase costs on a cumulative basis by \$1,555,229 for that same period, or a cumulative difference of \$441,998 in salaries and fringe benefit costs for that period. As the parties' final offers on

salary are very close, the difference in the cost of the two offers is really with respect to the health insurance. To be fiscally responsible, the District's offer is more reasonable because it reduces those fringe benefit costs and therefore reduces the entire unit costs as a percent of the District's total budget. It is unreasonable to continue to fund a fringe benefit through the WEA Trust when an equally effective fringe benefit exists at a much reduced cost through the Dean Health and MercyCare plans. Those savings are critical to the future financial well-being of the District.

Long-term consequences must also be taken into account in evaluating the parties' final offers. The costs associated with the Association's final offer increase the burden on the District for the future as well. The District has had a declining enrollment the past two years, which negatively impacts the District's overall revenue under the revenue limits imposed on school districts in Wisconsin. The District cannot count on that changing much, as area businesses are closing and people are moving out of the area. Also, Milton has more students leaving the District under open enrollment than entering, which means money is being sent to the other districts with those students.

The District also asserts that another referendum should not be considered an option in order to afford the Association's offer. While the District passed a referendum in 2004 for capital improvements and technology, those funding levels expire after the 2010-2011 school year, and a referendum for recurring expenses like salary and benefits is less likely to be supported by the community. A review of recent referendums in the pool of comparable school districts shows that more referenda failed than passed. To be fiscally responsible, the District needs to ensure that future increases are sustainable without the use of referendum funds. To select the final offer that is based on the District's securing additional revenue from taxpayers through a referendum does not serve the interests and welfare of the public.

The District disagrees with any argument the Association might make that the District's fund balance is available to fund the Association's final offer. Recurring costs such as salary and benefits should not be paid out of the fund balance. Further, even if it was determined to be an appropriate use of the fund balance, there is no fund surplus to fund the Association's offer. Prior to the 2000 -- 2001 school year, the fund balance was only about 2% of expenditures and the District had a budget deficit of \$850,000. Based on the recommendations of the District's new Business Manager, Dianne Meyer, the Board made a deliberate decision to increase the fund balance. This was necessary in order for the District to be in the position of having money to fall back on if emergencies arose, e.g., the mold problem in some buildings the District has had to address. The fund balance was also increased to improve the District's rating for borrowing purposes. Despite the District's efforts to increase its fund balance as a percent of total expenditures, its fund balance is still well below the average in the comparability pool and below the state average. Thus, it is neither practical nor reasonable to expect the District to use these funds for teacher salaries or fringe benefits.

Also relevant are the bleak local economic conditions in the District. Negative local economic conditions should foreclose consideration of an expensive benefit. Marathon County, Dec. No. 29517-A (Baron, 1999). According to the District, the economic conditions in both the District and Rock County are extremely bleak, having experienced significant job losses with the closing of the General Motors plant and other companies. The workforce profile of Rock County for 2009 shows significant increases in the unemployment rate from August 2008 to July 2009, and as predicted, throughout 2010 unemployment rates have continued to be high in Rock County as compared to other areas in the state. In April 2010, Rock County had the 11th highest unemployment rate in the state at 12.8%, which is much higher than the state and national averages. Another indicator of the bleak economic conditions is the increase in the number of students taking free and reduced lunches. In 2003 a percentage of

students who were on free or reduced lunch was 11.1%. By 2009, that percentage had rose to 19.1%. Rock County also had one of the highest foreclosure rates in the state in 2008.

The economic conditions in the area are also affecting other public sector employers. Half of the comparable districts were recently forced to seek additional money through referendum because of their financial troubles. The Beloit teachers recently accepted voluntary furloughs to address a \$1.5 million deficit. The City of Janesville froze salaries until the end of 2010 for all firefighters, police, transit, and Department of Public Works employees. Five area municipalities settled 2010 contracts with 13 bargaining units, and all but one of those units settled for a lower wage increase as compared to the 2009 settlements. Similarly, the average total package settlements for comparable school districts in 2009-2011 are much lower than the 2007-2009 settlements. These voluntary settlements indicate a trend toward lower salary and total package increases in light of the current recession.

Recognizing the worsening economic conditions, the District has budgeted accordingly, including setting the property tax levy only to the extent necessary. At the Board's annual meeting on August 17, 2009, there were a number of residents who expressed concern regarding economic conditions in the District and about setting the levy at the maximum level, which the District had been advised to do, and had done since the revenue limit went into effect. Although the Board originally intended to set the levy at the maximum again, after having a number of conversations regarding the levy and after receiving information on the ramifications of setting the levy at different levels, the Board ultimately decided to set the levy at \$500,000 under the maximum in recognition of the difficult economic situation in the District and in an attempt to alleviate the burden on its residents. However, in order to do so the District had to take a number of steps to reduce costs, which have been described previously. The District also increased student fees, including increasing the costs of books and materials at the elementary, middle, and high school levels and increasing the cost of family athletic passes and athletic fees, which are expected to generate an extra \$30,918 for the District. In addition, the District has received stimulus monies to use for special education needs, preschool entitlement, Title I for reading, and salaries and benefits for teachers. It has even considered naming rights deals and participated in the Race to the Top grant application. Thus, the District has actively tried to identify different means to secure additional revenue for the District in order to avoid any impact on its residents. Given the economic conditions in Rock County and the District, an expensive salary and benefit package, as proposed by Association, is not sensible nor favorable, as it is not only inconsistent with the salaries and benefits earned by the citizens of the county, but it is unfair to expect them to shoulder the burden for this expensive salary and benefit package for the teachers. Thus, the Arbitrator must find that the District does not have the financial ability to fund the Association's final offer, and that therefore, this factor favors the District.

Next, the District asserts that the Arbitrator must find that the interest and welfare of the public favors the District's offer. Noting again that the cumulative cost difference between the two final offers for the two school years is almost \$500,000, the District further points out that for every month the WEA Trust remains the carrier of the District's health insurance it costs the District \$48,301 more than would be the monthly costs of the Dean and Mercy plans, or \$579,612 more for the school year. Based upon the last 19 years, premiums for the WEA Trust have increased an average of 9% a year. This means that in just seven years a difference in the cost between the plans will exceed over \$1,000,000 per year. Even with the Association's proposed 2% premium contribution and the new drug card plan, the WEA Trust plan will still cost the District \$463,142 more this school year than the Dean/Mercy dual option coverage. Given the deteriorating economic conditions in the area, it is not in the publics' best interest

to provide the salary and health insurance plan sought by the Association. Nor is it in the teachers' interest to shift the costs of an overly expensive health plan to themselves by requiring them to pay 2% of the premium, thereby reducing their take-home pay by that amount, especially when the cost can be reduced by merely switching to a comparable carrier and plan.

Many arbitrators have concluded that the public's interest is best served when a school district can plan for the future with greater certainty. Monticello School District, Dec. No. 31029-A (Schiavoni, 2005). Given the history of the premium increases the past 19 years, even with plan changes that were made to avoid yet higher premium increases, it is indisputable that the Association's final offer creates greater future risk for the District. The most effective way for the District to control health insurance expenses is to bid for competitive premiums between multiple providers and continue to reach voluntary agreements with the Association that include reasonable changes to the health plan and/or carrier. To instead require the District to continue with the WEA Trust, with no significant reduction to its premiums, is not in the public's interest.

The District notes that its support staff and administrative employees made the switch from the WEA Trust to the Dean/Mercy dual option plan in 2007. The transition occurred without the support staff or administrators suffering any significant reduction in benefits or experiencing any problems in service. As a result of the switch, the District saved money that was used to fund salary increases for its support staff and administrators. Each year after the switch to the dual choice was made a survey was conducted through the CESA consortia with regard to member satisfaction, and each year the survey reflected very positive member satisfaction. Further, even before the switch was made, when employees were still insured through the WEA Trust, a survey was conducted which showed that 84% of the 122 respondents already primarily used Dean Health or MercyCare clinics. Moreover, 66% of 116 respondents stated that if price was not an issue, and they were to select a single group of providers to best meet their needs, they would elect to use Dean Health or MercyCare clinics. Although the teachers refused at that time to participate in the process of evaluating insurance providers, since all of the residents in the area have access to the same area health clinics, it is safe to assume that the overwhelming support for the local Dean Health and MercyCare clinics will continue.

According to the District, unlike the support staff and administrators, the teachers not only refused to make the change, but also stopped any discussion on this issue. In December 2001, the District took steps to study insurance options, forming a committee of teachers to look at insurance options and consider the cost of insurance in school districts. The committee included various teachers and Board liaisons and met every two weeks for the purpose of investigating cost of insurance in the District and to look at options the District might consider in bargaining, including looking at various vendors. However, in March 2002, as the parties approached their first bargaining session, the Association terminated participation on the study committee and declined any further offers to work together on the topic. However, the District continued to explore insurance options because it was committed to saving money for the District's residents. It formed a committee of support staff and administrators to look at what they liked and disliked about current plan and were assisted by a consultant from Associated Financial Group. The District brought representatives from Dean Health Care, Unity, and WEA Trust in order to allow staff to ask questions and see what kind of plans they had and to compare those plans. Although they were not specifically invited, the teachers certainly could have attended these sessions. After some research, the committee unanimously recommended, and the Board approved, a change in health insurance plans for support staff, administrators, and retirees from these groups. After the support staff and administrators switched to the new carriers in 2007, the Board continued its efforts to

obtain a voluntary agreement with the Association to move to the same type of health insurance offered to the other groups, bringing the issue to the table for each of the successive bargains. District Administrator, Peg Ekedahl, informed the Association of the District's intention to bring the Unity/Dean plan to the bargaining table, indicating it would save the District almost double what the new Trust plan would save. After this informal notice of the District's intentions, the Association voted on its own proposed change to the existing three WEA Trust plans without bringing the District's proposal to the membership. The Association voted to change to a single WEA Trust Preferred option and presented that option to the District for consideration. In effect, by seeking input from its members regarding the WEA Trust first, the Association undercut any ability of the Board to seek greater savings with a different carrier. While the Board advised the Association during negotiations that it desired to have the Association move over to the same plans offered to the other employees, the Board decided to leave this issue til the next round of bargaining. During the negotiations for the 2009 -- 2011 agreement, it was the primary goal of the Board to move over to the Dean Health and MercyCare plans. Initial bids for different providers were prepared by the District's consultant, with the original 2009-2010 projections of savings being just over \$670,000 for the school year. However, a more recent bid comparing the 2010-2011 premiums shows a savings of over \$1,000,000 per school year between the two plan provider designs. Thus, it is clear that while the District made every reasonable effort to explore and discuss insurance options with the teachers, the Association has refused to discuss such options. Such a refusal by the Association is clearly against the public interest and welfare. The Association has an interest in keeping the WEA Trust as its carrier, considering that both the Association and the WEA Trust are affiliated with WEAC, but the Association's efforts do not promote the welfare of the community or the children; they promote the welfare and interests of an insurance company. While the dual choice option creates more work than a single option, the District decided to offer a dual choice option in order to provide greater access to doctors for its staff. Effective July 1, 2009, the District offered MercyCare as an option, instead of Unity, because MercyCare offered services from University of Wisconsin doctors, in response to feedback from the support staff and administrator groups that they wanted to receive services from these doctors. Based on the above, the Arbitrator must conclude that the District's final offer clearly serves the public interest and welfare and that, therefore, this factor favors the District's final offer.

With regard to a comparison of the wages, hours, and conditions of employment with other employees performing similar services, the District asserts that this factor favors the District's final offer. The District notes that the parties have not been able to agree on the appropriate set of comparables. The District asserts that the appropriate set of comparables is the school districts in the athletic conference, Rock County and those adjacent to the District. Arbitrators have recognized that there is a need for objective criteria to select the comparables. In the past, school districts utilized other districts in the athletic conference as the primary group of comparables to be considered in teacher interest arbitrations; however, in some cases arbitrators instead utilized school districts within a geographic proximity, especially in support staff interest arbitrations. The same rationale would apply in teacher interest arbitrations. In Rio Community Schools (Support Staff), Dec. No. 30092-A Torosian, 2001), Arbitrator Torosian noted:

Arbitrators have long used various indices to determine the appropriateness of comparables such as school districts which are in the same geographic area and districts similar in size, staff, and equalized value. But, typically, the principle factors considered for school districts are geographic proximity and size... Proximity reflects the labor market and size reflects the Employer's relative ability to compete.

The Arbitrator is of the opinion that both factors are important and, in this case, a blend of the two should determine the appropriate comparables.

This geographic pool often includes the school districts within the athletic conference. In this case, the District asks the Arbitrator to consider a combination of the school districts in Milton's athletic conference (Badger South), and the other districts within Rock County and those immediately adjacent to Milton. Utilizing districts in a reasonable geographic proximity makes sense, especially when health-insurance plan services are being evaluated, as a regional comparison is appropriate since "the cost of those services are regionally determined." Madison Metropolitan School District (Support Staff), Dec. No. 32195-A (Malamud, 2008). In this case, the District's exhibits show that the teachers in the District mostly reside in the Janesville, with the next largest group residing in Milton. (Dist. Ex. 119).

The District asserts that the athletic conference should not be viewed as the controlling comparison. Athletic conferences throughout the state have been through a number of changes and realignments, and the reasons for the realignments are many and sometimes unknown. The Association's own witness testified that he did not know for sure what the Wisconsin Interscholastic Athletic Association's criteria are for realignment, other than being based on a broad sense of size and proximity. The WIAA's view of proximity is questionable as the current athletic conference includes Monroe, which is over 40 miles from Milton. Even though the Association proposes the athletic conference it excludes the districts in Dane County, due to the proximity and influence of Madison. The District posits that a key connection between multiple school districts is the UniServ representation for negotiations through WEAC itself. In this case the District's teachers are represented by the Rock Valley Educational Professionals. The District offers the following set of comparables:

Contiguous	District	Miles from Milton	Athletic Conference	County
Yes	Edgerton	11	Rock Valley	Rock/Dane
Yes	Janesville*	12	Big Eight	Rock
Yes	Fort Atkinson	13	Badger South	Jefferson
Yes	Whitewater*	13	Rock Valley	Walworth
No	Beloit- Turner*	20	Rock Valley	Rock
Yes	Delavan	20	Southern Lakes	Walworth
No	Beloit*	22	Big Eight	Walworth/Rock
Yes	Evansville	23	Rock Valley	Rock
No	Stoughton	23	Badger South	Dane
No	Parkview	25	Rock Valley	Rock
Yes	Clinton*	26	Rock Valley	Rock
No	Brodhead	32	Rock Valley	Rock/Green
No	Monona Grove	34	Badger South	Dane
No	Oregon	34	Badger South	Dane
No	Monroe	46	Badger South	Green

* denotes Rock Valley Education Professionals UniServ (Ex. A)

(Dist. Exs. 117, 118 and 129).

Looking at the comparables, a review of the comparable health insurance plans and premium costs supports the selection of the District's final offer. When comparing the health insurance for Association members to that provided to similarly situated employees in comparable school districts it is clear that the District's final offer with regard to health insurance is reasonable and part of a current trend to lower the cost of health insurance. District exhibits show that the health insurance carrier varies from district to district, and, while there is a similarity between the plans there is no predominant plan or carrier. A review of the comparables demonstrates that many of them have taken the same approach as the District is proposing to deal with the ever increasing cost health insurance – moving away from the WEA Trust. The District's final offer is also consistent with the monthly premium amounts being charged by plan providers in the comparable school district, while if the Association's final offer is selected, the District will have the second highest cost plan amongst the comparables, even with the proposed change in drug card. Further, several of the districts represented by the same UniServ that represents the Association (Beloit, Beloit–Turner, and Janesville), as well as other WEAC represented teacher units have voluntarily agreed to provide health insurance coverage through plans other than the WEA Trust. The District's final offer is consistent with that trend. Considering the economic conditions, it is reasonable for the District to seek to reduce expenses, especially when there is no reduction in services.

A review of the percent of premium contributions made by employees among the comparables, only six of the 16 districts currently have employees contributing towards health insurance plan premiums. Of those six, four have employees contributing 10% of the premium toward the family and single plans. If the Association seriously intended to address the increasing costs of health insurance by having employees contribute toward the premium, it would have proposed a higher contribution similar to those other voluntarily settled districts. There is little support for the Association's proposed employee contribution.

The District asserts that there is little support for an argument that the plan providers and benefits proposed in the District's final offer are inferior to those afforded by the current WEA Trust Preferred Plan. Both Dean Health and MercyCare are prominent health care providers with significant histories as reputable health care plans. Both plans provide coverage in a number of school districts in the area including the Milton administrative staff and support staff, as well as other public and private employers. Both have received a number of prestigious awards for the quality of the care they provide. The evidence shows that while there are many similarities between the plans and the WEA Trust Preferred Provider plan, there are also many advantages to the Dean Health and MercyCare plans with regard to preauthorization and co-pays for a number of services. Both plans have noted their intention to allow incurred deductibles to carry over, so that members will have that deductible credited to their accounts. Further, retirees and spouses will be treated similarly under both plants as they were under the WEA Trust plan. Given the comparable nature of the coverage and benefits for the dual coverage option included in the District's final offer, and the lower cost of providing that coverage, the District's final offer must be regarded as the more reasonable.

With regard to the salary issue, the District contends that while benchmark rankings of employees among the comparables is generally considered important, in this case it must be noted that in the early 2000's, at the Association's request, the parties agreed to replace the salary schedule with a salary structure, which basically provided the same percentage increase to all of the teaching staff, regardless of the teacher total package. In negotiations for the 2005 – 2007 agreement, the Association proposed to reinstate the salary schedule. The new salary increase method created much diversity in the teacher

salaries, making it difficult to place them on the traditional comparable salary schedule that was created for the 2006 – 2007 school year. As a result, the District had a number of staff who were then off schedule. Currently, the District has 41 teachers off schedule. The District's salaries at the BA and MA minimums are above average among the comparables, while the BA+6 and BA maximum benchmarks are purposefully lower in order to encourage new teachers to complete additional credits. While salaries at the schedule maximum are lower than average, this is misleading because the benchmark does not include the off the schedule salaries that are much closer to the average. This lower benchmark was voluntarily agreed to in reinstating a salary schedule. According to the District, its offer increases the salary schedule rank at the hiring base from 5th out of 11 to third among the 11 settled districts and increases the rank at the schedule maximum from 10th out of 11 to 9th. While the Association's final offer increases the hiring base only to 4th out of 11. The primary difference is that the District offer increases ranking in exchange for concessions on the cost of premiums for health insurance, while the Association wants to increase salary, even though they are already highly ranked, without offering any significant concession on the health insurance plan. The District notes it is not had trouble filling teacher, support staff, or administrator positions, even with the change in insurance carriers for the latter two groups. Further, Milton teachers have added benefits that other teachers in comparable districts do not have, in particular, long-term care.

The District concludes that based on the health insurance premium costs and salary increases in the comparable school districts, the District's final offer is more reasonable. Therefore, this factor supports selection of the District's offer.

Next, the District asserts that a comparison of the wages, hours, and conditions of employment with other public employees also supports the District's offer. Looking first at the internal comparisons, the District notes that arbitrators have noted the importance of internal comparability, especially when it comes to health insurance. In this case, the administrators and support staff in the District, like the teachers, have made concessions in health insurance when the cost of insurance has risen to an unreasonable amount and when the WEA Trust plans previously provided were no longer available. The support staff and administrators changed to a plan similar to what the District is now proposing for the teachers in 2007 – 2008 that allowed them the dual option of selecting either Dean Health or Unity. In 2008 – 2009 the Unity option was changed to MercyCare. These changes provided significant savings for the District. The administrators and support staff have typically led the teachers in making health insurance plan design changes. The teachers have not made concessions on health insurance until after the other groups have made those concessions, and in some cases, did not make the concessions. When the teachers finally did reduce plan costs in September of 2007 by moving to the WEA Trust Preferred Provider plan, those plans still cost significantly more than the plans provided to the administrators and support staff at that time. This shows that the teachers are typically the group that follows the other groups in the District who are willing to make changes in health insurance.

With respect to salary increases, the District notes that the administrators agreed to a pay freeze for the 2010 – 2011 school year in recognition and consideration of the economic situation in Milton and Rock County. In comparing the settlements in the District it is evident that teachers have enjoyed total package increases that are the same or greater than those provided to the administrators; however, the internal comparability between the administrators and support staff salaries and the teacher salaries will be further disrupted by the Association's proposed implementation of a 2% employee contribution towards health insurance premiums effective September 2010. The administrators and support staff do not contribute towards insurance premiums and as a result their take-home salary is not impacted by

such a contribution. However, under the Association's final offer, teachers enrolled in the insurance plan will have their salary reduced by approximately \$200 to \$450 by virtue of the premium contribution. Those amounts will increase every year as insurance premiums increase. In contrast, administrators and support staff will continue to contribute nothing towards insurance premiums. Such a discrepancy in fringe benefit contributions between internal comparables can lead to significant morale issues in the District. It is not only important to keep the plan contributions equal between the groups for internal comparisons, but the interests and welfare of the public are also best served when fringe benefit contributions are equal among the groups. As the District's final offer maintains internal consistency it will reduce the likelihood of morale issues between its employees.

Looking next at the comparable external non-teacher public employee groups, the District asserts that many of the area municipal employers are covered under the State Health Insurance Plan, which includes the Dean Health and MercyCare plan options. As the District's final offer contains those options, it is more similar to the options provided by many municipal employers under the State Plan. The city's share of the premiums in both Edgerton and Whitewater are at maximum \$485.16 per month for the single plan and \$1201.52 for the family plan, which are significantly closer to the District's proposed monthly premium costs of at maximum \$627 towards a single and \$1442 toward the family plan. Even taking into account the teachers paying 2% of the premium, under the Association's final offer the District's maximum cost will be \$766 per month for the single plan and \$1737 per month for the family plan.

A comparison of the average salary increases among local municipalities, shows that both the District's and the Association's proposed salary increases are comparable. Thus, when considering the wages, hours, and conditions of employment between the District and other public employees in the same and comparable communities, the District's final offer is more reasonable.

A comparison of the wages, hours, and conditions of employment with private-sector employees is also relevant to the Arbitrator's determination. The information admitted into the record by the District demonstrates that the District's final offer is more reasonable than the Association's, especially considering the low cost of health insurance premiums found in the private sector. The District cites the data from one local business and notes that the health-insurance premiums under the plans provided to employees at that business are significantly less than those premiums under the District's health insurance plan. In addition, those employees are required to pay 30% of the premium and also received a wage freeze for 2010. These private company health plans are in stark contrast to the cost and coverage afforded under the WEA Trust Preferred Plan. The most prevalent plan in the area, according to the "Spring 2009 Salary & Benefit Survey," is a preferred provider plan. However employees on average contribute 31 – 34% towards plan premiums. A comparison of those plans shows that the plans being offered by both the District and the Association are "Cadillac" plans compared to the average plans being provided in the local area private sector. The Association's proposed plan cannot be justified by the plans afforded other employees in the private sector. Thus, the District's final offer is the more reasonable of the two.

The District asserts that consideration of the average consumer prices for goods and services, commonly known as the cost of living, supports its final offer. It notes that arbitrators typically consider the Consumer Price Index (CPI) to be the relevant benchmark of the cost of living increase. Further it is generally agreed upon by arbitrators that total package data is the appropriate comparative measure because the total package data reflects the value of the increase in the employer's contribution

to health insurance benefits, as does the CPI. The District asserts that while looking at single snapshots in time is helpful, a more useful comparison is the average of the 12 months of increases over an entire school year. It is also useful to compare increases from one school year to the previous school year. The most relevant period for comparison is the CPI from the previous one year period: The 2008 – 2009 average consumer price index compared to the 2007 – 2008 average consumer price index. In this case, the 2008 – 2009 average school year inflation was .8%, while the 2009 – 2010 average school year inflation was 1.62%. Therefore, the total package increases of the Association's final offer at 3.78% and 3.09%, being much greater than the District's final offer at 3.65% and 1.04%, are much less reasonable given the current consumer price index data. Thus, the CPI factor clearly supports selection of the District's offer.

The over all compensation presently received by Association members must be considered, as well as the constancy and stability of employment within the unit. According to the District, the fringe benefits and salaries provided by the District to the bargaining unit members are significant. The teachers are given generous salaries, leaves of absence, sick leave use and payouts, full year insurance coverage, including health, dental, long-term care, life and long-term disability coverage, and they are also eligible for a significant retirement plan that, in 2008 – 2009, cost the District over \$763,000 in benefits. In comparing the average total package compensation for Milton teachers to other teachers in the comparability pool, the Milton teachers far exceed the others. Further, the tentative agreements reached by the parties also contain various economic items which add to the over all compensation and benefit package. The District notes that the satisfaction of the District's teachers with their salaries and benefits is demonstrated by the fact that over 100 out of the approximately 230 teachers have more than 10 years of seniority. Because of the overall compensation provided to the teachers, it must be concluded that the District's final offer is preferable.

Regarding changes in the foregoing circumstances during the pendency of the arbitration proceedings, the District notes it has not identified any changes that are relevant to this case. As a result, the District believes this factor does not favor either party.

With regard to other factors which are normally taken into consideration in the determination of wages, hours, and conditions of employment, the District asserts that while the “greatest weight” and “greater weight” factors are no longer in the statute, arbitrators should still take into consideration the restrictions placed on the District with respect to school finances, i.e., revenue limits. Arbitrators should not issue awards that pressure municipal employers to exceed their statutory revenue limits. Under the prior “greatest weight” factor, an arbitrator considered (1) whether the monetary difference between the two final offers was significant such that a selection of one final offer over the other could have concrete deleterious effects on the overall operations of the school district; (2) whether the district was having financial difficulties that it is addressing, as evidenced by the elimination of jobs or programs; and (3) whether the district would need to take additional steps in the future if its final offer is not selected. Citing, Marinette School District (Secretarial Unit), Dec. No. 30344-A (Dichter, 2003); Tomahawk School District (Support Staff), Dec. No. 30024-A (Vernon, 2001). Revenue limits were designed to control property taxes and sent a clear message to local school boards that they will not have much new money to spend on schools. In light of such limits on a school district's revenue, school districts must consider prudent and careful spending currently and as affecting the future. The significant monetary difference between the District's final offer and the Association's final offer is such that selection of the latter will have concrete, deleterious effects on the overall operations of the District for the present and the near future. In addition to the statutory constraints on raising revenues,

the District is experiencing increased costs and having a difficult time making ends meet. It has no ability, other than referendum, to increase taxes in order to deal with the increased cost for salary and health insurance premiums. If the Association's final offers selected, the District's expenses will be significantly greater and more drastic cost-saving measures will need to occur. Because of the District's low assessed value, its mill rates are generally higher; the State's tax credit formula favors higher property values and higher spending. Milton's property values have been increasing at a slower rate than most of the comparable districts. School districts, including Milton, have been facing increased pressure to keep property taxes from rising and this pressure will only get greater as the baby boomers put increasing strain on the funding system as a shift from income earners to the largest group of benefits eligible residents ever. Even with the increased mill rate and extra support from taxpayers through the last referendum, additional support will be necessary in the future when that referendum expires. The Arbitrator must consider the financial limitations placed on the District. If the Arbitrator selects the Association's final offer, it may have a significant negative effect on the District. As a result, this factor favors selection of the District's final offer.

The District asserts that when the evidence presented has been evaluated and the assessment of the statutory criteria completed, the District's final offer should be selected.

Association

Beginning with the health insurance issue, the Association asserts that the District does not meet its burden as the party seeking a change from the status quo. The District seeks to significantly change the status quo by switching the health insurance carrier from WEA Trust to a dual choice plan of Dean Health Plan/MercyCare. The Association has maintained the WEA Trust as its health insurance carrier for at least the past 25 years through voluntarily negotiated settlements. The Association has consistently held the WEA Trust as a top priority in negotiations because of its superior network coverage, level of benefits, and customer service. Given the duration and importance of the WEA Trust for Association members, the District carries significant burdens.

Arbitrators generally apply a three-part test that the party seeking the change from the status quo must meet. The seeking party must demonstrate:

... first, that a significant and unanticipated problem exists; second, that the proposed change reasonably addresses the problem; and, third, that the proposed change is accompanied by an appropriate quid pro quo.

City of Monona, Dec. No. 30991-A (Kossoff, 2004), citing, Unified Community Services of Grant and Iowa Counties, Dec. No. 30621-A (Petrie, 2004).

The Association asserts that the District fails to meet all three parts of the test.

First, the District cannot demonstrate that a problem exists that gives rise to a need to change insurance carriers. Milton's health insurance is in line with that of the comparable school districts; the Association has taken measures to moderate and reduce health care costs; and the District is financially healthy. Hence, there is no need to change the status quo insurance carrier.

A majority, 7 out of 11, of the comparable school districts have WEA Trust as their insurer. Milton's

health insurance costs are also in line with those of its comparables. Under the Association's offer the District's monthly cost for a family plan would either be less expensive, or within \$100 of seven among the 11 comparable school districts. At \$1736, a monthly family plan is only slightly higher than the median \$1693, underscoring the absence of a problem concerning health insurance.

The Association has proactively assumed responsibility for addressing health care costs during negotiations. In the 2007 – 2009 contract cycle, the Association negotiated plan design changes that reduced insurance premiums in the first year of the contract. The Association's current offer also reduces District insurance costs in the current year, as changes proposed by the Association will reduce the District's cost for the family premium from \$1813.98 in 2009 – 2010 to \$1736.48 in 2010 - 2011, proving a willingness to address health care costs. The District should work with the Association to continue this trend, rather than seek a change in carrier that the membership strongly opposes.

The Association has agreed to a number of health insurance plan design changes that, if its offer is accepted, would amount to an average of a 4.28% increase in District health insurance costs per year from 2003 – 2004 to 2010 – 2011. Given the much publicized national increases in health insurance costs during this time, this is an extremely reasonable rate of increase over a sustained period. Even without the Association's proposed changes, the single and family health insurance plans would only have increased by a modest 4.1% and 4.3%, respectively, for 2010 – 2011. Hardly an increase that compels the District to impose an unpopular change in the carrier. Taking the Association's additional cost-saving measures into consideration, the District's attempt to switch carriers makes even less sense.

The District's sound financial health does not suggest the need to change the insurance carrier for its teachers. The District dramatically increased its reserve fund in recent years, reflecting its robust financial condition. Over the past four years, the District increased its reserve funds by an average of \$636,966. Any savings that the District achieves through arbitration would go to further increase its reserve funds, rather than pay for the cost of education. In the past five years, the District has increased its reserve funds in percentage terms, by 181.1%. The statewide average increase for that period was only 25%, and Milton's increase ranks third-highest among the 11 comparable school districts. In 2008 – 2009, the last year for which there is audited data, the District increased its reserve funds by 11%, the fourth highest increase among comparable districts. The Association asserts that if the District were facing actual financial difficulties, it would be unable to annually significantly increase its reserve funds.

That Association asserts that the District proposes an unreasonable solution to a problem that does not exist. It is unreasonable to impose a non-bargained change that will significantly affect Association members' expenses, choice of doctor, and quality of customer service. The District's proposed change would force members to face either increased expenses, or compromise their choice of health care provider. Under either the WEA Trust, Dean Health or MercyCare, subscribers face significant increased out-of-pocket expenses for out-of-network care. However, as the WEA Trust's network is far more extensive than the relatively limited Mercy and Dean networks, members' health-care providers are almost always in network. The WEA Trust has a comprehensive network that includes every Wisconsin county, all the major regional providers, such as the Mayo Clinic, as well as a vast nationwide network. An analysis of Association members/family members indicates that a large percentage of members and families seek health care from more than one provider network. Of 304 members/family members who went to a Mercy provider in 2009, 126 (41%) also obtained health care from either Dean, St. Mary's or UW Hospital and Clinics. Under the District's proposed plan, an

individual who obtains healthcare from more than one provider network would have to either lose a provider network, or keep that provider network work and face increased costs. Similarly, families who have members in different networks would have to lose the provider network of at least one family member or face increased costs. Under the District's offer, a large portion of members' healthcare would not even be eligible for a network coverage. Almost 25% of the total paid claims for 2009 by WEA Trust would have been in neither the Mercy nor Dean provider networks. In addition to the increased out-of-pocket expenses for out-of-network care, members would face the prospect of "reasonable and customary" charges under the District's offer. As reasonable and customary charges do not apply to in-network health care, since the WEA Trust network is so comprehensive, the possibility of paying such charges is currently extremely remote. However, under the District's offer, members would face a significant possibility of incurring such charges, as they would have to leave the current large nationwide network coverage provided by the WEA Trust and choose between two much more limited network coverage areas. The Dean Health Plan network only covers southern Wisconsin and the Mercy network is limited to only four Wisconsin counties. Thus, any family members who live out of the immediate area, such as children up to age 25, or who seek medical care outside of the immediate area would have no choice but to go out-of-network. Further, access to the UW hospitals and Clinics as an in-network provider has a substantial value. While Milton's unrepresented staff previously had Unity, which includes UW as an in-network provider, the cost of maintaining Unity spiked so significantly that the District dropped Unity as an insurer for the District. Currently, Association members have access to the UW as an in-network provider, while it would be out-of-network under either Dean Health or MercyCare. It would be unreasonable to revoke in network access to UW health care, especially when the District offers so little in return.

The Association asserts that the WEA Trust benefits are superior in areas that could most dramatically affect member finances. WEA Trust continues insurance for members who are laid off, with increased years of service bringing additional months of coverage, while neither Dean Health or MercyCare have such continued coverage. The Association lists a number of areas where it asserts WEA Trust has superior benefits, e.g., unlimited home health care visits, unlimited inpatient rehabilitative treatment, and continuation rights for a surviving spouse, if a member dies at age 55 or older. While the Association would expect that most members will not be affected by these benefit areas, for those who are, maintaining the WEA Trust as carrier could protect those members from financial ruin. Association members also value the excellent customer service under the WEA Trust, and are concerned about the additional paperwork with which they will have to contend under a different carrier.

Association members care about maintaining WEA Trust insurance and it is unreasonable to change a benefit to which members attach such importance. They have resoundingly and consistently voiced that their choice of carrier is a top priority. In the most recent negotiations, continuing the status quo insurance ranked as the top priority among all considerations.

The Association asserts that the District does not offer an appropriate quid pro quo for the change it seeks. The District seeks a significant change that will save it considerable money, but does not offer anything material to the Association members for that concession. The requirement to give something in exchange for a concession that one party seeks is a bedrock principle of negotiating, and arbitrators have overwhelmingly reinforced this fact in decisions. Citing, D.C. Everest School District, Dec. No. 24678-A (Malamud, 1988); City of Verona (Police Department), Dec. No. 28066-A (Malamud, 1994). The Association has sacrificed salary improvements to maintain their insurance carrier. After having

invested substantial bargaining capital into maintaining WEA Trust benefits, the District seeks to remove the Trust without rehabilitating Milton's salaries. Milton's salary benchmarks reflect the sacrifice that members made to maintain their insurance. The relatively low position of Milton salaries is no coincidence, but instead shows the priority members gave to maintaining their health insurance benefits. The District now seeks to change carriers without improving the relatively low position of its teachers' salaries. The Association's sacrifice of salary for insurance was all the more explicit under the Qualified Economic Offer (QEO) law. Under that law, a school district had the option, in the event the sides could not reach a negotiated settlement, of imposing a 3.8% "total package" (projected cost of salary and benefits) settlement using cast forward costing. Thus, the greater the increased cost of insurance, the less money was available for salaries. This was true from the law's inception in 1993 until it was dissolved in 2009.

The large savings the District would realize from changing carriers only highlights the need to give the Association something significant in return. With the proposed change, the District's monthly family plan premiums would decline by \$377. With a November 2010 implementation, the projected savings to the District for that school year, when compared to the Association's offer, would be \$402,410. One would expect the District to offer a substantial salary increase in return for such a large savings. Instead, the District seeks to pocket the savings while passing the burden of increased costs and/or limited health-care options onto Association members. That any normal negotiations process would render a substantial quid pro quo for the type of concession the District seeks, is borne out by what other districts have offered to change from the WEA Trust to less expensive insurers. Among the four area school districts that switched from the Trust to less expensive insurers, the average increase to the MA Step 10 benchmark was 6.8% compared to the 2.4% increase the District offers. The District's offer for the other benchmarks is similarly remarkably below what the other districts offered for the change from the WEA Trust. An example is the Beloit – Turner School District, which not only offered a 7.2% increase per benchmark, but also other substantial improvements in retirement, salary lane movement for new teacher Professional Development based licensure, evaluation tools, a sick leave bank, a life insurance increase, personal day language improvements and additional extracurricular positions. Here the District neither offers nearly the same salary increase, nor the other substantial improvements that were necessary to get a voluntary change in insurance carrier in Turner.

With regard to the set of comparable school districts, the Association asserts its selection is more appropriate given the District's history and geography. Its set highlights the importance of stability and similarity in a comparable group over time. The Association notes that this is the first arbitration proceeding involving these parties and that the arbitrator must make the initial determination of the appropriate comparable pool. The Association's comparable group consists of the former Southern Lakes Conference, to which Milton belonged for 21 years, the contiguous school districts, and the current Badger South Conference schools, but excluding the Madison market area schools in that conference. Thus, the Association's suggested comparables are: Clinton, Delevan-Darien, East Troy, Edgerton, Elkhorn Area, Fort Atkinson, Janesville, Jefferson, Milton, Monroe, Whitewater.

While both parties acknowledge the relevance of a district's athletic conference with the inclusion of the Badger South school districts, Milton had been a part of that conference for not even a year when these negotiations commenced. Therefore, that conference does not provide a complete set of districts with which the parties have compared themselves over time. Further, certain districts in that conference should be excluded given their proximity to the Madison Metropolitan area. Arbitrators have noted the importance of stability and bargaining history within a comparable group. The former

Southern Lakes conference districts should be used as a pool with which to compare Milton, as it provides a group of districts with which the parties have compared themselves over a sustained time period. The Association also notes that arbitrators have selected Milton as part of a comparable pool for other former Southern Lakes districts (Jefferson, Delevan-Darien).

The Association asserts that certain school districts within the Badger South conference should be excluded because the Madison Metropolitan area constitutes an economically distinct zone. Arbitrators have found a metropolitan area should be excluded from the comparable pool for a school district outside that area given the obvious differences with school districts outside that area. Citing, Clintonville Public School District (Teachers), Dec. No. 19768-A (R.U. Miller, 1983). In that regard, arbitrators have noted the influence of the Madison Metropolitan area and how it creates a distinct economic area. Joint School District #2 City of Sun Prairie (Teachers), Dec. No. 16780 (Ziedler, 1979). The Association also asserts that some of the District's recommended comparables have little in common with Milton, other than that they are in the same county, and lack common characteristics or bargaining history that would warrant their conclusion in the comparable pool.

Next, the Association asserts that the District has the ability to pay for the Association's offer and that the Association's offer better serves the interests and welfare of the public. In addition to the District's fund balance increases, District funding has also grown considerably in recent years. In the five-year period from 2003 to 2008, the District received a 38.3% increase in total revenues for day-to-day operations, nearly double the statewide average increase during that time. Only one other district, Elkhorn, among 11 comparable districts increased its funds by a greater percent. With teacher compensation comprising a diminishing portion of the overall budget, the District cannot legitimately blame teacher compensation for its illusory financial difficulties. While in the 2003 – 2004 school year teacher salaries and benefits accounted for 50.8% of total district expenditures, by 2008 – 2009 school year, those same salary and benefits accounted for only 46.5% of overall district expenditures. At the same time there has been a notable 60.6% increase in administrative compensation in the District, which also points to the District's ability to pay for the Association offer. In fact, the District is so well-funded that even after rejecting a half-million dollars in tax revenue, it still had a surplus for the 2009 – 2010 school year. The District's evidence concerning alleged financial difficulties addresses projected, rather than actual, fiscal difficulties. The Business Manager's July 2009 memo projected a shortfall of \$1,214,448; however, rather than experiencing the mammoth projected shortfall, the District had a surplus for the 2009 – 2010 school year. The projected shortfall had used the full levy amount, rather than the eventual half-million dollar under-levy, which makes the discrepancy between the projection and reality all the more striking. Arbitrators have consistently agreed that where, as here, an employer has the resources to pay for a settlement, but prefers not to, such an unwillingness to pay does not constitute an inability. Further, the District's healthy financial outlook sharply contrasts the fiscal condition of employers where arbitrators found the need to change the status quo for the purpose of reducing costs.

Not only does the District have the lowest levy rate among comparable school districts, at 7.91, but that levy rate also falls well over a full point below the state average of 9.15. The Milton levy rate also declined by a greater percent (56.6%) than any of the comparable school districts since 1992 – 93, and its decrease also substantially exceeded the state average of 49.7% for that period. Further, Milton is more affluent and has less poverty than surrounding communities. The percentage of students who qualify for free and reduced lunch is lower in Milton (20%) than in any of the comparable school districts and is almost half of the state average of 39% and is less than half of Janesville's 46%. The

economic downturn in the area has not harmed Milton as it has Janesville and the other area school districts. Also, Milton's relatively high rate of income per tax return demonstrates that Milton is more affluent than nearby Janesville and the comparable school districts. Among the 11 comparable school districts, only Clinton ranks higher than Milton in that regard.

Selection of the District's offer would undermine morale and encourage Milton teachers to leave the District, which would undermine the public interest in maintaining an effective education system. While the District suggested that it has no problem filling positions, part of what attracts teachers to the District is presumably its excellent insurance coverage, and the District did not address the issue of maintaining motivated teachers. The District's offer would also undermine the public interest by encouraging further litigation among Milton's retirees to compel the District to restore the WEA Trust, which the Association asserts the District must provide for its retirees pursuant to the parties' collective bargaining agreement.

The Association asserts that its proposed salary increase is more reasonable than the District's proposal, both when compared to settlements among the comparable school districts and the settlements among comparable public sector workers. Although both of the offers are in line with the settled increases among teacher units in comparable school districts and are somewhat below the average increases achieved by comparable public sector workers, the Association's offer is much more reasonable in light of the major change in health insurance the District seeks. According to the Association, with the exception of the BA Minimum benchmark, which affects relatively few Association members, the District is less than a half percent higher than the settlement pattern in each of the other benchmarks. The Association offer is only slightly higher than the settlement pattern, as one would expect, as the offer includes increased insurance premium contribution that reduces the District's healthcare costs. With regard to non-school district public sector employees, the evidence shows that comparable public sector workers in the area received increases in 2009 that ranged from 2 1/2% to 3 1/4%, with many clustered around the 3% level, and in 2010 almost all the units received similar increases. While both the Association and District offers fall below the settlement pattern for comparable public sector workers, the fact that the District lags behind those settlements while simultaneously seeking to achieve significant cost savings in health insurance, demonstrates the injustice of its offer. When a district seeks to achieve significant cost savings by switching a long-standing benefit that has been voluntarily agreed to for at least 25 years, one would think that it would offer a salary increase that is higher than the settlement pattern in comparable units, not less.

The Association notes that the cost of living is another component that an arbitrator must evaluate in determining the most reasonable offer. Arbitrators have utilized several measures to evaluate cost-of-living – external settlement patterns and the CPI. However, in periods of low inflation, arbitrators have given greater weight to external wage increases. Citing, City of Milwaukee, Dec. No. 29581-B (Oestreicher, 2000). As shown previously, the Association's offer is consistent with the external settlements among the comparable school districts, which also demonstrates that it is consistent with increases in the cost of living.

The Association also contends that when total compensation is considered, the Association offer is the more reasonable of the two, as the District offer falls substantially below the lowest settled districts. Citing Union Exhibit 4-2, which the Association asserts indicates the total compensation for an employee at each benchmark in settled districts under a single or family health plan and similarly indicates the effects of the two offers on total compensation. Half of the benchmark increases over two

years fall well under 1% under the District's offer. Worse yet, under the District's offer, the lowest total compensation increases lay in the benchmarks that would affect a large majority of current Association members. The bulk of Association members would see their total compensation increase by well under 1% over two years with the District's offer. Sixty-five percent of Association members have the family health plan, and under the District's offer all of those members who receive family health insurance would see an increase under 1%. Thus, the District's offer, which would undermine the total compensation of all Association members, and is particularly substandard for a large majority of members, is unreasonable.

Looking again at Union Exhibit 4-2, the Association asserts that the District's offer is not even close to the lowest two-year percentage increase in total compensation for each benchmark indicator. The closest the District comes to any of the lowest ranked among the settled districts' benchmarks is .6% at the Schedule Max: Single Insurance. While at the MA-10: Family Insurance benchmark, the District's total compensation offer is a full 3.1% below even the lowest ranked two year increase among the settled districts. Conversely, the two-year total compensation increase under the Association offer of 4.9% is very much in line with the total compensation increase settlement trend of an average 4.6% two year increase among the eight benchmark/insurance indicators.

The Association asserts that even under the QEO cast forward costing that inflates the cost of a settlement, the District's offer is egregiously low. That costing methodology, which inappropriately includes the cost of step increases, while excluding turnover savings, gives an overblown indication of a district's costs and should not be used here, especially in light of the QEO law's repeal. Had the Association accepted the District's offer effective July 2010, it would have been a -.07% "total package" settlement for 2010 – 2011 under QEO cast-forward costing. The arbitrator is charged with selecting the offer that, "... most closely approximates what a voluntary agreement between the parties would have been had they been able to achieve a settlement." Bonduel School District (Teachers), Dec. No. 24341-A (Nielsen, 1987). The Association never would have agreed to offer that, even under a methodology that exaggerates its cost, would have constituted a negative "total package" for year two. Even accounting for the late implementation, the District's cast-forward offer for year two remains unacceptable. For year two that offer amounts to only a 1.04% increase over the prior year. According to the District's data of the 2010 – 2001 cast-forward settlements cost, those settlements ranged between 2.8% and 4.998%. Thus, the District's year two offer amounts to nearly only a third of the lowest cast forward total package settlement among the District's proffered comparable pool. Conversely, the cast forward costing of the Association's offer for year one represents a 3.78% increase over the prior year and a relatively low 3.1% increase for year two. Among the comparable school districts, Association members are currently in the middle of the pack for total compensation, with members who received either single or family health insurance ranging from between fifth and seventh among the 11 comparable school districts. Contrary to the District's assertion that Association members currently receive excessive total compensation, that is not case. The District's total compensation offer falls substantially below even the lowest of the settled districts, and there is no reason to expect that the parties might have negotiated such an offer, while the Association offer looks very much like what one could expect from negotiations had they reached their conclusion.

The Association concludes that its offer is the more reasonable and should be selected for the following reasons:

1. The District seeks to switch the insurance carrier, however, it cannot show any need for this change, especially when this insurance carrier and costs are in-line with comparable districts, and when the Association has taken steps to address healthcare costs.
2. While the District would save significant money and add costs and other burdens to Association members by switching insurance carriers, the District does not offer an appropriate quid pro quo.
3. The financially sound District has the ability to pay for the Association's offer.
4. The Association's offer is consistent with settled school districts and other public employees. The District's offer, especially when considering the change it seeks, falls well below the settlement pattern.
5. The Association's offer is consistent with the total compensation settlements among comparable school districts, while the District's offer falls shockingly below the total compensation increases among settled school districts.

District Reply

In its reply brief, the District acknowledges the applicability of the three-part test where a party is seeking to make a significant change and asserts that the quid pro quo analysis supports the District's offer. It argues that although in some cases the quid pro quo may be equivalent to that which would result in conventional bargaining, in other cases it may be substantially less, and in other cases may not be required at all. Rice Lake School District (Support Staff), Dec. No. 32580-A (Petrie, 2009). The latter is especially true in today's economic climate. Wausaukee School District (Support Staff), Dec. No. 32479-A (Schiavoni, 2009).

Contrary to the Association's assertion that the District has not demonstrated that a mutual problem exists that requires a change to the status quo, the Association's final offer establishes that the rising cost of health insurance is a significant problem that the parties have a mutual interest in changing. Further, in its initial brief, the Association claims a "willingness to address health care costs" and offers "measures to moderate and reduce health care costs." In fact, the Association's final offer proposes to address the problem by having its members begin paying 2% of a health-insurance premiums and changing the drug card. The District has demonstrated that a problem currently exists with the cost of health insurance in the District in showing that the cost of the current WEA Trust Preferred Provider Plan is significantly higher than most of the plans in the comparability pool. The vast majority of the districts in the District's proposed comparability pool have secured insurance plans with monthly premiums for the family plan that are several hundred dollars less than the cost of the District's current plan. Even using the Association's proposed comparability pool, the District's cost of a family plan in 2010 – 2011 is the third-highest out of the eight districts for which data is available. Using both parties' proposed comparability pools, the cost of the District's current plan remains the third highest out of the 15 districts. The Association's statement that the cost is "within \$100" of the 2010 – 2011 monthly family premiums of several plans, fails to recognize that even \$100 per month for each of the 105 family plan enrollees is a significant amount of money, and when the family premium for the current

plan is compared to the average among the 15 districts of both parties' comparables, the amount is actually \$175 higher, or \$220,500 more annually just for the family plans. The Association's claim that the average insurance increase since 2003 – 2004 is 4.28% is misleading, as it conveniently excludes the three years immediately preceding that time frame where plan premiums increased from 12% to 36% depending on the plan. The District's exhibit showing an historical average increase of 9% for all of the plans offered to the teachers from 1991 – 1992 through 2009 – 2010 is much more accurate and included decreases to the premium as a result of plan changes agreed to by the parties. The District concludes that if there was not a problem, the Association would not have agreed to make additional changes to the plan in its final offer.

The District also asserts that its final offer presents an appropriate solution to the problem by offering new health insurance carriers and plans with substantially similar benefits to those currently being provided at a significantly lesser cost. It is also a solution that has already been successfully implemented with the District's other employee groups. The District carefully reviewed different health insurance plans provided by other providers to determine whether the providers can provide similar benefits at a competitive price. The public would likely expect the District to take this approach with every cost item, whether it is textbooks or playground equipment. The District identified two other plans that provide excellent benefits to Association members at a competitive price. By doing so, it generates savings for the District and the public, while at the same time proposing a change that will have little impact on the benefits for the employees and does not require an employee premium contribution. This solution is consistent with the approach taken by a majority of the school districts in the District's proposed comparability pool, as well as the majority of the entire group of all 19 school districts mentioned by either party. Eleven out of the 19 school districts currently have a health insurance plan other than a WEA Trust plan. If the comparison is limited to those districts in the immediate area that have access to similar fringe benefit plans (those districts within 25 miles of Milton), 8 out of the 12 districts have a plan other than a WEA Trust plan.

The District also asserts its proposed solution is appropriate because the health insurance plans contained in its final offer are substantially similar to the WEA Trust plan. While there are some differences between the plans, in many cases, the WEA Trust does not provide the most generous benefits. The Association spends a lot of time in its brief arguing that its members may need to change his or her doctor if the District's final offer is selected. The District recognizes that concern, but does not feel that it is totally realistic. A new doctor may be better than the teacher's current doctor, and it must not be presumed that any change to Dean Health or MercyCare will result in a decrease in the quality of health care services provided to members. Even under the WEA Trust plan, members are not guaranteed to have the same doctor for life. The Association also claims that the District's proposed change will force members to face either increased expenses or compromise their choice of health care provider. However, the Association's own exhibit (Union Ex. 2-10) shows that 76% of the total WEA Trust paid claims in 2009 were paid to either Dean Health or have MercyCare providers. Further, the exhibit is misleading in that it shows all the providers utilized by Association members in 2009, but does not provide enough information to determine if the services were emergency services or were specialty referrals that would otherwise qualify for network coverage. The Association's exhibit shows that only four of the top 10 providers, ranked by gross charges, are outside of the network in both the Dean Health and MercyCare plans, and that those four providers saw only 16% of the total number of patients listed by provider in 2009.

The Association also incorrectly assumes that Dean Health and MercyCare do not have nationwide

coverage. However, the Dean Health plan has a national network that allows any member access to about 4000 facilities nationwide and about 50,000 providers. This nationwide network is available for insureds, which would be mostly retirees and students, who live outside of the immediate plan area.

The District concludes that its final offer addresses the problem of high cost of insurance by replacing the WEA Trust health insurance plan with two plans that provide substantially similar benefits, and asserts the concerns presented by the Association about minor differences in the plans and minor difficulties that may exist during the transition period do not change that fact.

The District asserts that the Association's expert testimony is not reliable to demonstrate that the solution proposed by the District is not reasonable. The testimony of WEA Trust representative Ross Hampton is unreliable, because when he reviewed the plans and prepared the Association exhibits, he did not have accurate or complete information regarding the Dean Health and MercyCare plans and was not fully aware of the Association's proposal. Mr. Hampton indicated that the prehearing plan information looked different than the exhibits that were provided at hearing. Further, when preparing his exhibits, Mr. Hampton often could not figure out whether Dean Health or MercyCare provided benefits similar to WEA Trust; however, he did not take time to find out the answer by contacting representatives from those plans. His lack of knowledge of the plans resulted in numerous inaccurate statements by him in his exhibits and in his testimony regarding the difference in benefits. Most surprising, however, was the fact that Mr. Hampton was not aware that the Association proposed to change to a more complex Value Choice Plan for the teachers' prescription drug coverage. Therefore Union Exhibit 2 – 2, which he prepared, does not address these new tiers. Further, Mr. Hampton did not take into account the contribution that employees would have to make toward premiums when he evaluated out-of-pocket expenses. As Mr. Hampton's account of the differences in benefits is not reliable, the Arbitrator should disregard his statements and conclusions.

The District asserts it has provided an appropriate quid pro quo for the change, especially in light of the District's overall financial health. It asserts it is necessary to keep in mind that “there is no set answer as to what constitutes a sufficient quid pro quo.” Monticello School District (Support Staff), Dec. No. 31029-A (Schiavoni, 2005). Some types of proposed changes in the negotiated status quo which are directed toward the resolution of a mutual problem may require either none or substantially reduced quid pro quos. Arbitrators have stated that the employer's burden of establishing a traditional quid pro quo is reduced where health-insurance benefits are at issue, in light of the economic impact of rising health insurance costs. Citing, Marquette County (Highway Department), Dec. No. 31027-A (Eich, 2005); Village of Fox Point (Public Works Department), Dec. No. 30337-A (Petrie, 2002).

The District showed in its initial brief that the salaries for Association members are already competitive with those of comparable school districts, and the District's final offer will increase the rank of Milton teachers among their comparables. The increase in range, in light of the financial state of the District and the local economy, makes the District's final offer a sufficient quid pro quo. Further, the members' current salary ranking is not the result of members sacrificing salary improvements in order to stay with WEA Trust, as the Association claims. The Association failed to present any proof of the teachers' salaries losing ground with other comparable districts as a result of staying with WEA Trust. The available data shows that members' salaries have not been losing rank during the time they have maintained health-insurance coverage through WEA Trust. If the Association had been giving up salary increases in exchange for maintaining its benefit, proof of such a decline would be evident. There is also no proof to show that the current salary ranking was impacted by the QEO law. If

anything, that law helped ensure that the WEA Trust would remain in the District as long as possible, while also ensuring some salary increase.

The District also asserts that the Association incorrectly contends that the average MA Step 10 benchmark increase among the four area school districts that changed from WEA Trust was 6.8%. The Association's exhibit does not support the claim. Further, two of those settlements are easily distinguishable since they occurred well before the current decline in the economy.

The District again notes that there are times when a lesser quid pro quo or even no quid pro quo is needed for a change to be made. There have been a number of cases that have recognize that the cost of health insurance presents a significant mutual problem that the parties have a mutual interest in resolving. In such cases, an employer is not required to provide a quid pro quo for a change even where the employer could afford to continue to pay for the high cost of health insurance. Citing, Rice Lake School District (Support Staff), Dec. No. 32580-A (Petrie, 2009); City of Wauwatosa (Fire Department), Dec. No. 32645-A (Hempe, 2009). Thus, it is clear that the cost of health insurance must be considered a mutual problem, even if the Arbitrator determines that the District has the financial ability to pay for the health insurance, and that therefore, no quid pro quo is required in this case.

With regard to the Association's proposed comparability pool, the District asserts that the Association's own argument for a consistent comparability pool cuts against reliance on the athletic conference. Instead, a comparability pool should be based primarily on geographic area, which is a more stable, comparability pool than the athletic conference. The Association provides no evidence to support its assertion that the Southern Lakes athletic conference should be utilized because “it provides a group of school districts with which the parties have compared themselves over a sustained time period.” This is an initial interest arbitration for these parties and they have no history and no defined comparability pool. Further, the Association has not shown any common characteristics of these districts other than an expired WIAA athletic conference affiliation, for which the criteria for that affiliation are unknown. The District contends that the appropriate comparability pool includes the current athletic conference and schools within the geographic area around Milton. The Association recognizes that the geographic area is appropriate. Its own witness suggested that Rock Valley Educational Professionals UniServ schools all use each other for comparison purposes, showing that the Association has a history of comparing to Rock County districts. Using the geographic area also makes sense because Rock County school districts are each similarly influenced by the availability of competitively priced health insurance through more than one insurance carrier. The District notes that the Association omits Evansville from its comparison, even though it is contiguous and is also a member of the Rock Valley athletic conference, and therefore very closely aligned to the other Rock Valley schools, particularly Clinton, Whitewater and Beloit – Turner, which are also all represented by the Rock Valley Educational Professionals UniServ. The only reasonable explanation for omitting Evansville is the fact that it has already changed to Dean Health as its insurance carrier.

While the District agrees that some of the schools in its comparability group may be more connected to the Madison or Dane County market than the Janesville or Rock County market, it believes that Milton is clearly affected by both markets. Similarly, Stoughton is clearly influenced by both metropolitan areas, considering that it is also located on the I-90 corridor.

The District also notes that only four of the 11 districts that the Association offers as comparables are settled. That is hardly enough of a comparison to make the strong statements that Association makes

regarding the settlement trends. It is also important to note that the three districts that the Association offered as comparable that the District has not offered for comparison – East Troy, Elkhorn, and Jefferson, are all 20 to 30 miles north and east of Milton and in entirely different health care provider areas. Further, all of them are unsettled or 2009 – 2011, making any comparison difficult.

The District also questions the Association's assertion that the Jefferson School District decision from 1991 supports selection of the athletic conference. The arbitrator in that case considered the athletic conference and two contiguous districts, but only included Milton because at the time it was a member of the athletic conference. The District also questions the Association's reliance on the Clintonville Public School District decision. The arbitrator in that case agreed that athletic conferences may provide little guidance regarding the comparability pool, since the districts in that athletic conference had only a “limited amount of similar characteristics.” While the arbitrator excluded the Green Bay suburban area districts, it was not only because of their suburban location, but also because they were significantly farther away from Clintonville, the latter being two counties west of Green Bay. Here, the districts being considered are at most in the immediately adjacent county.

The District asserts it does not have the unfettered ability to pay for the Association's offer. In this regard, it asserts that the suggestion that the District's reserve monies have “dramatically increased” is misleading, as it fails to acknowledge the previous very low level of the District's fund balance and the growth that has been necessary to try to maintain a reasonable, but still less than comparable, fund balance. The District has increased its fund balance annually, when possible. After the administrators and support staff changed to the Dean Health and MercyCare plans, the District was able to make a remarkable \$1,353,545 deposit, which increased the fund balance as a percent of expenditures from 7.62% to 11.94%. Given the comparable school district average of a 19.1% fund balance to expenditures, the District still has a lot of catching up to do. It is clearly in the teachers' and community's interests for the District to increase its fund balance, so that it can maintain an appropriate bond rating, adjust to unexpected emergencies, and avoid layoffs and program cuts. When the Association states that “any savings that the District achieves through arbitration would go to further increase the District's reserve funds rather than pay for the cost of education,” it is just speculating. The District will of course use savings to pay for the cost of education, and its ability to do so is in the best interest of the public, and this will be even more important in the near future with decreasing state revenues and reduced District enrollments. Paying for the cost of education or augmenting the District's fund balance are certainly better options than continuing to pay WEA Trust for a benefit that can be reasonably achieved elsewhere at a substantial savings.

The District also finds the Association's suggestion that the District's levy rate has declined misleading. The Association asserts that taxpayers in the District are taxed at about half the rate they were taxed in the last decade. However, when considering the other information presented, specifically the levy rate paid by taxpayers around the state for the same time period, it is clear that this decrease is simply a trend in the State rising out of the limits placed on districts. A decrease in a levy rate since the 1993 change in funding cannot be used to distinguish the District from the school districts in the comparability pool or the other school districts around the State. During the more relevant current time frame (2006 – 2007 to 2009 – 2010) the change in a District's levy rate was no more and no less than others in the comparability pool. The average change in the levy rate among the comparables being 8.3%, while Milton's was 8%.

The District also disputes the Association's suggestion that the District's lower than average mill rate

and higher than average income per tax return demonstrate the District's ability to pay. The suggestion is not entirely true because revenue limits affect the District's ability to raise revenue, and therefore increase the mill rate. When the revenue limits were imposed in 2003, the amount of revenue that could be raised was restricted. To some extent, those restrictions locked in each district's mill rate relative to the position of other mill rates in the State. If one was a low mill rate district when the restrictions were put in place, one is most likely still a low mill rate district unless it successfully utilized special adjustments or passed a referendum to override the limit. The Association's reliance on the 2008 income tax returns as an indication of the state of the current economy in the area is inaccurate. The recession had only just begun in 2008 and there is no doubt that the current data would reflect a deeper recession. Further, having higher than average income tax returns for the residents in the District does not equate to it being reasonable for them to pay for extremely high cost health insurance benefits, when a similar plan is available at a substantially lower price.

The District asserts its proposed salary increase is more reasonable than the Association's proposal for a number of reasons. First, while the Association states that both offers provide salary increases that are in line with settlements in its comparability pool, and both parties agree that the District's proposed salary increase is over all slightly higher than that proposed by the Association, the Association incorrectly focuses the review on the average increase rather than the actual benchmark salaries provided by its four settled comparable school districts. The District asserts that its benchmark analysis is more appropriate. The Association suggests that both salary offers increase the BA Minimum more on a percentage basis than the Schedule Maximum. The salary schedule structure and index, which is not changed by either party's final offer, dictates the dollar per cell distribution. Since the 2006 – 2007 contract year, the parties have negotiated an increase to the base rate for beginning teachers with no experience, and the rest of the salary schedule structure is built from that amount based on voluntarily agreed-upon formulas. The percent increase to the salary Schedule Maximum will be lower than the percentage increase to the BA Minimum because the overall index is dollar-per-cell. The parties voluntarily agreed to the current salary schedule structure and index, as well as the resulting rankings those salary benchmarks provide among the comparables. The Association's argument focuses on only four settled districts and the 2009 – 2010 and 2010 – 2011 school years, which misses any base year comparison entirely, and is woefully insufficient.

A District reasserts that its offer is more consistent with the settlements of other non-school public-sector workers. The fact that teachers often receive both step and lane advancements in addition to the negotiated salary increase provides less weight to the Association's comparison in this area.

With regard to the cost of living factor, the District asserts that the Association failed to present any evidence regarding the CPI and relies only on salary comparisons that are already considered under other statutory criteria. It is the CPI that should be reviewed under this factor.

The District asserts that the Association's argument concerning total compensation provided by the offers only focuses on four settled districts and is therefore insufficient to show a pattern. Also, while the total package cost of the District's offer will be impacted by the reduction in costs due to the change in health insurance carriers, even looking at only the four districts the Association cites, the data shows that on average the total compensation received by teachers in Milton will, on balance, be comparable. The District's final offer is far closer to the average BA Minimum benchmark while the Association's offer is closer to, but higher than, the average Schedule Maximum benchmark. The fact that the BA Minimum compares above average while the Schedule Maximum compares below average is not

addressed by either final offer, and is the result of the underlying voluntarily agreed-upon salary schedule structure. The District's final offer is more reasonable because, on average, it provides a reasonable total package compensation to teachers while at the same time providing savings for the District and a comparable health insurance plan for its employees. Last, the Association fails to review the non-economic benefits teachers receive under this factor and the additional benefits they received through the tentative agreements reached by the parties.

The District asserts that the Association failed to present evidence and arguments concerning many of the statutory factors the Arbitrator is required to consider and give weight to. Therefore, the Arbitrator must conclude that the District's evidence regarding those factors is valid, undisputed, and controlling.

The District asserts that the Association's threat of future litigation if the District's final offer is selected is inflammatory and absurd and should be ignored. It further asserts that the Association's final offer states that "Effective September 1, 2010, all eligible members and their eligible covered dependents may participate in the WEAIT Preferred Provider Plan Copayment Option (as described in Appendix J, attached hereto)." The Association did not provide a revised Appendix J as part of its final offer to reflect the changes to the health insurance plan resulting from its offer. Instead, one is required to assume that the Association's intent is to amend Appendix J to include the "The WEA Trust Value Choice drug plan" proposed by the Association. Since no details regarding the plan were provided at the time final offers were certified, and the District was unaware of the particular Value Choice drug plan being offered until a summary was provided 10 days prior to hearing, it is possible that the Association's final offer is not sufficiently clear as to Appendix J. This potential fatal flaw in the Association's final offer, if selected, is more likely to lead to litigation by the retirees than the District's final offer.

The District disputes the Association's suggestion that it has proven a willingness to address health care costs. First, the evidence demonstrates that the Association has been unwilling to address health insurance costs and has actually impeded the District's efforts to do so, as explained in the District's initial brief. Second, despite repeatedly asking the Arbitrator to allow the parties to use the collective bargaining process to address the rising cost of health care, the Association has failed to do so. The Association's final offer, as it presently reads, was never presented at the bargaining table during negotiations or during mediation. It was not until the Association submitted its first Preliminary Final Offer in January 2010 that an employee contribution towards health insurance premiums was proposed. It was not till March 18, 2010 when the Association amended its final offer to include the 2% premium contribution that is in its final offer, while the District's proposals included a change in health insurance carrier from the very beginning. Many arbitrators have concluded that such a practice is unfair and should be counted against the party proposing a change that was never sought at the bargaining table. Due to the time, energy and financial costs resulting from interest arbitration, the public is best served when the parties are given an incentive to present all reasonable offers at the table, before they move into the process of interest arbitration. The District requests that the Arbitrator take the same approach as the other arbitrators and conclude that the Association's failure to present an employee contribution towards health insurance until the WERC investigator called for final offers weighs against the Association.

The District asserts that based on the facts and arguments presented by District, and in light of all the statutory factors, the Arbitrator must conclude that the District's final offer should be selected.

Association Reply

The Association first asserts that the District can afford the Association's offer, given that the District consistently finishes the school year with a substantial surplus under the status quo health-insurance. Further, the District turned away a half-million dollars in potential revenue for the 2009 – 2010 school year. There is no support for the District's claim that it could be forced to have to go to referendum, if the Association's final offer is selected. The District addressed revenue caps at length, however, the mere existence of revenue caps, even under the “greatest weight” factor, does not automatically favor the less expensive offer. Sturgeon Bay School District, Dec. No. 30095-A (Tyson, 2001). The District submitted no evidence concerning the actual effects of revenue caps on the District. It is clear that the District has the ability to increase its revenues simply by levying to the amount that is currently permitted, rather than under levying.

Another factor indicating the District can afford the Association's final offer is the fact that Milton has the lowest school taxation rate, or “mill rate,” among the comparable school districts. Thus, the suggestion that Milton residents have a relatively inordinate tax burden lacks evidentiary support. The District has not submitted any evidence to distinguish Milton from other districts or communities that can afford fair settlements. There is no evidence that Milton has unusual costs that other districts do not share, and the record shows that the District cannot only meet its expenses, but has a significant surplus at the end of each year. Moreover, the other comparable school districts were able to afford settlements with fair wage increases without changing health insurance carriers.

The Association disputes the District's claim that local economic conditions are deteriorating. It asserts that while there is no denying that the national and local economies have suffered in recent years, the evidence shows that the Janesville area and Rock Valley economies are improving and the Milton area economy is on a significant upswing. The May 2010 Department of Workforce Development Employment Report indicates that the unemployment rate declined in that month alone by .6% and that over the prior year the rate had declined by 2.5 points. Also, Milton has a lower poverty rate and higher income than surrounding communities.

The Association asserts that by using the cast-forward total package costing method, the District exaggerates the cost of the Association's and the District's offers at \$1,997,228 and \$1,555,229, respectively. In calculating these numbers, the District has multiplied the projected cost of the first year of the contract times two, and added on the projected cost increase for the second year. While the two offers have different insurance costs, the cumulative cost figures projected above are largely inflated due to the inherent flaws with the QEO cast-forward costing method, a costing method unlike those used in other labor relations arenas. Cast-forward costing methods are inflated because the additional cost of moving members up steps in the schedule are included in the projection, but the savings of higher paid members moving off the schedule to be replaced by lower paid new hires, as well as possible unit reductions, are not included. Under the QEO cast forward method, the projected total salary costs for the unit in 2009 – 2010 under the Association's and the District's offers are \$11,425,440 and \$11,406,691, respectively. However, if costs are projected based on the actual placement of members on a set schedule, the salary costs of the Association and District offers are \$11,034,226 and \$11,015,446, respectively, a difference of approximately \$391,000 in 2009 – 2010 alone. By repealing the QEO law, the legislature decided that including the cost of step increases under cost calculation no longer applies to teachers. Further, in units not covered by the QEO law, arbitrators found that it was not appropriate to cost the steps. Citing, Waukegan Community School District, Dec.

No. 30305-A (Stern, 2002). The Association concludes that as the cast forward method significantly inflates the cost of both offers, the District's characterization of the overall cost of the offers should be discounted.

With regard to the comparables, the Association asserts the pool of comparables it has offered is more appropriate than those offered by the District. The District includes all of the Badger South Conference districts in its comparable group; however, several of the districts, Monona-Grove, Stoughton and Oregon, are not comparable as they are part of the Madison metropolitan region, rather than the Janesville metropolitan region. Arbitrators have recognized the influence of metropolitan areas on the surrounding districts. Recognition of the different metropolitan regions is particularly important here, because the provision of health care is regional. Health-care providers used by individuals employed by Stoughton, Oregon, and Monona-Grove districts are more likely to be in Madison and unlikely to be used by Milton teachers. The District also includes all of the districts in Rock County, including Evansville, Parkville, Beloit – Turner, Brodhead and Beloit. None of those districts are contiguous to Milton and there is a great disparity in size among them, Milton having twice the enrollment of all but Beloit. Milton is not currently in the same athletic conference as those districts and they were not part of the Southern Lakes Athletic Conference, nor do they share the long standing association that Milton has with other districts from that conference. Given that they are considerably smaller than Milton and there is no shared border or history with Milton, there is not a sufficient basis to include them as comparables. There is also no basis for including all the districts in the Rock Valley Educational Professional Uniserv. There is no arbitral authority cited for using a UniServ to establish a comparable pool. Just because districts are grouped together for one purpose is not sufficient to conclude they are an appropriate comparable group in interest arbitrations. Recognizing that local economies are an important factor in bargaining, the Association included all contiguous districts in its comparable group. It also recognized that long-standing associations are important in determining comparables and therefore included districts from the Southern Lakes Athletic Conference. The District's pool of comparables should be rejected because it includes districts that are influenced by another metropolitan area and districts that do not share a long association or border with Milton.

Next, the Association asserts its offer includes reasonable insurance cost-saving measures, while the District unreasonably insists upon changing insurance carriers. There is substantial evidence in the record about why Association members value their current insurer over the District's proffered carriers: differences concerning provider networks; differences concerning choice of provider; differences concerning additional costs; and differences concerning benefits. Without any evidence, the District states that the Association's insurer has some type of undue influence over the Association, and that the Association disregards its members' interests to further the fortunes of the WEA Trust. Such unsubstantiated allegations highlight the District's desperation in the absence of facts to support its offer. The Association asserts it has accepted responsibility for addressing insurance costs in crafting an offer that reduces the District's insurance costs for the second consecutive bargaining cycle.

While the District notes other arbitrators have approved a change in insurance carrier, in each of those cases the employer either demonstrated a significant need for the cost-saving measure and/or demonstrated an appropriate quid pro quo. Here, the District has demonstrated neither and cannot rely on the factually distinct examples. The Association distinguishes this case from Nicolet Area Technical College, Dec. No. 32064-A (Krinsky, 2007), where the employer only sought to change health carriers after it was notified of an 18.4% premium increase, unlike the approximately 4% increase and the Association's proposed further cost-saving measures that bring an actual reduction in the District's

costs. Additionally, the employer in that case had negotiated a change in carrier with two other groups represented by the same union prior to seeking change with the faculty. Here, the District has not negotiated such a change in carrier, but imposed the change on non-represented employees. In the Iowa-Grant case cited Dec. No. 32684-A (Honeyman, 2009), unlike here, the employer offered a significant wage quid pro quo in exchange for the change in carrier it sought, with a wage offer more than double that of the union's in the first year. The Association also asserts that the evidentiary record in this case concerning differences in the insurance plans, distinguishes it from those cases, which lacked the member testimony and documentation of the differences between the current insurer and the replacement insurer.

The District's projections of future insurance costs also have no support in the record. The District assumes a 9% annual increase in its insurance costs and projects that into the future to come up with an alleged future cost difference between the WEA Trust and the other plans. However, only once over the past seven years has the District's cost for the WEA insurance increased by as much as 9%. That increase in 2006 – 2007 gave impetus to the net cost reduction the parties negotiated effective for 2007 – 2008.

The Association finds the District's comparative insurance information misleading. While the District's chart lists two other school districts with higher insurance costs for 2010 – 2011 than under the Association's offer (Clinton and Edgerton), it inexplicably characterizes the Association's offer as the second-highest cost, if selected. The District additionally omits the highest cost insurance district (Beloit) from its chart. While the insurance costs were not known for that district for 2010 – 2011, even a 0% increase would put it at a higher cost than Milton. Further, omission of the highest insurance cost district obviously skews the subsequent averages the District uses to depict cost averages. Not only would the Association's offer rank fourth, rather than second, in cost among the District's comparables, the cost of the Association's offer is also very close to that of Whitewater and Delevan – Darien in cost. Thus, Milton's insurance cost is more in the middle of the pack than as characterized by the District.

The Association also asserts that by insisting that the Association conform to the insurance carrier of the minority employee groups, the District seeks to have “the tail wag the dog.” Here, the District seeks to use the non-represented minority support staff and administrative groups to set the trend for the bulk of the District's employees. Further, arbitrators generally do not give weight to conditions that are imposed on groups that lack collective bargaining rights. Citing, Door County, Dec. Nos. 31694-A, 31693-A, 31692-A, 31691-A (Greco, 2006). Thus, no weight should be given to the insurance carrier of the non-represented employee groups in Milton.

Last, the Association asserts that the comparable settlements favor its offer. That District's own salary data favors the Association's offer. The parties agree that the salary offers are relatively similar over two years, and with that similarity the parties agree that the issue of support from comparable settlements is connected to the issue of an appropriate quid pro quo. Even when using the District's suggested comparables, the relatively minor salary improvements in the District's offer does not constitute an appropriate exchange and is out of line with comparable settlements. The District argues that the minor salary benchmark ranking changes constitute a quid pro quo. However, such minor changes in comparable salary benchmark rankings are a normal component of the negotiations process. The District's own table on page 46 of its brief shows that in Edgerton, where the WEA Trust remains the insurer, the hiring-based benchmark improved from 10th to 8th for the 2008 – 2010 contract term.

Similarly, Beloit improved from 7th on the hiring base in 2008 – 2009, to 5th in 2010 – 2011 and there was no dramatic insurance change. Given that such ranking shifts are a normal part of negotiations without significant concessions, the District's own chart highlights that it does not offer a quid pro quo for a change in insurance carriers. In Beloit – Turner, where the teachers agreed to a change from the WEA Trust to a dual choice carrier, their ranking for the hiring base was 6th and 9th for the schedule maximum in 2008 – 2009. By the end of the contract term, Beloit – Turner teachers improved four spots in each of those benchmarks. Here, the District seeks the same type of change that the Beloit – Turner school district negotiated with its teachers, but refuses to offer a similar salary increase that would dramatically affect salary rankings.

The District's offer also falls substantially behind the comparables in year one and is somewhat in line with settlements in year two. However, when the two-year lift of the District's offer is viewed, it can be seen that it is below the settlement trend of the Association's comparable pool and of the pool suggested by the District. Below are the two year average benchmark lifts of the Association's comparables:

Benchmark	Two Year % Avg. Increase Among MEA Comparables	Union Offer	District Offer
BA Minimum	4.9%	5.4%	5.7%
MA Step 10	4.3%	3.8%	4.0%
MA maximum	4.0%	3.4%	3.6%
Schedule Maximum	3.9%	3.6%	3.8%

The District's offer falls below the settlement trend on three of the four benchmarks. Under the District's offer the vast majority of Association members would get two year salary increase that falls behind their counterparts in the Association's suggested comparables. The District's offer also falls behind comparables even among its own suggested pool of school districts. Thus, regardless of the districts with which to compare the District's offer, that offer is behind for most benchmarks and when considering the concession the District seeks, and is patently unreasonable. If the Milton teachers who are “off schedule” are considered, the District's offer looks even worse, as those employees receive an even smaller percentage increase (60% of the dollar increase applied to the maximum cell in their respective lanes).

The Association finds the District's sub-comparable offer even more shocking given the healthcare concession it seeks. It not only fails to show a need for the change it seeks, it fails to even offer a salary increase that keeps pace with the settlement trend

The Association also asserts that the District uses different methods to characterize settlements to inflate the comparative value of the two offers. When the District reports the value of those two offers, it includes the across-the-board increases, as well as step costs; however, it only includes the across-the-board (or percent per cell) when reporting comparable non-school public employees' salary increases. This is comparing apples and oranges. An apples to apples comparison shows that the District's offer for year one is 1.85% and 2.7% for year two, both of which are well below the settlement trend of non-school public employees. In looking at private-sector settlements, the District inappropriately heavily relies on a local newspaper operator, Bliss Communications, as evidence of local private-sector settlements and concessions. However, those circumstances are only evidence of the difficulties facing the newspaper industry and cannot be relied upon as evidence of anything more than what faces that particular industry.

The District points to a modestly lower total package settlement trend among its suggested comparables as support for its offer. However, at about 1%, the District's total package offer falls well below the average 3.58% among its comparables for year two. Thus, even using the cost inflating cast-forward total package method of costing, shows how unreasonable the District's offer is.

For the above stated reasons, the Association concludes its offer is more reasonable and requests that it be selected.

DISCUSSION:

It is noted the parties do not address the preparation time issue. Hence, that issue is given no weight. There are two issues that are necessary to address before consideration of the statutory criteria. First, is the costing methodology to be used in assessing the parties' final offers. The Association asserts that the actual cost to the District provides a more accurate picture of the offers, while the District relies upon the cast-forward method of costing as giving a more accurate picture of the worth of the increase. Second, the parties have been unable to agree on a set of comparable school districts with which to compare Milton.

Costing Method

While the Association argues the cast-forward method was required under the QEO law and that its use should be discontinued with the repeal of that law, the Arbitrator notes that the cast-forward method has been the traditional method of costing settlements in Wisconsin school districts at least since 1978, when teachers and other non-protective service public employees in Wisconsin were given the right to go to interest arbitration if their collective bargaining representative could not reach a settlement with their municipal employer, well prior to the passage of the QEO law in 1993. However, the Arbitrator also notes that this dispute is not a new one. The late and well respected Arbitrator Joseph Kerkman addressed this very issue in his award in Deerfield Community School District (Teachers), Dec. No. 26712-A (Kerkman, 8/91). In deciding that the cast-forward method was the more appropriate method in that case, Arbitrator Kerkman explained:

The undersigned has considered all of the evidence and prefers the cast-forward method for both years. The actual costing proposed by the Association for the 1990 – 91 school year includes cost savings that were generated by reason of senior teachers retiring or leaving the District's employ and being replaced by less senior employees who then occupy a lower spot on the salary schedule than did their predecessors. Without question, the Association method accurately defines the expenditures for teacher salaries and constitutes an accurate budget figure. That, however, in the opinion of this Arbitrator, is not the measure of the worth of a salary increase on a salary schedule. A salary or wage increase is measured by the percentage or dollar increase over the predecessor salary schedule. Were it not for the practice of including step increases when costing the dollar and percentage increases in teacher negotiations, it would be simple to calculate the percentage of increase per cell at the same spot the salary schedule from the predecessor schedule to the new schedule. Because the practice is to cost the step increase, it is necessary to “cast forward” in order to take into account the step increases that are generated in addition to the negotiated increases to the salary schedule itself. When replacements are factored into the equation at a different step on the salary schedule than the one occupied by the replacement's predecessor, there is no longer a measure of the percentage increase negotiated for the improvement in the salary schedule and the movement of one step. Therefore, while the actual costing is an appropriate budgetary measure, it does not accurately reflect the amount of the negotiated increase. The actual costing becomes significant if the Employer pleads poverty or inability to pay because, then, it becomes a matter of whether there are sufficient dollars in the budget to cover the cost of the negotiated settlement. The actual costing, however, does not measure the amount of the negotiated increase in the opinion of the undersigned.

...

Finally, the cast-forward method is preferred for comparison purposes when comparing patterns of settlement because it provides a more consistent and more reliable method of costing when making those comparisons than does the actual costing method. When comparing actual costing, the numbers of teachers turning over from one year to another, and the salary schedule that the departing teacher occupied compared to the salary level that a new teacher is hired, creates variables from one district to another which are not present in the cast-forward method of costing. Because the actual costing method skews the results, depending on the amount of and levels of turnover, the comparisons are not as accurate as the cast-forward method.

(At pages 6-7).

This Arbitrator concurs with the above as to the application of the two costing methods. In this case, both have application. Section 111.70(4)(cm)7r,c, Stats., requires the Arbitrator to consider and give weight to “The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.” In this case the District expressly asserts that it does not have the ability to cover the costs of the Association's offer. That being the case, the actual costs method provides a more accurate picture of the District's ability to pay, and therefore, is the method to be applied in considering this factor. However, when the final offers are to be compared under subsections d, e, and f, the cast forward method of costing better allows comparison of the salary

components of the parties' final offers with the salaries of those employees in the pool of comparables. Therefore, the cast forward method will be applied when considering those criteria.

Comparables

As this is the parties' first interest arbitration there has not been a pool of comparables set. To further complicate matters, the WIAA realigned athletic conferences, resulting in Milton being moved from the Southern Lakes conference to the Badger South conference in the 2008 – 2009 school year after at least 20 years in the former conference.

Below is a chart of the districts offered as comparables by the parties with membership count, distance from Milton and athletic conference:

<u>District</u>	<u>Membership</u>	<u>Distance From Milton</u>	<u>Athletic Conference</u>
Beloit	7,272	22 miles	Big Eight
Beloit-Turner	1,257	20 miles	Rock Valley
Brodhead	1,153	32 miles	Rock Valley
Clinton *	1,173	26 miles	Rock Valley
Delavan-Darien *	2,567	20 miles	Southern Lakes
East Troy	?	?	Rock Valley +
Edgerton *	1,900	11 miles	Rock Valley
Elkhorn Area	?	?	Southern Lakes
Evansville *	1,793	23 miles	Rock Valley
Fort Atkinson *	2,709	13 miles	Badger South +
Janesville *	10,355	12 miles	Big Eight
Jefferson	?	?	Rock Valley +
Milton	3,481	0 miles	Badger South +
Monona Grove	2,806	34 miles	Badger South
Monroe	2,677	46 miles	Badger South
Oregon	3,647	34 miles	Badger South

Park View	1,106	25 miles	Rock Valley
Stoughton	3,422	23 miles	Badger South
Whitewater *	2,046	13 miles	Rock Valley +

(* Contiguous to Milton) (+ Formerly in Southern Lakes)

(Compiled from Dist. Exs. 117, 118, 129, 137 and Assn. Exs. 1-6 to 1-12)

The District suggests the appropriate pool is comprised of the Badger South conference school districts (Fort Atkinson, Monona Grove, Monroe, Oregon, Stoughton), the contiguous districts (Clinton, Delavan-Darien, Edgerton, Evansville, Fort Atkinson, Janesville, Whitewater), all Rock County districts (would add Beloit, Beloit Turner, Brodhead, Parkview), and those that are represented by the Rock Valley Educational Professionals UniServ (does not add any not already included). The Association offers those districts that were in the Southern Lakes conference (Delavan-Darien, East Troy, Elkhorn, Fort Atkinson, Jefferson, Whitewater), the current members of the Badger South conference, except those located within Dane County based upon the influence of the Madison Metropolitan area on those districts (Monona Grove, Oregon, and Stoughton), and the contiguous districts (it does not include Evansville).

As both parties note, Arbitrators have consistently recognized the need for a stable set of comparables selected on the basis of objective criteria, of which size and geographic proximity are the more significant. The parties also recognize that athletic conference has been a traditional means of selecting a district's set of comparables; however, they also recognize that the use of the athletic conference has its shortcomings, especially when it comes to geographic proximity. Both parties agree on the inclusion of the districts contiguous to Milton, with the exception that the Association does not recognize Evansville as being contiguous. Both also include Monroe, based upon its being a member of the Badger South conference. While the District would include all districts in the Badger South conference, it argues that athletic conference should not be a primary basis for comparison, due to the forces which can affect a district's ability to reach agreement with its bargaining unit, forces which are unique to each individual district. It offers in that regard that the UniServ that represents Milton's teachers should be a basis for selection, arguing that the other districts where it represents their teachers should be given more consideration.

The undersigned is satisfied that in this case the present Badger South conference schools, excluding Madison Edgewood (a private school), along with the contiguous districts, present a satisfactory pool of districts for comparison purposes based on size (as measured by enrollment) and/or geographic proximity. It is recognized that this pool is not perfect in that it contains some districts that are not as proximate in size (Clinton, Edgerton, Evansville, Janesville) or in geographic location (Monroe, Monona Grove, Oregon); however, those not proximate in size are contiguous to Milton and those not proximate geographically are among the most proximate in size to Milton. Additionally, Fort Atkinson now a member of Badger South, Delavan-Darien, and Whitewater, besides being contiguous, also provide a sample of the Southern Lakes conference that Milton had been in previously. While Monona Grove, Oregon, and Stoughton are within the influence of the Madison Metropolitan area and its economy, they are closest in size to Milton. It is further noted, that both Oregon and Stoughton about

Rock County on their southern borders.

The Arbitrator notes that the Association did not provide any information regarding the size or distance from Milton or other characteristics of the districts that had been in the Southern Lakes conference with Milton to evaluate their similarities, or lack thereof, with Milton. Therefore, the Arbitrator is unable to make a judgment as to their comparability beyond the historical basis the Association notes. With regard to the earlier interest arbitration awards involving Southern Lakes conference schools where the arbitrators in those cases found Milton to be an appropriate comparable, the Arbitrator notes the most recent of those two awards was in 1991, almost 20 years ago. Much can change in that time, and unless the Association showed that nothing relevant had, which it did not, there is no basis upon which to judge the present relevancy of those awards.

The District suggested that all of the districts in Rock County should be included. That would add Beloit, Beloit-Turner, Brodhead, and Parkview. As can be seen from the chart, Beloit's membership count is twice that of Milton, and Beloit-Turner's, Brodhead's and Parkview's membership counts are 1/3 that of Milton. They are neither proximate in size nor are they contiguous. Therefore, the Arbitrator has not included them as comparables to Milton.

Based upon the above, the following Districts are considered the comparables:

- Clinton
- Delavan-Darien
- Edgerton
- Evansville
- Fort Atkinson
- Janesville
- Monona Grove
- Monroe
- Oregon
- Stoughton
- Whitewater

Statutory Criteria

a) Lawful Authority of the Municipal Employer

There were no arguments made that the District does not have the authority to fund the Association's final offer. Therefore, this factor is given no weight.

b) Stipulations of the Parties

The stipulations reached by the parties primarily contain improvements for the Association's members, especially the expansion of the "just cause" standard to apply to all discipline, for both non-probationary and probationary teachers. Therefore, it is concluded that this factor favors the District's final offer.

c) Interests and Welfare of the Public and the Municipal Employer's Ability to Pay

Addressing the District's ability to pay first, as noted previously, the application of the “actual costs” method of costing provides a more accurate picture when considering this factor. The District costs the difference in the two offers over the 2009 – 2011 contract term at \$441,998 using the cast forward method of costing. The Association costs the difference in total salary cost under the cast forward method and under the actual cost method as \$391,000 in 2009 – 2010 alone. The District does not dispute the figure, only the method of costing, which has been addressed. If \$391,000 is subtracted from the total new money figure for 2009 – 2010, that leaves a total increase of \$310,633 under the Association's offer and \$286,686 under the District's offer, or an actual difference of \$23,947 in the first year. That turns out to be the same difference under either costing method the first year.

The difference the second year under the Association's “actual cost” method (it simply again subtracts the same \$391,000 from the total salary figure) is \$395,353. The difference in the second year is about \$420,000 under either party's costing using the cast forward method. Regardless of which costing method is used, the difference in the offers is over \$400,000 over the life of the contract, due primarily to the difference in the cost of health insurance in the second year under the two offers - \$402,410 using the Association's figures. (Assn. Ex. 4-3 and 4-5).

The Association makes much of the fact that the District has increased its fund balance each year by having a surplus at the end of the year, having increased its fund balance by 181.1% from 2003 – 2004 to 2008 – 2009. (Assn. Ex. 5-2). However, looking at the fund balance as a percentage of expenditures shows that Milton went from having the lowest percentage in 2003 – 2004 at 3.0% to the third lowest percentage among the comparables in 2008 – 2009 at 12.3%. (Assn. Ex. 5-4). Thus, it cannot be said that the District is out of line with regard to increasing its fund balance.

The Association does have a point that the taxpayers of the District are not being overly burdened compared to their neighbors. Milton ranked in the middle of the comparables – six out of 12 as to equalized value (Dist. Ex. 136), eight out of 12 as to total tax levy, 11 out of 12 as to tax levy per member and 11 out of 12 as to the mill rate. (Dist. Ex. 138). Further, as the Association notes, the District under levied by \$500,000 for the 2009 – 2010 year, even though taxpayers had authorized it to levy to the maximum allowed under the revenue caps. It also appears that the District's citizens are doing somewhat better than some around them, Ranking second out of the eight districts for which there was information as to “income per tax return” (Assn. Ex. 5-14) and had the lowest percent (20%) of its membership enrolled in the free/reduced lunch program among the eight districts. (Assn. Ex. 5-17). However, the Arbitrator notes that Evansville, Monona Grove, Oregon, and Stoughton were omitted from these comparisons. This points out the problem when there is disagreement as to the comparables and what information is important to the record. The omission of those districts cuts against the weight to be given those comparisons.

Also of valid concern, is that even if the District can fund the Association's final offer in 2010 – 2011, will it be able to continue to do so in the future. This is a very real concern in this case, as the difference in the cost of providing health insurance between the offers will continue into the future, if the Association's final offer is selected. Considering the family premiums since at least 2007 – 2008, the six districts out of the 12 comparables with WEAIT plans have had the six highest premiums out of the 12 districts, with the exception of Fort Atkinson ranking fifth with a Dean plan in 2010 – 2011.

(Dist. Ex. 122). Milton would continue to have the third-highest premium under the Association's offer. There is also the cuts the District has made to meet its budget and perhaps end with a surplus to consider. Some of those cuts were just putting off the expenditures to the future – a delay in purchasing technology (\$200,000) and a delay in purchasing textbooks (\$49,000). Also of concern is the District's declining enrollment that will continue to impact its revenues from the State.

On the other hand, there is a real concern, as well, that a change in the health insurance carrier will have a negative impact on the morale of the teachers, especially those who would be required to change providers. This concern must be weighed against both the effect on the morale of the District's other employees that previously underwent the change in health insurance carrier and the public's interest in reducing costs while maintaining services in these austere times.

The Arbitrator concludes from the above that while it cannot be definitively said that the District does not have the ability to pay for the Association's final offer in 2010 – 2011, there is a real basis for concern as to whether it will be able to do so in the future. For these reasons, it is concluded that while the District has not established an inability to pay for the Association's offer for the 2010 – 2011 year, the serious question of whether it can continue to do so in the future, without negatively impacting its educational mission, leads to the conclusion that the interests and welfare of the public would best be served by the District's final offer. The Arbitrator finds that the interests and welfare of the public outweigh the District's present ability to pay, and that this factor therefore favors the District's final offer.

d) Comparison With Other Employees Performing Similar Services

It is noted at this point that health insurance is the primary issue in dispute in this case and will be given controlling weight. While both parties have argued their respective salary offers are supported by the external comparables, both concede the offers are very similar. The District costs the difference in the two offers as to percentage of average salary increase over the two years at .09%, while the Association costs the difference at .11%. For this reason, the Arbitrator will for the most part forgo a comparison of the parties' salary offers with the external comparables, except to the extent necessary to address the question of whether the District's offer provides an adequate quid pro quo for the change it proposes.

With regard to health insurance, as noted previously, six of the 12 districts in the comparable pool have the WEA Trust as their health insurance provider. Four of the comparable districts have Dean as the sole carrier or as an option, one is self-funded and one is in the State Plan. In that regard, the comparables are evenly split and do not favor either party.

As to a comparison of premiums, using the premiums for a family plan, Milton's premiums have ranked third highest since 2008 – 2009 and would continue to rank third highest in 2010 – 2011 under the Association's offer. Also, as noted previously, the districts with WEA Trust plans, with but one exception, have had the six highest premiums among the comparables since at least 2007 – 2008. Under the District's offer Milton would fall to the middle at seventh highest. The Arbitrator finds that the comparables favor the District's offer with regard to the cost of the premiums.

A comparison of plans, which is limited to drug co-pays, deductibles, co-pays, and lifetime maximums, shows that the six districts with a WEA Trust plan have lower drug co-pays than the other districts,

deductibles are substantially the same among the plans, as are co-pays and lifetime maximums. (Dist. Ex. 121). There would be no significant change in these regards under either offer. As to premium sharing, four of the districts have an employee contribution, two with a 10% employee contribution, one with a flat dollar amount that was the equivalent of 3 %, and one with a 2.2% contribution. (Assn. Ex. 2-15, p. 4). The average contribution among the four being 6.3%. Therefore, the comparables do not support the Association's offer in this regard.

The Arbitrator finds that on whole, the external comparables favor the District's offer.

e) Comparisons With Other Employees Generally
in the Same Community and Comparable Communities

Starting first with the internal comparables, the District relies on its treatment of its administrative and support staff, who are non-represented employees. Arbitrators have consistently held that the treatment of a municipal employer's non-represented employees does not constitute a "settlement" for comparison purposes, as those employees do not have access to interest arbitration to resolve an impasse, but rather must, in the end, accept what the employer offers. Though it is relevant as far as showing that the District is trying to treat all of its employees consistently and that it was able to make the transition from the WEA Trust plan to the other options with those employees without significant problems, the District's treatment of its non-represented employees is not given any weight as far as constituting an internal settlement pattern.

With regard to non-school district employees, a review of Association Exhibits 3-7, 3-9, 3-10 and District Exhibit 159, shows that the settlements with Rock County's bargaining units were at or near 2.75% for 2009 (2010 not settled) and that the vast majority of the other settlements in the area communities were at 3.0% for 2009. In 2010 half of the settlements were at a 3.0% lift, with four below that and one above. All though it is noted the four Janesville bargaining units agreed to defer their 3.0% increase for 2010 until December 31, 2010. As noted previously, the parties concede their salary offers are quite similar and the Arbitrator concludes that when they are compared to the non-school public employee settlements, one is not favored over the other.

The comparison information provided regarding health insurance costs in the non-school public sector is very limited. District Exhibit 159 shows that the maximum the City of Whitewater will pay toward health insurance for its represented employees in 2010 is \$1201.52 toward the monthly family premium. In Janesville represented employees will pay from \$29.34 for a PPO family plan to \$133.67 for the Basic plan per month for 2010. Association Exhibit 2 – 16 shows that in Rock County, with self-funded plans, the highest monthly premium for a family plan in 2009 was \$1468 and in 2010 ranged from \$1556-\$1939. In the City of Milton with the State Plan, the City will pay 105% of the lowest cost option. At Blackhawk Technical College with the State Plan the College will pay 100% of the lowest cost option for its represented faculty. Due to the paucity of information, the Arbitrator is unable to make a reasoned judgment as to which final offer this limited information would most support. Hence, it is concluded that this factor does not favor one offer over the other.

f) Comparison With Other Employees in Private Employment
in the Same Community and in Comparable Communities

The Association does not offer any comparisons with regard to this factor. The District offers a

response from the parent company of a local newspaper (Dist. Ex. 162) and the “Spring 2009 Blackhawk HRA Salary & Benefits Survey.” (Dist. Ex. 161). As one single entity does not provide a viable comparison and because that entity is also one of the 46 organizations that responded to the Survey, the Arbitrator will rely on the Survey. While the Survey does not provide an exact accounting of health insurance benefits in the area's private sector, it does provide at least a rough idea of what is happening in that regard in the Rock County area. Of the 46 organizations responding to the Survey, 19 indicated they provide an HMO and 29 responded they provide a PPO medical plan. Forty-five indicated employees pay a percentage of the family premium, 21.7% on average under the HMO plans and 32.5% under the PPO plans, or \$203.34 on average and \$319.27 on average, respectively. The Association's offer proposes that teachers pay \$35.44 toward the monthly family premium in 2010. Even with the new drug co-pay card the Association proposes, a comparison with the area private-sector employees shows that the latter group is paying substantially more toward their health insurance. Therefore, this factor favors the District's offer.

g) Cost of Living

The parties disagree as to how the “cost of living” should be measured. The Association cites arbitral precedent favoring comparison of the settlements among the external comparables as the best measure. The District cites arbitral precedent using CPI statistics as the appropriate tool for measuring this factor. In truth, it is a mixed bag. One relies on the parties' perception of what is a fair increase given the times. The other relies upon statistical data. Conventional wisdom in public sector labor relations is that in periods of high inflation public employees lose ground to inflation, and in periods of low inflation they make up ground. In this Arbitrator's experience, the cost of living, as measured by the CPI, is discussed in negotiations and is considered in arriving at what the parties agree is a fair settlement. As the CPI has gone down, settlements have gone down. In this case, the average CPI was an .8% rise in inflation for the 2008 – 2009 school year and 1.62% for the 2009 – 2010 school year. (Dist. Ex. 164). When one looks at the parties' salary offers one is again struck by how close they are when viewed over the two-year term of the agreement. What ground the District's offer loses the first year, it makes up the second year, looking at the percentage increases in the benchmarks. (Assn. Exs. 3-2 and 3-3). In other words, they are again a draw. Statistically, the District's total package offer of 3.65% for year one and 1.04% for year two are closer to the CPI figures than the Association's total package offer of 3.78% and 3.09%, respectively. The Arbitrator concludes that this factor favors the District's offer.

h) Overall Compensation

This factor requires the Arbitrator to consider and give weight to, “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.” When looking at the salaries and benefits Milton teachers receive compared to their counterparts in the comparable districts, they are at the least comparable, and there are improvements added in the Stipulations, as well. District Exhibit 124 shows that Milton was at the top in terms of money spent per FTE on total compensation. That will clearly change under the second year of the District's offer that would significantly reduce the cost of providing health insurance to its teachers. One cannot say how much that will change due to half of the comparable districts not being settled at time of hearing.

In terms of the total package cost of the parties' final offers compared to the total package cost of the settlements among the six comparables that are settled, the average total package cost for 2009 – 2010 was 3.73% and for 2010 – 2011 was 3.41%. Clearly, the Association's final offer of 3.78% the first year and 3.09% the second year is closer to the average total package settlements, than is the District's offer of 3.65% and 1.04%, respectively. However, while measuring total compensation by the dollars spent on it by the municipal employer is a simple method of calculating and comparing total compensation, it assumes that if you pay more, you get more, and that is not always the case. Here, the amount of the total package in the second year is largely impacted by the cost savings on health insurance under the District's offer. The question is whether the level of benefits that teachers receive is substantially reduced by going to plans with lower premiums than the District's current health insurance carrier, and also whether the District should be using that savings to expand or enhance other benefits or further increase salary. Those questions are addressed below.

Reasonableness of the Proposed Health Insurance Change

This is perhaps the overriding question in this case. When a party to a collective bargaining agreement proposes a significant change in a previously negotiated right or benefit, “arbitral approval of such a proposal is normally conditioned upon three determinative factors: first, that a significant and unanticipated problem exists; second, that the proposed change reasonably addresses the underlying problem; and, third, that the proposed change is normally but not always, accompanied by an appropriate quid pro quo.” Rice Lake School District, Dec. No. 32580-A (Petrie, 7/09).

The Association contends that there is not really a problem to address, as many of the districts in the comparable pool also have the WEA Trust as their health insurance carrier, the premiums the District pays have not been out of line with the comparables, and the increase in premiums in recent years have been modest at most. It further contends that to the extent there has been a problem, it has agreed to and even proposed changes to the health insurance plan in the past and in these negotiations to meet the problem. The record shows that in fact the Association has agreed to, and at times proposed, as in this case, changes in the WEA Trust plan in order to reduce the premium for the plan or at least reduce the increase in the premium. This, however, demonstrates that there has been a significant ongoing problem that the parties have tried to address. In other words, there has been, and is, a significant problem that the parties have continually attempted to address. The following chart regarding family premiums taken from District Exhibit 122 demonstrates the problem:

<u>Non-WEA Trust</u>	<u>2008 – 2009</u>	<u>2009 – 2010</u>	<u>2010 – 2011</u>
Evansville	\$1227.07	\$1242.28	\$1365.33
Fort Atkinson	1272.98	1374.82	1483.39
Janesville	1123.43	1187.31	-----
Monona Grove	1082.88	1145.78	1251.78
Oregon	1250.81	1319.62	1394.85
Stoughton	1237.55	1345.33	1423.30

Avg: \$1199.12 Avg: \$1269.19 Avg: \$1383.73

WEA Trust

Clinton	\$1944.17	\$1946.62	\$2012.16
Delavan-Darien	1519.28	1669.76	1728.18
Edgerton	1677.62	1787.36	1844.48
Milton	1649.26	1739.96	1813.98
Monroe	1603.94	1418.00	1452.16
Whitewater	1591.90	1669.84	1740.42
	Avg: \$1664.36	Avg: \$1705.26	Avg: \$1765.23

(Difference in Avgs: \$465.24 \$436.07 \$381.50)

Though the difference in the average monthly family premiums between WEA Trust plans and the non-WEA Trust plans has decreased, even with an average increase of 2% for 2009 – 2010 and 3% for 2010-2011 the WEA Trust plans are on average \$381.50 per month more expensive in 2010 – 2011 annualized, it costs on average \$4578 more per year for each family plan for a district with a WEA Trust plan in this comparables pool. It is doubtful that the parties foresaw that this would be the case when they agreed to go into the WEA Trust plan. That it has been an ongoing problem in recent years has been demonstrated by the chart above and most especially by the actions of the parties in negotiating changes in order to meet the problem. They have been only modestly successful, as seen above.

The Arbitrator could go on about the need to control rising health insurance costs, but it is unnecessary, given that it is one of the most significant concerns facing not only this school district or this State, but the Nation. The national debate is not about the need for change, rather, it is about the manner in which to go about it. That is the question in this case as well. The Association has recognized there is a need and has proposed some changes to address the need to reduce the cost of health insurance and the District has proposed a larger change. The question becomes which of those proposed changes most reasonably addresses the problem.

The Association has proposed a change in the current plan's drug co-pay card, which on a family plan will save approximately \$42 dollars and that teachers contribute 2% toward the monthly premium, which on a family plan amounts to approximately \$35. The Association notes that this reduces the monthly cost for the District in 2010 ---2011 from \$1813 to \$1736. The Association contends that these changes it proposes sufficiently address the problem and also demonstrate that the Association has been willing to mutually address the problem, and that therefore there is no need for the drastic change the District proposes. The Arbitrator disagrees. While the Association's proposed changes would save the District some money, the \$1736 it would be paying for a monthly family premium is

still \$352 more than the average family premium among comparable districts without a WEA Trust plan. Further, the full premium of \$1771.92 is still above the average among comparable districts with a WEA Trust Plan. It also leaves the question of what to do in the future, as this has been an ongoing problem.

The District proposes to change health insurance carriers from the WEA Trust Preferred Provider plan to the Dean Health and MercyCare plans with monthly family premiums for 2010 – 2011 of \$1431.13 and \$1441.90, respectively. That would be a saving of at least \$371 a month from the full \$1813 premium compared with the \$77 the Association's changes would save. While one cannot predict what will happen in the future, it is clear that the District's proposed change more effectively addresses the problem now.

The Association correctly notes that not only the cost savings to the District must be considered, but also the impact of the proposed change in carriers on its teachers. It notes that the Trust has been the health insurance provider for its members for over 25 years, and that its members have been very comfortable and satisfied with the Trust's benefits and service. The Association also asserts that the benefits and the service would be negatively impacted by a change to the other plans. It points out that under the WEA Trust plan, its members have in-network access to providers at UW, Dean and Mercy, as well as, providers around the nation. This means that a teacher can have a primary physician at Dean and his/her spouse can have a primary physician at Mercy and that they can have specialty care at any of the three and still be in-network. The Association asserts that this would not be the case under either the Dean or MercyCare options. The Association also asserts that those options do not provide the same level of benefits as the WEA Trust plan. It appears that the Association is more or less correct that the change would impact its members' in-network access to the different providers, although there would be limited access through referrals for specialty care. Thus, the teachers and their families could be required to either change providers or pay the cost of going out of network. This is a significant change for those members and must be weighed against the cost savings the change would bring. As to the difference in benefits between the plans, it must be realized that the question is not whether the Dean and MercyCare options provide identical benefits to the WEA Trust plan under an "equal to or better standard", but whether they provide comparable benefits. The record demonstrates that the plans are generally comparable, with the new options providing a better level of benefits in some areas, the same level of benefits or slightly lesser in other areas. The Arbitrator is satisfied that the plans are sufficiently comparable with regard to benefits and services. There is also no question from the record that the Dean Health and MercyCare are solid reputable plans.

The question then is whether the cost savings to the District out-weighs the impact on individual teachers and their families of having either to change providers or incur the out-of-pocket expense of going out-of-network. The Arbitrator is mindful that having to change providers is no small thing. However, it remains an aspect of a change in carriers which other of their colleagues in the comparable districts have done. Beyond providing a significant cost savings to the District, it also saves the teachers the 2% of premium that they would be paying under the Association's offer. The cost savings would also continue into the future and improve the District's financial health. That should work to everyone's benefit.

The Association contends that the District has not provided a quid pro quo for its proposed change, asserting that others in the comparables who have agreed to such a change received significantly higher salary increases in exchange, while the District's salary offer is at best comparable to or less than the

settlements among the comparables. The District contends that no quid pro quo is necessary in this case, and that even if one is, its salary offer and the improvements contained in the parties' Stipulations are sufficient. It has been recognized by numerous arbitrators in the last decade or so that escalating health insurance costs are a serious, and originally unanticipated, mutual problem, and that therefore a lesser or even no quid pro quo is required of the party proposing a change that reasonably and effectively addresses the problem, especially where the other party has not proposed a reasonable solution. That is the case here. No matter what the parties have done in the past, premiums for their current health plan have continued to rise. While that is also true of the other plans, the premiums for those other plans have remained significantly lower than the premiums for the District's current plan. The Arbitrator concludes that the burden to provide a quid pro quo in this case has all but been eliminated by the higher and steadily increasing health insurance premiums under the current plan, and by the District's offering comparable plans at a significantly reduced cost. In this case the District has offered a slightly higher increase in salary than what the Association has proposed and raises the District's ranking among the comparables on a number of the benchmarks, and this, along with the improvements contained in the parties' Stipulations, provides an adequate quid pro quo to the extent any is necessary.

i) Changes in the Foregoing Circumstances

Neither party has argued that there has been any changes in the foregoing circumstances during the pendency of this proceeding. Therefore, this factor is given no weight..

j) Such Other Factors

The District has argued that the “greatest weight” and “greater weight” factors that pertain to non-school district public sector bargaining units should be considered relevant under this factor. The Arbitrator disagrees. By amending the statute to expressly exclude school district bargaining units from the application of those factors, the legislature indicated its intent that the arbitrator not be required to give weight to those factors beyond consideration of them to the extent they are relevant under the subsection 7r. “Other factors considered.”

Based upon the foregoing, the evidence, and the arguments of the parties, and having considered and given way to a statutory criteria in Sec. 111.70(4)(cm)7r, Stats., the Arbitrator concludes that the District's final offer is the more reasonable, and therefore, makes and issues the following

AWARD

The parties are directed to incorporate the final offer of the Milton School District, along with their Stipulations, in to their 2009 – 2011 collective bargaining agreement.

Dated this 6th day of November, 2010, at Oregon, Wisconsin.

David E Shaw, Arbitrator

Appendix "A"

4. Tentative Agreements as follows:

Tentative Agreement No. 1

Add to Appendices B and C as follows:

Appendix B: Extra Curricular Activities

Athletic Activities High School	0-2 Years	% of Base	3-4 Years	% of Base	5+ Years	% of Base
Cheerleading		8%		9%		10%
Basketball Cheerleading		5%		6%		7%
Football Cheerleading		5%		6%		7%
Wrestling Cheerleading		5%		6%		7%
One-Act Plays Full Length Plays		5%		6%		8%
Musical (Vocal)		6%		7%		9%
Musical (Drama)		6%		7%		9%

Appendix C: Extra Curricular Activities¹

DESIGNATED LEAD TEACHER

Middle School	\$1,134
Milton East	\$1,134
Milton West	\$1,134
Consolidated	10% of their base salary per year
Harmony	\$1,134
Northside	\$1,134
MECAS	10% of their base salary per year

OTHER ASSIGNMENTS

Audio Visual Coordinator (High School)	Released from supervision responsibilities and compensation \$1,418 per year
Audio Visual Coordinator (Middle School)	Release from supervision responsibilities and compensation \$1,540 per year
Gifted and Talented Coordinator	\$2,712
Librarian Head	\$2,269
**Outdoor Education Teacher	256 \$275 per session
Outdoor Education Coordinator	1,512 \$600 per session
Homeroom Coordinator (Middle School)	\$1,417
Summer Band (High School)	\$2,241
Summer Band (Middle School)	\$2,815
**Teacher Induction/Mentor	\$566
**Teacher Induction/Partner	\$340
Vo-Ag Coordinator	\$3,405
Vo-Ag Coordinator Asst.	\$1,696

~~EMR teacher shall be paid \$250 in addition to their base salary. No EMR teacher hired after July 1, 1976 shall be eligible for the EMR stipend.~~

¹ All Appendix C fixed dollar rates, except as noted above, will remain at the 2008-09 amount July 1, 2009, through June 30, 2011.

Tentative Agreement No. 2

Modify Article XII(A) - Sick Leave, as follows: *(see additional changes to this provision in Association Proposal 6, above)*

1. Each member under contract shall be granted the annual rate of 11 days of sick leave per year, accumulative to 110 days. With the first paycheck of the year, the Board of Education will provide each returning member with a statement of accumulated sick leave.
2. **Sick leave shall be available for any absence from work due to the personal illness or injury of the employee or immediate family.**
3. **Any leave granted under this section shall be deemed to run concurrent with any state and/or federal family and medical leave that is available to the employee.**

Tentative Agreement No. 3

Add the following language as a last sentence to each of the following provisions: Article XVI(C)(1)(a), and (C)(2)(a):

“Two vacation days for new members will be granted for attending the new teacher orientation days.”

Tentative Agreement No. 4

Modify Article XVI(C)(1)(a), first paragraph, as follows:

“...and ~~one~~ two orientation days (for new members only)...” and “During the 2007-08 2009-10 school year, members who work August 27 or 28 26 or 27 may use October 25 29 or January 25 22 as vacation days.”

Tentative Agreement No. 5

Modify Article XVI(C)(1) and (C)(2) as follows:

Change years as follows:

1. ~~2007-08~~ **2009-10**
2. ~~2008-09~~ **2010-11**

Modify Article XVI(C)(2)(a) as follows:

“During the ~~2008-2009~~ 2010-11 school year, members who work August ~~25-26~~ 17, 26 or 27 may use October ~~30~~ 28 or January ~~23~~ 21 as vacation days.”

Modify Article XVI(C)(1) and (C)(2) as follows:

Available makeup day will be February ~~22, 2008~~ 26, 2010 (for 2009-10)

Available makeup day will be February ~~27, 2009~~ 25, 2011 (for 2010-11)

Tentative Agreement No. 6

Modify Article XVIII(A) - Terms of Agreement, as follows:

“This Agreement shall be in full force and effect July 1, ~~2007~~ 2009 through June 30, ~~2009~~ 2011.”

Tentative Agreement No. 7

Modify Article XI (D) as follows:

From July 1, 2009, through June 30, 2010, Article XI, D, shall remain as in the 2007-09 Collective Bargaining Agreement. Effective for the 2010-11 contract year, modify Article XI, D-Advancement in Classification, as follows:

If an individual's salary classification will differ from the placement in effect at the time the individual's contract was signed, such status must be declared by June 1st for a ~~first semester change and by October 1 for a second semester change~~ **the year's change** of the effective dates of the individual contract. Proof of this change in placement must be furnished to the Superintendent prior to ~~the last Friday in September 15th or the last Friday in January~~ of the year for which the individual contract is issued. Salary changes shall be made when presented with appropriate proof of change beginning with the October 20th ~~paycheck for first semester and the March 5 paycheck for second semester~~ **the year for which the individual contract is issued.**

Tentative Agreement No. 8

Modify Article III (B) as follows:

Dismissal Discipline

No probationary or non-probationary member shall be ~~dismissed~~ **disciplined** without just cause. All ~~dismissals are~~ **discipline is** subject to the Grievance Procedure.

Tentative Agreement No. 9

Modify Article XII (A) (2) as follows, effective July 1, 2010:

Cafeteria

A cash election cafeteria plan with a cash option in the amount of ~~\$375~~ **395.83** per month or ~~\$4500~~ **4,750** per year will be available to all members covered by this agreement who choose not to take the family or single health insurance coverage.

Tentative Agreement No.10

Modify Article XII (A) as follows:

LEAVES OF ABSENCE

A. Sick Leave

1. Each member under contract shall be granted the annual rate of 11 days of sick leave per year, accumulative to 110 days. With the first paycheck of the year, the Board of Education will provide each returning member with a statement of accumulated sick leave.
2. **Sick leave shall be available for any absence from work due to:**
 - a. **The personal illness or injury of the employee or immediate family or**
 - b. **Medical or dental appointments for the employee or immediate family that occur during regularly scheduled work hours.**
3. **Any leave granted under this section shall be deemed to run concurrent with any state and/or federal family and medical leave that is available to the employee**
4. **Immediate family is defined to mean spouse, children, step-children, parents, step-parents, grandparents, grandchildren, brothers, sisters, step-brothers, step-sisters, aunts, uncles and parents-in-law.**

2. 5. Members with an excess of 110 unused sick days, at the end of the school year, shall be paid for the unused sick days that remain over 110 days. Members shall be paid at the rate of ~~\$30~~ **40** per day. Such payment shall be made with the first paycheck in December of the following school year.

Tentative Agreement No. 11

Modify Article XII (B)(1) as follows:

B. Personal Leave (~~effective July 1, 2008~~)

1. Two personal days may be taken each year, which will be deducted from sick leave. A personal day may not be taken on in-service, professional, or workshop days, ~~immediately following or preceding school vacations, or during the last two weeks of school, unless approved in advance by the Superintendent of Schools.~~ **A personal day may be taken immediately following or preceding school vacations or during the last two weeks of school, upon a two-week advance notification and approval of the building principal. A personal day not taken immediately following or preceding school vacations or during the last two weeks of school shall not require an advance notification of two weeks.**

[Article XII otherwise unchanged, except as indicated above]

Tentative Agreement No. 12

Modify Article XI (M) as follows:

M. Master Educator License: Effective July 1, 2008, members who hold a Master Educator License issued by the Wisconsin Department of Public Instruction shall receive a stipend equal to the dollar amount required to move to the last lane on the salary schedule from the preceding lane for each contract year that the member is so licensed as of July 1 of said contract year (~~including retroactive issuance effective on July 1~~). The stipend is not cumulative. **For the first year of licensure, the stipend will be divided equally among pay periods remaining after the date the member submits written verification of the Master Educator License and will be added to the regular salary of the affected member and paid per the regular payroll. Thereafter, each year that the member holds a Master Educator License, the stipend will be divided equally among the pay periods in the contract year, added to the regular salary of the affected member and paid per the regular payroll.**