BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

BELLEVILLE EDUCATION ASSOCIATION

Case 21 No. 69181
Int/Arb-111395
Dec. No. 33055

And

SCHOOL DISTRICT OF BELLEVILLE

INTEREST ARBITRATION AWARD

Appearances:

Melinda L. Dorris, UnivServ Director Capital Area UniServ South, Attorney Nancy Kaczmarek, Legal Counsel WEAC, and Greg Spring Negotiations Specialist, WEAC.

Robert Butler and Ben Richter, Staff Counsel, Wisconsin Association of School Boards.

The above-captioned parties, hereinafter referred to as the BEA and the District respectively, have been parties to a series of collective bargaining agreements throughout the years. The parties were able to resolve most issues for the successor agreement for two years July 1, 2009 through June 30, 2011, with the exception of wages and health insurance. The BEA filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the District. The BEA requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Belleville, Wisconsin on September 13 and 21, 2010. A stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on November 19, 2010. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

SUMMARY OF DISPUTE:

Both parties propose 1.8% per cell on the salary schedule for the first year of the agreement. The dispute between the parties is limited to a disagreement on the salary rate increase for the second year, 2010-2011, and health insurance; in particular the health insurance carrier and the District's contribution to the benefits.

For 2010-2011, the BEA is proposing a 2.25% per cell increase while the District proposes a 4.8% per cell increase on the salary schedule. The average salary increase under the BEA's offer is 3.06%. Under the District's offer, it is 5.91%. Total compensation under the BEA's offer is 3.30%; under the District's, 4.55%.

The BEA proposes to maintain the status quo insurance carrier, the WEA Trust (with 12 members grandfathered into a Dean HMO plan as a result of an agreement by the parties in 2003) with a 90% District contribution and a 100% contribution for Dean HMO members. The District proposes to switch all members to a dual choice between a Dean Care Point of Service Plan, hereinafter referred to as "Dean Care POS" with a 95% District contribution for the Dean Care POS, or to a Dean Care Health Maintenance Organization Plan, hereinafter referred to as "Dean Care HMO" with a 100% District contribution. There are discrepancies in what the proposed plans offer with respect to health insurance co-payments and office visit, urgent care and emergency room co-payments which will be discussed below.

STATUTORY CRITERIA:

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

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

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, except for any decision involving a collective bargaining unit consisting of school district employees, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified under subd. 7r.

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

a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
g. The average consumer prices for goods and services, commonly known as the cost of living.
h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration.
j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITION OF THE PARTIES:

District Initial Brief

The District's final offer balances the interests and welfare of the public in providing educational services within the community's ability to pay while also providing teachers with an excellent salary and benefit package. The District argues that the cost increases of the BEA's current health insurance premiums and corresponding early retirement benefits costs have called into question the District's ability to sustain its educational mission into the future. The District's offer provides BEA members with exceptional health insurance coverage and benefits at a lower cost so that it will be able to provide a high level of educational services without overly burdening its citizens and taxpayers.

The District has a need to change the teacher's health insurance carrier and plan options. The premiums charged by the current carrier are substantially higher than costs in the comparable districts. The teacher's post-employment benefit includes District-provided health insurance, which is subject to the carrier's annual premium increases resulting in double the costs for post employment benefits than those incurred in comparable districts. This interplay has adversely affected the District's salary schedule and adversely affects the District's ability to provide educational services into the future without even greater sacrifices from taxpayers.

The District's proposed carrier is found in more of the comparable districts than any other carrier and is the sole provider for the District's support staff as well as the carrier of choice for several BEA members. The District's proposed carrier provides excellent care at a significantly reduced cost. Although there is no need for a formal quid pro quo, the District has offered a quid pro quo in the form of an amplified increase in salary, total compensation, and health insurance premium contributions towards the Dean Care POS.

The present and future costs of the BEA's proposed health insurance carrier are no longer supported by the comparables or the current economic climate.

The District asserts that the comparability pool should consist of schools in the old State Line League and those in the current Capitol Athletic Conference. In addition to those belonging to the old State Line Conference, the District would add Cambridge, Columbus, Lake Mills, Marshall, Poynette, Waterloo, and Wisconsin Heights. The District's proposal acknowledges the schools to which Belleville has historically been compared and in light of significant changes that have taken place over the past 17 years, adds other districts to the pool. Size and geographic proximity are key factors in determining comparables. Accordingly, schools in a comparability pool typically have a similar size and/or are in reasonable close proximity to each other. Schools in an athletic conference often constitute the comparables for teacher bargaining units. Once, however, a comparability list has been established, there is a general arbitral principle that it should be maintained, as keeping the same set of comparables enhances predictability and stability and guides the parties during negotiations. However, if there is a sufficient change in circumstances, an arbitrator may modify an established pool. A change in size or a switch of athletic conferences could justify changing a comparability pool. There have been three prior arbitration awards between the parties, the last of which occurred in 1993.

The District maintains that significant changes have occurred since 1993. Belleville's size has grown considerably in comparison to the districts in the now-defunct State Line League Athletic Conference, many of which have declined. Seven of the eight in 2009 had enrollments that were less than 50% of Belleville's and three of those had dropped below 40%. Given the arbitral emphasis on size when determining a comparability list, the District argues that this data demonstrates the insufficiency of the current pool. Belleville is the sixth largest school out of ten in the Capitol Athletic Conference as Cambridge, New Glarus, Waterloo, and Wisconsin Heights all have lower enrollments. The fact that Belleville switched to a different athletic conference, according to the District, renders the initial basis for comparability moot because the original comparability list was established with the understanding that the District's comparables should consist of other schools in Belleville's conference. Once the District switched conferences, the underlying principle that informed selection of a specific set of schools was no long applicable and it is now appropriate to revisit the comparability pool.

In the District's view, all of the schools in the Capitol Conference should be added to the present comparability list because in addition to their status as schools in the same conference, they satisfy other key elements of comparability – size and proximity. The average enrollment for the Capital Conference is within 16% of Belleville's enrollment. Additionally, enrollment in eight of the nine schools is within 50% of Belleville's. Given the size similarity between Belleville and the other schools in the Capitol Conference and the changes that have occurred in both the old State Line League and current Capitol Conference, schools in the Capitol Conference should be added to the District's comparability list.

In considering the third factor, proximity to Belleville, the District alleges that schools in the Capitol Conference are close enough to Belleville to satisfy that requirement pointing to a presumption that schools in the same athletic conference are located within sufficient proximity to constitute comparables for teacher bargaining units.

With regard to the cost of living factor, because both parties' offers match for the first year, the cost of living should only be utilized for the 2010-2011 school year. In comparing the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), the District stresses that its proposed increases of teachers' salary schedule, average salaries and total compensation dwarf both the CPI-W and the BEA's offer. If an alternative, the settlement pattern of external comparables, is utilized, the District's offer significantly exceeds both the settlement pattern and the BEA's proposal. Although the BEA's offer is closer to the CPI-W and comparables' settlements for 2010-2011, the District submits that this is not a typical case because the significant difference between the District's offer and the cost of living serves as a quid pro quo for the proposed health insurance change in the second year of the contract. Given the above, the best conclusion is that the "cost of living" factor does not favor either party.

Citing arbitral precedent, the District urges the arbitrator to consider wage and health insurance issues together as a total package to get a realistic evaluation of the parties' proposals. A key component in determining which offer is more reasonable involves the percentage increase in each party's overall compensation. Because wage and health insurance costs are interlinked in the "overall compensation" factor, an increase in one can constitute a quid pro quo for a concession on the other. For 2009-10, the average increase among the comparables was 3.14% and both the District and BEA are proposing 3.30%. For 2010-2011, the settled comparable average without Belleville is 3.69% as compared to the BEA's offer of 3.37% and the District's offer of 4.55%. The District's offer would provide Belleville teachers with the highest percentage total-package increase among the comparables in 2010-11. As a quid pro quo, at every benchmark listed above, the District is offering the highest percentage increase of the comparables and its offer is more than three percentage points above the comparables' average. In essence, the District argues that the sharp differences in cost between the health insurance proposals and the similarity in actual providers and coverage levels all lead to the conclusion that the overall-compensation factor favors the District.

Because the District's wage proposal is so generous, it will have a long-term beneficial impact on employee lifetime earnings of as much as $5,000 or more under the Wisconsin Retirement System (WRS). The District's offer will result in more money going to salary increases than benefit increases in the future, which will also increase the retirees' pension benefit.

The District insists that its final offer ensures that the dollars it spends on teachers' health insurance benefits work harder for both the District and the employees, and frees up additional dollars to place on the salary schedule. School districts throughout the state with WEA Trust insurance are facing skyrocketing health insurance premium costs, and Belleville is no exception. The WEA Trust's preferred provider plan for family costs the District $21,510.96 annually; for single, it is $9,506.64.

Prior to 2003, the District offered two health insurance plans, a Dean Health Plan HMO and WEA Trust's Front-End Deductible Plan. WEA Trust notified the District of its intent to drop coverage if the dual-choice option was not eliminated, and the parties' bargained over the successor benefit. BEA proposed to eliminate Dean HMO and retain WEA Trust as the sole-carrier. At that time the District took the position that this would negatively impact upon the salary schedule and benefit options for present and future employees because it would have the effect of driving up the employees out of pocket costs and would have a negative impact on the costs to the District for new employees. Despite these warning, the BEA insisted upon WEA Trust as a sole provider while grandfathering in current bargaining unit members who had selected the Dean HMO.

According to the District, despite the fact that the BEA (1) has switched to less-expensive WEA Trust plans; (2) has made several plan modifications to further reduce WEA Trust's premium increases and costs; (3) has had the benefit of enrolling every new, young, healthy BEA insurance participant since 2003; and (4) has the benefit of being pool rated by WEA Trust to limit the risk of catastrophic claims and therefore to receive more "stable" rates (as opposed to being partially experience rated like the Dean plans), the WEA Trust's premium costs have still increased at a greater average annual percentage rate than Dean Health Plan's and have increased by more than $1800 per participant than Dean Health Plan's since the dual-choice option was dropped in 2003.

The District claims that it specifically designed its final offer to offer BEA members with health insurance options that not only provide substantially similar benefits and coverage as the existing WEA Trust PPO plan, but also that mitigate the factors driving health insurance premium costs. It has done this by including a HMO option and a HMO-based point of service plan (POS) and a preferred provider organization for those residing outside Dean Health Plan's service area. This is the case because an insurance carrier like Dean Health Plan owns the HMO-based POS plan provider group and can make the discount arrangements and grant itself as the provider price reductions off of the retail costs of medical services. These reductions are much greater than they would be for a broad PPO network neither owned by the insurance carrier nor restricted to the carrier's HMO provider group like the WEA Trust's PPO plan. According to the District, by offering the DEAN POS plan, the District is offering a narrower covered provider network to achieve in-network benefit levels by steering employees to Dean providers who have agreed to the deeper discounts which in turn holds down health insurance premiums costs better than a traditional PPO plan. While the BEA's health insurance proposal would require the District to maintain the "old fashioned," more expensive WEA Trust Preferred Plan (PPO), the District has proposed a dual-choice set of options that would allow BEA members to choose between Dean Health Plan's HMO or POS plans which would be far more effective at containing future health insurance premium costs.

If the District's offer is selected, both the District and BEA health insurance enrollees will enjoy substantial cost savings. The District claims that if a BEA member currently enrolled in WEA Trust's family plan enrolls in Dean's POS plan, the employee will see an immediate bump in take-home pay of nearly $1200 that is solely attributable to the premium contribution differential, and if that member were to select Dean's HMO, he or she would see an immediate bump in take-home pay of $2151. In fact, under the District's offer, an employee's contribution to Dean's POS family plan premium would be less than an employee's current contribution to WEA Trust's PPO single plan premium. The cost to the District for a family plan is still $1856 less annually per participant. The District has costed its proposed health insurance carrier change to reduce its premium costs by over $23,000 for the remainder of the 2010-11 school year assuming that all teachers currently enrolled in the WEA Trust PPO will enroll in Dean Health Plan's POS; and the saving would be greater should any of the teachers enroll in the Dean HMO. To address BEA arguments that the premiums are less expensive because the benefits and services rendered by the Dean Health Plans are inferior to those provided by WEA, the District admits that the benefits will not be identical. However, the differences in benefits and out-of-pocket costs to BEA members are minimal and are substantially outweighed by the premium cost savings to both the District and the individual BEA member.

In comparing the plans proposed by the District to the WEA Trust, the District relies on arbitral precedent to the effect that if there were a major and conspicuous difference between the plans in qualitative, coverage and/or out-of-pocket costs to the employees, a change could not be supported. The District disputes BEA testimony that adverse selection may effect the future viability of the Dean POS under the District's dual option proposal citing experiences in other districts which offer the Dean POS and HMO options. It also disputes evidence suggesting that Dean Health Plan's experience rating of the group versus the WEA Trust's pool rating might lead to less stable health insurance premium rates and increases. It notes that the WEA Trust's health insurance premium increases for Belleville have ranged from 31.04% in one year to -2.94% in the next.

With respect to the emergency room copayments, the District points out that the WEA Trust has a $25.00 copayment that is waived if the individual is admitted as an in-patient. The Dean HMO plan has a $50 copay which is also waived if the individual is admitted, while the Dean POS has a $25 copay is also waived if the individual is admitted. With regard to the service area/provider networks/coverage issue, an employee's out-of-network out-of-pocket costs would be limited to a maximum of $1200 which is substantially less than the WEA Trust PPO maximum non-network, out of pocket expense of $2900. Furthermore, District witnesses testified that those BEA members who move out of Dean Health Plan's 23 county provider network will still have access to Dean Health Plan's national Preferred Provider organization network. Those employees who move out of Dean Health Plan's HMO provider base will not only continue to have Dean Health Plan coverage, but they will continue to have that coverage with fewer non-network out-of-pocket expenditures than they would have through the current WEA Trust PPO. As to limits for physical, speech and occupational therapy, neither the Dean HMO nor the Dean POS plans limit the number of visits for physical therapy/occupational therapy.

While the WEA Trust PPO and Dean HMO have no maximum lifetime benefit limits as contrasted to the Dean POS which has a $5 million lifetime benefit maximum, the District points to the recent federal health care reform act which prohibits individual and group health plans from placing lifetime limits on the dollar value of coverage insisting that this would render the Dean POS lifetime maximum benefit limit moot.

Although the BEA witnesses testified to a number of discrepancies between the two carriers' plans with regard to benefits for retirees and their survivors, Dean Health Plan's intent is to match the current District and WEA Trust retiree coverage programs. Anyone who is currently covered by the plan will continue to be covered. The District also disputes BEA representations that only 57.4% of its members' claims paid by the WEA Trust would have been in-network for the Dean POS and 65.3% of the claims would have been in-network for the Dean HMO.

Seeking to rebut assertions that Dean Health Plan may immediately change its drug formulary, the District cites arbitral precedent that as long as each formulary contained the same number of tiers and the same level of copayments, the plan formularies were equal. It submits that changes to a carrier's drug formulary, including that of the current health care carrier, are nothing more than common market corrections on the price of drugs as determined by their effectiveness and availability designed to effectively control drug costs. Because the BEA cannot prove that Dean Health Plan's drug formulary tiers or copayments are significantly different from the WEA Trust PPO drug formulary, the arbitrator should find that the carriers' drug formularies are not substantively different or inequitable.

The District argues that the BEA's side-by-side comparison is so flawed that the arbitrator should disregard it entirely. It argues that the BEA's primary witness did not contact Dean Health Plan for any policy updates, riders or addendums prior to performing and creating his side-by-side comparisons in this case. According to the District, he did not provide empirical evidence to support some of the claims he made and when he did provide empirical data, the data often was inaccurate. The District also points out that many of the alleged Dean Health Plan coverage limitations cited by the BEA's witness have been rendered moot by the newly mandated federal health care legislation. Even assuming the BEA's expert witness is credited, the BEA still has not shown that any differences in benefits are of the magnitude to outweigh the health insurance premium cost saving possible under the District's final offer. Given the minimal qualitative differences between the plans and the substantial cost savings of the Dean plans, the arbitrator should select the District's final offer.

Although it did not make a side-by-side benefit comparison, the District argues that its expert has established that the two dual choice Dean plans are both high level benefit plans with small deductibles, copays, and out-of-pocket liability, yet the extent of coverage is great. Independent sources have also rated the Dean Health Plan options highly, especially insofar as customer satisfaction is concerned. The District also stresses that out of the BEA's membership, 10 teachers eligible to retain Dean HMO coverage have elected to retain their Dean HMO choice in 2010-2011. It also notes forty-four District employees, teachers, administrators and support staff are currently enrolled in the Dean Health Plan HMO. The BEA cannot show any major deficiency in terms of coverage or of quality of benefits between the proposed Dean Health Plans and the current WEA Trust PPO. Therefore, the arbitrator should find that the major cost difference between the plans outweighs any coverage or benefit differences and select the District's offer.

In order to assess whether the costs being borne by the District are disproportionate to the comparables, the arbitrator should look at the market in which the premiums are being purchased. If regional purchase price for health insurance is lower, as is the case for Dane and Green counties, the health insurance premiums in Belleville school District should be low as well. They are not. They are substantially higher than the state average premium, the average Madison Metropolitan area premium, and the average South Central Wisconsin regional health insurance premium. Because the Dean Health Plan's 2010-11 monthly single HMO and POS premiums are much closer to the average South Central, Dane County and Madison Metropolitan rates, the District's offer should be selected.

A similar comparison to State employees enrolled in the State Health Insurance Plan yields similar conclusions. The Dean Health Plan monthly single rates and monthly family rates fall well within the range of the rates offered to employees under the State Health Insurance plan, especially when comparing the premium costs to those of local government employees enrolled in the State Health Insurance Plan and other plans offered by other health insurance providers in Green and Dane counties. For local government employees in the State Plan, WEA Trust rates were higher than every plan with the exception of Humana Eastern's month premiums for single and family premiums. The Dean Plans HMO and POS rates are only slightly higher than the range of rates offered to employees under the state insurance plan. Looking to those in other plans in Green and Dane county, the contribution for the Dean premiums is much more comparable to what Dane County's premium expenditures are. Although Green County's health insurance premium contribution obligations are much closer to what the District currently contributes to the WEA Trust PPO, the District's contribution to WEA Trust PPO's single plan is still higher than Green County's for a single plan.

When looking at comparable school districts, Belleville's WEA Trust premium costs have ranked in the top five highest cost plans in each year for the past three years. They were third highest in the 2008-2009 school year, second highest for the 2009-2010, and fifth out of 21 plans in 2010-1022. Of the four ranked higher, three are other WEA Trust plans. This supports testimony by the District's expert witness that PPO plan structure has not performed as well in terms of controlling premium costs and cost increases. The high WEA Trust cost is especially significant when the fact that Belleville is located in the geographic region that has the lowest cost health insurance premiums in the state is taken into consideration. Belleville's premium contribution for family coverage under the WEA Trust PPO is 10.5% higher than the average of the comparables' premiums. WEA Trust PPO premiums are so much higher than the comparables that the District still pays $795 more towards a single plan and $1,096 more towards a family plan per month per enrollee than the average of the comparable districts' premium contributions.

The comparables show that there is a shift away from the WEA Trust plans towards managed care carriers such as the Dean Health Plan. Those districts that have not yet switched consistently have the highest annual premium costs. Should the District's offer be selected, BEA members would still have access to one of the best health plans in the nation; their out-of-pocket expenses would dramatically decrease, their salaries would be higher, and the District would gain needed cost saving through reduced premium expenditures and OPEB liability.

While acknowledging the general requirement to provide a quid pro quo to justify a change in the status quo, the District cites arbitral precedent suggesting that rising premiums alone can reduce or eliminate the need to provide a quid pro quo in exchange for a health insurance modification. In this case, the need to modify the BEA's health insurance is directly related to ever-increasing premiums. The District's cost for both the single and family premiums has risen 122% and 127% respectively since the 2000-2001 school year. The average rate increase was over 8% per year for both single and family premiums.

The rising health insurance costs have eroded bargaining unit members' salary increases over the past decade and are likely to continue to do so if the BEA offer is accepted. Although Belleville's rank at the schedule maximum moved from fifth to fourth among comparable districts between 2000-2001 and 2008-2009, it slipped from first to fifth at the BA base. By switching health insurance carriers and adding 6.78% per cell to the salary schedule, the District can stop the erosion at the BA base among comparables. When comparing the CPI-W with Belleville salary increases for 2009-2010, the District maintains that the teacher who received salary increase in line with the CPI-W earned $1,618 more than the salary increase at Belleville, or 2.73% less than the teacher who would have received a salary increase commensurate with the CPI.

The District argues that its retiree obligations also make the insurance change necessary referring to its position among the seventeen comparable districts of fourth highest in post retirement benefits. It asserts that its maximum possible benefit obligation of $151,811 is almost double the comparables' average of $77,240 noting that all but $1,200 of the $151.811 is consumed by health and dental insurance premiums. The District's legacy costs, i.e. expenditure on individuals who are no longer District employees, adversely affect the funds available for present services to students more so than in the comparable districts. If active employees switch from the WEA Trust to Dean, then participating retirees also will make the switch providing needed relief for the District. The savings can be used to reverse the erosion of the salary schedule at the BA base. The District insist that there will be no change whatsoever in eligibility requirements for health benefits in retirement.

Having established a need for the insurance modification, the District is offering a generous quid pro quo. Here the District's proposed increase for 2010-2011 is 2.64% above the BEA's at all salary benchmarks and more than sufficient to justify the change. With regard to total-package increases, the District's total package proposal for 2010 exceeds the BEA's by 1.18%. Given the slippage in Belleville's rank at the BA base and the excessive retirement benefit, it is in the District's best interest to realign its expenditures, paying more for salary than benefits and more to active employees as opposed to retirees transferring future unknown liabilities into current, known liabilities.

The District is also offering a five percent increased premium contribution to the Dean Plan PPO and a one hundred percent contribution if the teacher switches to the Dean HMO as part of its quid pro quo. As a result, employee out-of-pocket expenditures will drop dramatically under the District's offer. As a result of the increased salary and reduced premium expenditures, employees effectively could receive additional compensation of thousands of dollars under the District's offer.

Although the District has offered a reasonable quid pro quo under a traditional analysis, the quid pro quo offered is even more reasonable because there is a reduced need to offer one in response to escalating health insurance premiums. Citing arbitral precedent, the District notes that the 127% rise over the past eleven years is more than supportive of its determination to switch carriers in exchange for increased compensation.

In comparing the District's wage proposal against its proposed external comparables, the Board contends that its proposal for 2010-2011 places bargaining unit members in a more favorable position. Conceding that at first glance the BEA's salary proposal may seem more reasonable because it is close to the comparables average with respect to both actual salary and the percent of increase for 2010-2011, it argues that there are unique circumstances in this case, given the need for a quid pro quo and the past erosion of the salary schedule that has occurred with respect to the CPI over the past eleven years. Although bargaining unit member salaries may be 3% to 22% above the comparables average, the maximum possible retirement benefit for the BEA is approximately 197% above the comparables average. Shifting a portion of the teachers' compensation from post-retirement benefits to salaries will result in an overall package that is more in line with compensation packages in comparable districts. The BEA, in contrast, proposes salaries and salary increases that exceed the comparables' average, but offers no reason as to why such increases are justified.

Looking at the interests and welfare of the public and the financial ability of the District to meet the costs of the proposed offers, the District acknowledges that it has experienced slow, but steady growth in student enrollment, although it projects to have static enrollment for the next year and a slight decrease in enrollment for 2012-13. It also admits that it did not tax to its full revenue limit authority in 2009-10 and still has the ability to raise the revenues needed for the 2010-2011 school year. The District claims that its annual levy increases since 2004 have averaged 5.75%, which is comparable to the average of the comparable district increases and two to three times the rate of annual inflation over that same time period.

Although the District has levied $394, $150 less than the average comparable districts over the past five years, it has offset the difference by drawing from its fund balance by a similar amount during the same time period. The District's present fund balance is about 12.5% of the total budget but after completions of capital improvement projects and needed major purchases, the fund balance will be down to 10.8% of the operating budget by the end of the current school year. Anticipating that the BEA will point to the District's fund balance and decisions not to raise revenues to the statutorily allowed levels as evidence that the District can afford its final offer, the District insists that this case is not about the District's ability to afford the BEA's final offer but about the District's sustainability in light of current economic conditions, WEA Trust PPO's extremely high premium costs, and the effect that those premiums costs are having on the District OPEB liability. Just because the District has the ability to raise enough revenues to pay for the BEA's offer, does not mean it is prudent to do so. The District has to find a balance between the tax burden it levies on the community, its ability to provide quality wages and benefits to its employees and most importantly, its ability to provide a quality education to the students. At least 100 other districts across the state also under-levied last year, 96 of which under levied by more than $6500. One reason that the District under levied is because it wanted to be flexible in case state aids were not forthcoming to the levels expected. Its fund balance for 2010-22 will range between 12.5% and 10.87% of the total budget. Despite maintaining a fund balance in that range, the District must still short-term borrow to cover its operating expenses and the district needs the fund balance reserves to cover current costs throughout the course of the school year.

Citing arbitral precedent, the District claims that the BEA is not the first union to argue that a district should access its fund balance to pay for a union's final offer. Noting that arbitrators have routinely rejected this argument, the District asks the arbitrator to allow its elected officials to set the District's fiscal policy and to refuse to allow the BEA to escape the tough decisions necessary to ensure the continuing financial health of the District into the future. The District has taken other actions to reduce its operating costs by laying off 2.25 FTE bargaining unit members in 2009-2010 and 2.67 FTE prior to this year in spite a small uptick in student enrollments for both years. The District now requires students to pay for driver's educations course, participation in extracurricular activities, and a greater amount towards the cost of hot lunch. Finally, the District recently refinanced its unfunded prior service Wisconsin Retirement System liability to reduce its interest costs from 7.8% annually to 5.25% annually for an interest cost saving of $168,000 over the course of the loan..

While the total cost of the District's proposal is greater than the BEA's in the short-term, BEA members will immediately reap the benefits through bigger pay increases and reduced health insurance premium costs. The District's proposal serves the District and the interest and welfare of the public by better containing future health insurance premium cost increases and its OPEB liability. With Wisconsin's budget ranked as one of the 10 worse in the nation and its deficit swelling, further cuts to per member revenue limits increase and cuts to state aids are likely and the Fund balance will become more important than ever.

BEA Initial Brief

The BEA maintains that its offer maintains the status quo, WEA Trust health insurance, and provides for wage increases supported by the settlement pattern. It is the District who is forcing an unwelcome and unnecessary change from the status quo health insurance plan. The District has created a moving target by repeatedly modifying the contents of its health insurance proposal despite the Union's persistent attempts to analyze the District's offer. No amount of maneuvering will allow it to overcome four critical facts as demonstrated by the evidence: (1) There is no need to change the status quo: Belleville is not an outlier on health insurance costs or carrier, and the District can afford to maintain the status quo WEA Trust benefits; (2) substantial differences exist between the status quo WEA Trust plan benefits and the District's proposed Dean Health insurance plans; (3) the BEA's wage and insurance proposals are supported by the comparable settlements; and (4) the Union's offer more closely follows what the parties would have agreed to at the bargaining table.

The parties have utilized a comparable pool established and reaffirmed in three prior arbitration awards comprising school districts in the former State Line League Athletic Conference. The District is wrongfully seeking to expand the comparables to include the entire Capitol North and Capitol South Athletic Conference. In the first case the parties stipulated to Albany, Argyle, Barneveld, Black Hawk, Juda, Monticello, New Glarus and Pecatonica as comparables. In the second case resulting in an award, the BEA sought to expand the comparables to include districts within a fifty-mile radius of Belleville which the arbitrator rejected. In the third arbitration, the parties again stipulated to the above comparables as the appropriate group. While the District may argue that Belleville's changed athletic conference and increased enrollment are reasons for expanding the comparable group, this would result in the inclusion of a number of districts not geographically proximate to Belleville and far from the Monroe labor market. School district conferences are under continual fluctuation and Belleville only recently entered the Capital Athletic Conference during the 2006-2007 school year. The relatively recent change should not destabilize the parties' long-standing comparable group. Geographical proximity has been a primary factor considered when determining comparability and is especially appropriate where health insurance plan services are being evaluated because the cost of services are regionally determined. The Districts' comparability pool is not viable for health insurance cost purposes and not appropriate for use where the health insurance carrier and the District's contribution to benefits are of central import. No compelling evidence has been presented for the change.

In the BEA's view, the District has not met its burden as the party seeking a change from the status quo. The change which the District is seeking is a dramatic departure from the status quo. The WEA Trust has been the health insurance provider since 1976. BEA members have identified maintaining this benefit as a basic priority. During the years where a QEO was imposed, the BEA sacrificed salary benefits to maintain their health insurance benefits while making plan design changes to hold down the increases and bearing a greater than average percentage contribution to premium costs. The District now seeks to force a change which it could not gain through collective bargaining. In the BEA's view, the test for the party proposing such a significant change to the status quo involves two factors: (1) Has the party proposing the change demonstrated a need for the change? And (2) if there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? The District does not even meet the first test. It has not shown any need to change the status quo or deviate from the manner in which the parties negotiate but disregards thirty-four years of bargaining history between the parties.

Health insurance costs are not unique to Belleville. The District health insurance contributions are in line with comparable districts. The majority of comparables utilize the WEA Trust as their carrier. Of the Union's proposed comparables five of nine including Belleville have the WEA Trust as the provider while looking at the District's proposed comparable pool, eight of eighteen including Belleville utilize the WEA Trust. Dean is the stand-alone insurance carrier among only five of the eighteen districts. Furthermore the BEA has taken meaningful steps to reduce and moderate the cost of health insurance. Dean Health insurance rates are increasing more quickly than the WEA Trust rates. There is simply no compelling reason to change the status quo.

The District's current health insurance contributions are in line with the comparables. Under the Union proposal, the District's monthly contribution to a single insurance plan in 2010-2011 would be either less expensive or within $150 of six of the eight established comparables. The District contribution is less than three dollars higher than the Black Hawk Districts contribution and roughly twenty dollars more than Monticello's contribution to its Dean health insurance plan. With respect to monthly contribution by the District to the family insurance plan for 2010-2011, the same conclusions can be made. The District's monthly contribution is either less expensive or within $150 of seven of the eight established comparables. The District's contributions under the BEA's proposal are very similar to the comparable districts. Thus the status quo offer most closely maintains Belleville's relations to the comparable group with respect to District insurance contributions. The Union offer moves Belleville slightly from third of nine to second of nine among the comparable group. In contrast the District's offer results in Belleville falling from third of nine to eight of nine under both the Dean POS and Dean HMO with respect to premium contributions for the single and family plans.

The BEA points out that it has proactively addressed rising health care costs through voluntary settlements in the past moving from a WEA Trust Front-End Deductible Plan to a WEA Trust Point of Service Plan and then to a WEA Trust Preferred Provider Plan. It has also adopted a three-tiered drug plan, and accepted emergency room and urgent care co-payments. BEA concessions have contained the WEA Trust premium increases to a modest 7% average annual increase to single and family premiums. This 7% annual cost increase is hardly the type of cost increase that compels a district to impose an unpopular change in carriers. Major policy changes such as this should not be imposed by a neutral through interest arbitration.

The BEA also notes that its members are willing to pay a greater than average percentage of the health insurance premiums to maintain the WEA Trust. They have made a ten percent contribution to the insurance benefits since 1993. In addressing the District's contention that the sustainability of the teachers' current health and retirement benefits is at issue, the BEA disputes this fact by pointing out that the issues are limited to wage and insurance benefits for the second year of the 2009-2011 agreement and that there will be future bargaining to address future concerns. It maintains that the BEA has made concessions in retirement benefits by agreeing to a two-tiered retirement structure with reduced benefits for those hired after July 1, 2006 and that it has agreed to raise the age of retirement eligibility from 55 to 60 as well as increasing the years of service required from 10 to 15. Based upon these changes the benefit period has been reduced from 96 months to 60 months or less.

The BEA stressed that the District is not prefunding its retirement costs at all. Utilizing the Districts estimates, the District will have spent roughly one percent of its 2009-2010 maximum revenue limit with exemptions on retire benefits. The District cannot make a credible argument that teachers' salaries and benefits pose a financial hardship for the District given that the percentage of the District's budget devoted to teacher compensation has decreased slightly over the last five years. Thus, the status quo WEA Trust does not pose an undue burden on the District nor can the District mount a credible argument that it cannot sustain the status quo.

The District can afford to maintain the status quo WEA Trust because it is in strong financial condition. From 2004 to 2008 its Fund 10 revenues have increased more than 23% which is well above the state average of 19.5%. Its total allowable revenue increased more than 138% between 1993 and 2009 and is substantially above the state average of 85.8%. The increase would have been even greater had Belleville chosen to levy to its full authority under law. It has, however, consistently under-levied in eight of the last ten years, something unheard of in the comparable pool. Belleville has under-levied although its rate is below the state average and is the lowest levy rate in the comparable group, the low levy representing a decline of nearly 60% from 1993 to 2009. Today's residents are taxed at less than one-half the rate that they were taxed in 1993 to support the District. No other comparable district has under-levied as much as Belleville. This under-levying is unnecessary given that Belleville's residents have the second highest income per tax return and the lowest percent of students qualifying for free and reduced lunch of the comparables. Despite having the lowest levy rate and the second highest income per tax return, the District is choosing not to levy to the allowable limit. Belleville also received more federal stimulus dollars than its comparables above and beyond the District's annual revenue limit. It has an unwillingness to pay, no an inability to pay to maintain the status quo health insurance carrier. It would prefer to switch to a less expensive carrier but can well afford to maintain the existing carrier. In reviewing the increased costs of the WEA Trust and Dean HMO plans, the BEA points out that the WEA Trust premium increased less than 3% from the 2009 -2010 to 2010-2011 school years while the Dean HMO increased by 7%. The dramatic Dean increases were not limited to Belleville. All of the Dean rates within the established comparable pool experienced double-digit increases. The Dean plan increases undermine the District's contention that a change to the status quo is needed and undercut the District's sustainability argument.

The BEA claims that there are substantial, significant differences between the WEA Trust and District's Dean proposed plans. The WEA Trust has a large comprehensive network that includes every county in Wisconsin, all major regional providers including the Mayo Clinic and a vast nationwide network. Dean's is limited to 23 counties in south central Wisconsin. The network differences alone are significant because under the District's proposal members must limit their health care provider choices or pay increased out-of-pocket expenses to maintain their established healthcare provider services. A review of claims paid by the WEA trust in 2009-2010 shows that 32% of the total paid claims would have been considered out of network under the Dean POS plan and 35% would have been considered out of service under the Dean HMO plan. Even those who currently utilize Dean will have more limited options as 29.5% of members who went to Dean Medical Center or Saint Mary's Hospital also went to the University of Wisconsin Medical Foundation, University Hospitals & Clinics or Meriter Hospital. Access to UW Hospital and Clinics as an in-network provider has substantial value. BEA members forced to use out of network providers under the Dean plans will incur increased out-of-pocket expenses in the form of reasonable and customary charges with the possibility of paying such charges under the WEA Trust plan much more remote. BEA members who seek treatment at Mayo Clinic for serious medical conditions would be exposed to the potential of uncapped reasonable and customary charges that could amount to thousands of dollars.

The Dean plans provide a lesser benefit to BEA members. WEA Trust continues to provide insurance for members who are laid off, with the length of the benefit based upon the member's years of service. Dean has no layoff benefit. Dean limits home healthcare visits to 40 visits per contract year while the WEA trust has no limit. Dean limits inpatient rehabilitative treatment to 90 days per contract period; the WEA Trust has no limit. Under the WEA Trust plan, if a BEA member dies at age 55 or older, the surviving spouse can continue coverage, while the Dean plans have no such continuation rights. The WEA Trust covers medical treatment to address complications from non-covered procedures, while the Dean plans do not. Each of these differences poses the potential for tremendous financial impact upon BEA members. Members with family out of state who experience ongoing health issues would also see significant differences under the Dean plans. Having to regularly seek preauthorization for non-emergency care or to pay financial penalties for not doing so would be extremely burdensome. BEA members who move out of state or to counties not included in the Dean in-network after retirement would also face the difficulty of locating an in-network provider and higher out-of-pocket expense for using an out-of-network provider. There would also be an uncertainty as to whether as retirees, members would be covered under the Dean plans.

Given the significant differences noted above, the District's proposal to change is unreasonable in light of its sound financial condition, the current carrier's costs in comparison with those of the comparables, and the considerable bargaining capital expended by the BEA over time to maintain the WEA Trust as its provider.

The District has functioned for years without internal consistency in health care providers and it is preposterous to suggest that this is needed now. The support staff agreed to use the Dean plans exclusively in light of the fact that the majority of their members were already enrolled in Dean health plans. Here the majority of BEA members have always been with the WEA Trust. The District has not made a valid argument to support the need for internal consistency.

The BEA asserts that its salary proposal is supported by the comparable settlements, pointing out that the parties matching 1.8% cell increases for 2009-2010 would give Belleville the third or fourth highest of the benchmark rankings among the seven established comparables. The BEA's offer for 2010-2011 would continue this settlement pattern in the second year of the contract because its proposed 2.25% per cell increase would maintain Belleville at the third or fourth highest benchmark ranking among the seven established comparables. The BEA disputes the representation that maintaining the WEA Trust plan is eroding the District's salary benchmark rankings. Under both offers, Belleville maintains its relatively high position in salary schedule maximum comparisons and improves slightly in starting salary comparisons. It is also noteworthy that the two districts with starting salaries higher than Belleville in 2010-2011 maintain the WEA Trust as their provider. Black Hawk maintains a 95% employer contribution to the premium while Barneveld has a 100% employer payment. Even utilizing the District's proposed expanded comparables, Belleville maintains a ranking of 3 out of 14 districts at the BA minimum benchmark and third or fourth of 14 at the salary schedule maximum.

The BEA alleges that its wage offer is more closely attuned to the consumer price index for urban wage earners and clerical workers pointing out that in period of low inflation, arbitrators have given greater weight to external wage increases. It also insists that its total compensation increases are more reasonable than those contained in the District's offer.

The BEA's offer is also supported by the internal comparables because the Belleville support staff's total compensation increases of 3.61% in 2010-2011 and 3.96% in 2011-2012 are more in line with the BEA's total package costs under its offer, because the BEA's offer represents a 3.30% and 3.37% total compensation increase in each year of the proposed contract.

Total compensation under the BEA's offer are more reasonable because its offer more closely maintains Belleville's benchmark for newer employees at the BA minimum benchmark. Under the BEA's offer utilizing 2008-2009 as a base year, total compensation for employees with family insurance was 3 out of 8 established comparables. In 2010-2011, the BEA's offer maintains this ranking while under the District's offer, the ranking would fall to 5 out of 8 were the proposed Dean plans to be implemented. For veteran employees who are more likely to be at the top of the salary schedule, the District offer is merely diverting dollars from insurance to salary against the members' will. There is $1.00 difference in the costs of the BEA's offer and the District's Dean POS at the schedule maximum benchmark for employees with single insurance and $65 dollars difference for those who use family coverage. Given these small differences, it is clear that the District does not need to change the status quo.

According to the BEA, its offer costs less than the District's offer. During the years of the QEO, members's salaries and benefits were linked together under total package settlements. Under these settlements, the BEA willingly put money into the health insurance benefits at the expense of the salary schedule. The District now seeks to unilaterally undo these voluntary agreements through arbitration despite the fact that the Union's total package offer costs less than the District's and despite, the fact that the Union's total package offers in 2009-2010 and 2010 -2011 are lower than any other total package settlements reached by the parties, and despite the fact that QEO costing inflates the actual costs of the parties' settlements. Using former QEO assumptions, the parties matching 1.8% per cell increases in 2009-2010 represent a 3.81% total package settlement. The BEA's proposed 2.25% per cell increase for 2010-2011 represents a 3.65% total package settlement. Conversely, the District's offer with an implementation of July 1, 2010, represents a 4.36% total package settlement. The BEA's offer, under this costing, costs approximately $40,000 less than the District's offer. While this comparison can be used to demonstrate that the BEA's offer is less costly than that of the District, these numbers inflate the true cost of the parties' proposals.

The BEA argues that QEO costing should not be applied because it exaggerates the actual benefits that members received from one contract to another. It points out that in 2008-2009 there was a $719 difference between the QEO projected total compensation per teacher and what became the actual compensation per teacher for that year. The District's continued use of inflated total package compensation comparison throughout its hearing exhibits is inappropriate. The cost of living criteria should only be compared to wage increases and not to the cost of the total package because employees can only use wages to pay for their expenses. The BEA argues that in its repeal of the QEO, the legislature clearly intended to repudiate the arbitrary QEO costing methodology. The BEA notes that both parties recognized that this costing methodology is no longer valid as both parties deleted the total package costing language which was contained within their most recent collective bargaining agreement.

The BEA contends that its offer more closely represents what the parties would have agreed to voluntarily at the bargaining table. It asserts that throughout the arbitration, the District has created a moving target by continually modifying the contents of its health insurance proposal in spite of repeated attempts by the BEA to actively analyze the proposed Dean plans. Dean and/or the District continually changed the health insurance proposal so that the District's offer was never presented to the BEA and is significantly different from the plan that was presented to the BEA. The District provided a Dean health insurance policy to the BEA during the bargaining and mediation process. A different health insurance policy was provided in response to the BEA's information request shortly before the arbitration hearing and yet a third policy, one never before offered to the Union, was submitted in the District's exhibit book at the arbitration hearing with additional modifications to the policy being created between the first and second days of hearing. BEA sought information directly from Dean's representatives and Dean continually modified its position, particularly on retiree benefits in particular. At the hearing, the District presented documents in direct contradiction to the retiree addendum provided less than two weeks earlier to the BEA. It attempted to explain away these contradictions by asserting that these types of modification to a retiree policy are typical, noting testimony by District insurance consultant Kevin Clougherty who stated "I would say that's generally a given in these types of group plan takeovers where frequently there's a lot of confusion between the group, the represented employees, the union itself, their representatives and the WEA Insurance Trust and frequently all the specifics of the retiree coverage addendum aren't worked out until after the plan is even in force."

According to the BEA, it is contrary to collective bargaining, not to mention insulting, for the District to suggest that there was merely confusion over Dean's policy governing retirees when in fact, the District provided the BEA with contradictory documents. The District's defense of its ever-changing plan does not ring true. The BEA asks why it is that the modified policy documents were only created between the first and second day of the arbitration hearing.

In particular, the BEA claims that as of the fall of 2009 and September 7, 2010 the information it received on retirees was as follows:

> (1) Eligibility: age 57 and 10 years of service; (2) Coverage Ends: Medicare eligible or Age 65; (3) Eligibility/Spouse: Coverage Ends Medicare eligible or 65; (4) Employer's Premium Contribution: at least 40% of the single premium and 25% of the family premium [This provision would eliminate 5 BEA retirees who have maintained their WEA Insurance by paying the full premium on a direct bill basis.] ; and (5) Participation Level: Maximum Participation – 10% (retirees under and over age 65 combined) or 25% (retirees under and over age 65 combined) [Retirees currently comprise 20.7% of the WEA Trust Health plan enrollees in Belleville.]

The documents in the District's Exhibit book on retirees as of September 13 and 21, 2010 contain the following information:

> (1) Eligibility: age 55; (2) Coverage Ends: Dean will follow school district requirements for retiree benefits, survivor spouse, and direct bill; (3) Eligibility/Spouse: Dean will follow school district requirements for retiree benefits, survivor spouse and direct bill; (4) Employer Premium Contribution: Dean will follow school district requirements for retiree benefits, survivor spouse and direct bill; and (5) Participation Level: Dean will follow school district requirements for retiree benefits, survivor spouse and direct bill.

Anticipating that the District will argue that these documents serve as a guarantee of Dean's intention to match the current level of benefit provided through the WEA Trust, the BEA further points out that even Dean's new summary document dated September 20, 2010, clearly contains the following disclaimer:

> Note: This Summary is designed to highlight certain benefits to members of Dean Health Plan. All benefits are subject to the policy's provisions, exclusions and eligibility requirements in effect at the time services are rendered. This summary (and any attachments) does not contain all information an individual needs to understand the provisions of each plan and make benefit decisions. For benefit questions, please refer to the Group Member Certificate and Schedule of Benefits.

The BEA further submits that the group member certificates and schedules of benefits provided to the BEA contradict Dean's summary documents. The contradictions in its view are pervasive and the District's own exhibits perpetuate the confusion. The District's modified summary created between the hearing dates conflicts in several places with the group member certificates and schedules of benefits provided to the BEA by Dean. Conflicting information has been provided regarding infertility services, transplant coverage, CAT Scans and MRIs, the treatment of kidney disease and more.

The District, rather than fully engaging in bargaining by sharing an accurate insurance policy, seeks through arbitration, to implement a plan that it never provided to the BEA during the collective bargaining process. Dean's continual plan modifications even occurred between hearing dates and are clearly Dean's attempt to shore up its proposal after listening to the BEA's testimony from its members over various concerns presented at the first day of hearing. The arbitrator should not reward the District for this type of behavior. BEA's frustration with Dean Health Insurance is not unique. Other districts along with their bargaining representatives have been discontent with Dean health coverage, particularly bargaining units in the Stoughton School District who expressed outrage over Dean's drastic changes to the drug formulary just days after teachers ratified a plan to voluntarily move from a self-funded drug plan to a dual choice Dean or Physician's Plus drug plan. The District's final offer contains an insurance policy that was never presented to the BEA and is, in fact, significantly different from the plan that was presented to the BEA.

The BEA's status quo insurance offer and reasonable salary proposal are far closer to an agreement the parties would have reached through voluntary settlement.

The BEA's salary proposal for 2010-2011 of 2.25% per cell, is just slightly below the 2.28% per cell average salary increase that the parties reached through voluntary settlements from 1999 to the present. Therefore the parties' collective bargaining history supports the Union's proposal.

<u>DISTRICT Reply Brief</u>

With regard to comparables, the BEA in arguing for a stagnant comparability pool, skews the facts, misinterprets arbitral history and dismisses the monumental demographic change that has occurred since the parties' last arbitration in 1993. It notes that the District is not seeking to include the entire Capitol Conference as it would exclude Lakeside Luther and Watertown Luther Prep, both private schools. It notes that the conference's name is "Capitol Athletic Conference" and it is comprised of a "North" and a "South" division. In the District's view, the switch of athletic conferences and the changes in enrollment justify expansion of the pool.

With regard to the desire for stability and bargaining history within a comparable group, the District notes that the arbitrator in the lead case qualified his statement as follows: "In the absence of a compelling reason for using different comparables, the parties are better served by using the same comparables in order to provide some stability and consistency in the collective bargaining relations."

The BEA alleges that schools in the Capitol Athletic Conference are not "geographically proximate to Belleville but offers no arbitral precedent to support that assertion. In contrast, the District cites arbitral precedent by two arbitrators to support its contention that all of the districts in the Capitol Athletic Conference should be considered as an appropriate comparability group as geographically proximate. Further the BEA's assertion about the "Monroe labor market" has no support in the record. While it may be true that the schools in the now-defunct State Line League are relatively close to Monroe, there is no evidence whatsoever that Monroe is the definitive labor market for those schools. Rather the defining labor market for at least four of the schools in the former State Line League is Madison—not Monroe. Capitol Conference schools form a ring around Madison and imply that Madison is the unifying factor among all conference schools. The Association's use of teachers' zip code data is factually misleading. Fifty-seven per cent of its membership which resides in Belleville and/or New Glarus is hardly a vast majority and none of the other 43% live in any of the districts in the old State Line

League Conference or the current Capitol Conference. Given the zip code data, an argument favoring the district's proposed comparability pool could also be made. Since 57% of the teachers now live in Capitol Conference districts, teachers are more likely to experience economic factors similar to teachers in the expanded comparable pool.

Because the BEA does not clarify how a comparability pool relates to the provider network for Belleville teachers, the District makes an educated guess as to its intent. The District's comparability pool spans seven counties and Dean has both a hospital and primary care presence in all seven of them. In making a claim that geographic proximity, rather than athletic conferences, has been a primary factor considered by arbitrators when determining the appropriate comparability pool, the BEA fails to cite any cases involving teachers' bargaining unit. In contrast, the District points out that at least eleven arbitrators have used athletic conference schools as comparables in at least one case involving teachers. Given that the present arbitration involves a teachers' bargaining unit, it is appropriate to look to other schools in Belleville's athletic conference for comparability. As evidence that a geographic or regional comparison is especially appropriate in a case such as this where health insurance plan services are being evaluated because the cost of those services are regionally determine, the BEA relies on a decision were the arbitrator was referring to different regions and metropolitan area of Wisconsin, not to different counties with the same region.

The District insists that the BEA mischaracterizes its position in stating that the District is asking the arbitrator to ignore previous arbitral findings in past Belleville interest/arbitration cases. Rather, the District is asking the arbitrator to enhance the prior comparability pool based on changed circumstances. This is not "forum shopping." It cites arbitral precedent to suggest that adopting comparables based upon the make-up of the new athletic conference is not akin to forum shopping, and notes that arbitrators have ultimately determined that all districts with unionized employees in the old and new conferences should serve as comparables.

With respect to the BEA's argument that the District has not met its burden as the party seeking a change from the status quo, the District cites the BEA's willingness to make benefit modifications as evidence of the very need to change health insurance carriers. Furthermore, this argument has recently been rejected in the *Milton* decision.[1]

Here, WEA Trust premiums are consistently the highest premiums among the comparables and cost an average of $2,184 to $2,596 more annually per participant than the premium costs associated with non-WEA Trust carriers during 2008-2009 and 2009-2010. Notwithstanding, single-digit premium increases from the WEA Trust for 2010-2011, the premiums still cost an average of $1999 more annually per participant than the average premium cost of non-WEA Trust carriers. Belleville's WEA Trust PPO family plan premium is also nearly $1000 greater annually per participant than the average of the comparable districts' WEA Family Trust premiums. Even with the BEA's attempt to make changes and plan modifications WEA Trust policy, Belleville's WEA Trust PPO family premium cost still ranked in the top five of all comparables, and with 4 out of 5

[1] Dec. No. 33020-A at p.40 (Shaw, 11/10).

most costly premiums among the comparables attributable to WEA Trust. Although BEA members contribute a greater-than-average percentage toward the cost of the health insurance premiums, the District's cost ranking has increased from fourth highest out of the Association's comparables in 2008-2009, to third highest in 2009-2010.

Notwithstanding the union's proposal of an increased employee premium contribution and other plan modifications to offset the WEA Trust's premiums, the arbitrator in *Milton* still selected the District's dual–choice option of non-WEA Trust carriers as more reasonable. Here, the BEA did not propose any changes and the District has proven that the ever-escalating costs have created a need for the proposed change.

It cites arbitral precedent where an arbitrator concluded that 8% average annual premium increases not only provided the employer with a need to propose a change to an HMO plan, but also that the proposed change was a reasonable way to address the need. Here the WEA PPO's premium increases have averaged over 12% annually, which has created a need for the proposed change to which the District has responded by proposing a dual-choice HMO-POS option through the Dean Health Plan. The District has proven this by clear and convincing evidence.

To dispute the BEA's contention that Belleville is not an outlier on health insurance costs, the District points out that WEA Trust PPO plan family premium has ranked no lower than the fifth most expensive out of sixteen comparables over the past three years and costs over $2000 more annually than the average of the comparable district's family premiums. While it is true that health insurance costs are a problem borne by all districts, in Belleville the costs present a problem that is significantly greater in magnitude than the problem faced by the majority of other districts. The BEA's decision to include average premium increases beginning in July of 2002 is disingenuous because it conveniently leaves out the 31% WEA Trust Premium increase from 2001-2002 to 2002-2003. If one looks at a 10 year period, the actual average premium increase for the WEA Trust family plan premium has been 12.7%, which is less than Dean Health Plan's increases over the same time period.

Although it may be true that Dean Health Plan insurance rates from 2008-2009 to 2010-2011 have increased more quickly than the WEA Trust insurance rates, the District has established that nevertheless, from 2003-2004 through 2010-211, the WEA Trust family increases have increased by 8.91 % with a total premium increase of $8,274.00 as compared to the DEAN HMO increases of 8.71% with a total premium increase of $6,442.00. Even if the comparables' Dean Health Plan premiums have increased an average of between 6.28% and 8.28% per year since 2008-2009, these increases are far less than the premium increases historically charged by WEA Trust. The District's WEA Trust PPO health insurance premiums are substantially greater than the majority of the comparable districts' premiums and the average of the comparable districts' premiums regardless of which comparable group is selected and despite the plan changes that the parties have made to reduce the premium costs.

The District disagrees with the BEA's representation that the WEA Trust insures the majority of school districts in the comparable pool. If Belleville is removed from the BEA's comparison, Dean Health Plan is the carrier in four districts and WEA Trust has retained four districts. Under the District's set of comparables, Dean Health Plan is the carrier in the majority of districts, eight, while WEA Trust remains the carrier in only seven districts. WEA Trust steadily continues to lose market share on a state-wide and local basis and the only explanation is that its premiums have become too expensive. The BEA's claim also ignores the fact that Dean Health Plan remains a carrier in the Belleville district for ten of its members.

According to the District, the BEA's claim that under its offer, the District's monthly contribution to a single insurance plan in 2010-2011 would be either less expensive or within $150.00 of six of the eight established comparables is misleading. It is misleading because within the BEA's proposed comparables, under the BEA's offer, only one district would have a greater monthly premium contribution than the District's. Furthermore, to state that the District's contribution would be within $150 of six of the comparable districts also understates the fact that, on an annualized basis, the District's premium contribution would be $1800 ($150 x12) greater, per participant. Looking at monthly family premiums, the District admits that while its contribution would be within $140 of seven of the eight comparable monthly premiums, the District's contributions would actually be less than only one of the comparables. Using a cast forward comparison with one of the comparables, Juda, the District asserts that the cost would be over $50,000 per year ($149 x 12 months x 28 enrollees.) Looking at Belleville's 44 enrollees, the cost is even greater ($78,672 or $149 x 12 months x 44 enrollees).

Noting that the BEA characterizes the District's ranking for premium contributions under the BEA proposal as "slipping into second place", this is not a contest as to who will have the highest employer premium contributions. The District pays more for BEA members' health insurance benefits than all but one of the comparables, i.e., its contributions are higher than seven of the eight districts.

Responding to BEA assertions that the vast majority of BEA members live in Belleville or New Glarus, the District points out that New Glarus, the only other district to be a member of both the old Stateline and Capitol conferences, has the smallest employer premium contributions of all the comparable districts because it has already implemented the Dean Health Plan dual-choice option that the District has proposed.

With regard to past bargaining history, the District believes that this evinces a continuing need to change from the WEA Trust as the health insurance carrier and that health insurance change in at least some respects represents the status quo for the bargaining unit. It claims that the BEA is simply refusing to take the final step necessary to achieve meaningful health insurance premium relief despite the generous quid pro quo offered. The parties have reached the end of the line in terms of wringing any additional premium saving out of the WEA Trust PPO. Rather than accept the change the BEA attempts to obfuscate and block the District from acting in the best interest of all stakeholders (students, teachers, and taxpayers) by making the switch.

To address representations that the BEA members are willing to pay a greater than average percentage of health insurance premiums to maintain the WEA Trust, the District asks why its taxpayers should be forced to continue to pay a greater than average percentage of health insurance premium costs to provide BEA members with WEA Trust PPO insurance when less expensive, comparable alternatives are available. While BEA members may be willing to pay more than their external and internal counterparts, it is unlikely in this economic climate that taxpayers would be willing to or should even be asked to incur increased tax levies to do the same.

To counter BEA arguments that the District cannot make a credible argument that teachers' salaries and benefits pose a financial hardship for the District because the percentage of the District's budget spent on teacher compensation has decreased slightly, the District stresses that the data presented by the BEA is flawed because they do not take into account any of the District's expenditures toward early retiree benefits and do not include the amounts spent on salary and benefits for social worker, guidance counselors or special education teachers. The actual amount with these inclusions constitutes a far greater percentage of the overall budget than the 50% and 49.2 % set forth in the BEA's exhibit. The District's health insurance expenditures for BEA members have increased by almost 50% during a five-year span, while its total Fund 10 expenditures have increased by only 27% during the same period. Even assuming for the sake of argument that the percentage of the District's budget spent on teachers' total compensation has decreased as the BEA argues, the premiums have increased although there were fewer BEA members enrolled in health insurance in 2008-2009 than in 2004-2005.

Admitting that the BEA made retirement modification concessions during negotiations, the District points out that these changes will not go into effect until 2022 at the earliest. Given this implementation date, the omission in the District's post-employment benefits costs is logical. With respect to BEA arguments that the OPEB actuarial report obstructs the true retirement costs, the District asserts that lack of prefunding these costs does not mean that they do not exist. The cost of providing future benefits is a part of the cost of providing public services today, and the approximately $101,000 that the District will pay in 2010-2011 is only a part of the OPEB liability that it has incurred.

Under the District's comparables, the District's revenue limit per member has increased by only 2.84% annually, which is less than the average of the comparables' average annual increases during that same time period, and its final revenue limit authority average annual increase was only 1.15% greater than the average of the comparables' average annual increase during that same time period. Despite BEA claims to the contrary, the revenue limit increases experienced by the District are similar to the revenue limit increases experienced by the comparable districts over the last ten years.

The District does not believe mill rates serve as an appropriate indicator of a district's financial status. A more appropriate indicator is the actual tax levy increase. Disputing the BEA's assertion that Belleville residents today are taxed at less than one-half the rate that they were in 1993, the District asserts that its property taxes have increased by an average of 4.27% annually since revenue limits were implemented in 1993 and by an average of 5.75% annually since 2004. This is in line with the comparable districts' tax levy increases during the same time period. Although the District's property values increased by 311% from 1993 to 2009, its mill rate decreased by only 59.9% and its total tax levy increased by 65% over the same time period. The District's total levy for 2009-2010 ranks 8th out of the 16 comparable districts.

The District alleges that the BEA would have the arbitrator view the cases in a vacuum, ignoring the recession that has befallen the state and national economies and disregard the hardships imposed by raising additional taxes to accommodate the teachers' health insurance carrier. The BEA would also have the arbitrator ignore the fact that the District has managed to keep its levy increases low in the best interest of the community by dipping into its fund balance.

The District finds itself stuck between a rock and a hard place. On one hand the economy has restricted its ability to raise its tax levy and on the other, the District cannot afford to draw from its fund balance any further without exposing itself to substantial risk. Although the District may have enough money in its fund balance to pay for the BEA's final offer during the two-year term of this contract, its greater concern is that, even if it can fund the BEA's final offer, it will not be able to do so in the future, especially in light of the District's OPEB liability and BEA members' health insurance premium costs. That is the very issue addressed in the *Milton* case which led Arbitrator Shaw to strongly favor the employer's offer. Even though the Milton school district had a similar mill rate ranking, a larger fund balance as a percentage of revenue limits and under-levied by a greater amount than Belleville has in this case, the arbitrator found that the magnitude of WEA Trust's current and future premium cost increases would put the district's ability to serve its educational mission in the future at risk and outweighed the fact that the District could afford the immediate premium increases for the WEA Trust plan during the term of the contract.

The District maintains that it has offered BEA members a high quality set of health insurance plans through Dean Health Care and does not seek to modify the terms of the BEA members' early retirement benefits. It is simply seeking to apply the brakes by offering comparable benefits at a significantly reduced cost through a structure designed to hold down future premium cost increases better than the existing plan. This is the case in light of the state's $2.5 billion dollar shortfall which will most certainly result in further cuts to school district general aids. When combined with the District's slight decrease in enrollment, the District needs the ability to start addressing the teachers' health insurance costs now.

In response to BEA arguments that it is unwilling as opposed to unable to pay for the BEA's final offer, the District stresses that even if it has enough money in its fund balance now to pay for WEA Trust PPO'S premiums, it would be risky to further draw down its fund balance to do so.

With respect to the side-by-side comparison of benefits, the provider networks in particular, Dean's 23-county HMO-based provider network covers every county in which a comparable district lies and covers every community in which a BEA member resides, so BEA members will have no trouble finding providers. The District made it clear that BEA members who moved outside of the 23-county HMO-based provider network would be able to retain coverage through Dean Health Plan's national PPO plan. Nevertheless, the BEA continues to act as through its members will not have coverage outside the 23-county HMO-based provider network, and (b) any provider outside of the 23 county provider network will cause an employee or retiree to incur steep out-of-pocket costs. This is simply not the case. By including every Wisconsin county, all major regional providers, and a vast nationwide network, WEA Trust admits that it has no cost containment measures and its providers have no incentive to provide discounting of the retail price of services. The consequences are higher and higher premiums.

The BEA cannot rely upon the exhibit provided by its expert witness to support its position that 35% of recent claims made by BEA members would be considered out-of-network claims under the Dean PPO since he admitted during cross-examination that it was flawed and did not provide a corrected exhibit into the record. With respect to the assertion that members who are forced to use out-of-network providers under the Dean plan will endure increased co-pays and deductibles, the District counters that the BEA did not provide any evidence to support this claim whatsoever. An employee enrolled in Dean Health Plan's POS will have the same deductibles as they currently have under the WEA Trust PPO while an enrollee in the Dean HMO will not have any deductibles. With respect to its contentions about the significant possibility of BEA members paying more for services over and above the reasonable and customary charges under the Dean plans, again the District claims that no actual evidence was entered into the record. It also points out that WEA Trust's out-of-network, out-of pocket maximums are significantly higher than Dean Health's POS. Dean's POS out-of-pocket maximums are $500 for an individual and $1200 for a family. Conversely, WEA Trust PPO's out-of-net, out-of pocket maximums are $1450 for an individual and $2900 for a family plan. Moreover, in every instance, Dean Health Plan's POS covers non-network services listed on BEA exhibits at 90% while WEA Trust covers only 80%.

In response to the BEA assertion that several benefits provided under the WEA Trust PPO are not provided under the proposed Dean Health Plan options, the District has been forthright throughout the process that the proposed Dean Health Plan options would not match every WEA Trust benefit, but that the benefits would be substantively comparable. This argument was also covered by the arbitrator in Milton where the arbitrator found that the Dean Health Plan and another plan provided comparable benefits to the WEA Trust. The same type of benefits analysis here should provide the same conclusion. The District points to certain benefits which are much better under the Dean plans, i.e., hearing aides, and licensed skilled nursing coverage.

The District stresses that the Dean Health Plan is very broad and the teachers are unlikely to relocate in any areas in which it does not have in-network providers.

The District also urges the arbitrator to find that the internal comparables support the District because the support staff unit, 10 of its BEA members and an administrator all have District-provided health insurance through the Dean Plan. So that the District's proposal under section 111.70(4)(cm)7r.e., stats., is favored.

The BEA's has argued that because Belleville teachers will maintain the same benchmark ranking from the 2008-2009 school year through 2010, no erosion of the salary schedule has occurred. Looking at the benchmarks from 2000-2001 to 2008-2009, Belleville teachers slipped from first to fifth at the BA base. Looking at salary schedule comparison's to CPI between 1998-1999 and 2009-2010 in comparison to CPI increases, Belleville employees earned 2.73% less in 2009-2010 than they would have if salary schedule increases had kept pace with the CPI. The District does not agree that arbitrators have given greater weight to external comparability data during "periods of low inflation," noting that some do not consider the comparables when analyzing the cost of living factor even during a period of relatively low inflation. The District encourages the arbitrator to consider both the CPI and the external comparisons when analyzing the "cost of living" factor. The BEA claim that its offer is preferable because it is closer to the CPI and the external settlements fails to take into consideration the unique circumstances of the case in which the District's total package exceeds that of the BEA, the CPI and the comparables because the "excess" compensation serves as a quid pro quo for the insurance change.

Admitting that a new teacher with no experience who is at the BA base would fall to fifth of eight under both proposed Dean plans, the District points out that with a family premium at the MA 10 benchmark, a teacher will be second out of eight: at the MA max, first out of eight; and at the schedule max, first out of eight. Only at the BA base does a new teacher fall from third to fifth in ranking. For single premium insurance, the only change in rank is at the BA base where new teachers in Belleville were fourth in 2008-2009 with the WEA Trust, and would rise to third in 2010-2011 if the WEA Trust were retained while they will remain ranked at fourth with either Dean plan.

The District is not merely diverting dollars from insurance into salary against the members' will but will save significant overall savings because the financial obligations to retirees will be reduced.

The District disputes the BEA's claims that the cast-forward method of costing is inappropriate. Cast-forward costing does not include all compensation costs associated with teacher compensation such as the cost of lane movement on the salary schedule based upon additional education achievement nor does it include the substantial cost of early retirement benefits. Cast-forward costing has consistently understated teachers' total compensation and the cost of the parties, historical settlements. The District believes that it can and should compare total package costs because the cost that the District contributes toward health and dental premiums helps to pay for teachers' health and dental expenses. Without the District's premium contribution, the employees' out-of-pocket expense for health and dental would be astronomically higher. Moreover, arbitrators have routinely compared total compensation to the CPI, looking to the total value of the economic package that employees would receive under both offers. The District also relies upon Arbitrator Shaw's reliance upon this method for comparisons with the comparables.

The District claims that the Association argument that it has continually modified the contents of its health insurance proposal is nothing more than a red herring to distract the arbitrator from the merits of the case. If the BEA believed that the Association was engaging in manipulation or gamesmanship with its final offer, the appropriate response for the Association would have been to either file a prohibited practice against the District for failing to bargain in good faith or to object to the District's final offer as failing to constitute "a single, ultimate final offer" before it was certified. The BEA did neither. The District has made it unequivocally clear that it intended to offer a dual-choice option through the Dean Health Plan that provided comparable coverage and benefits to BEA members. It began the process by providing the BEA with Dean Health Plan's generic HMO and POS policies. Once it discovered benefits covered the the WEA Trust PPO that were not covered under those generic Dean Health Plan policies, it consulted with Dean to determine whether it would match the WEA Benefit in those areas and informed the BEA of the corresponding changes.

Insofar as retiree benefits are concerned, the Dean Health Plan notified the BEA on October 6, 2009 of its intent to accommodate the retiree language and criteria that the group requests. Nevertheless, because Dean Health Plan never updated its generic policy documents or teacher addendum to reflect this fact prior to the first day of hearing, the Association alleged that Dean Health Plan somehow changed its position. After the BEA's concern became apparent after the first day of hearing, the District and Dean Health Plan entered into the record a letter from Dean that explicitly states that it intended to follow the District's current practice with WEA Trust regarding retiree benefits, survivor spouse benefits and direct billing. This letter was consistent with the October 6, 2009 correspondence and Dean Health Plan never wavered from this position despite the contents of the generic plan documents that were provided to the BEA. Both parties' expert witnesses testified that health insurance carriers' general policy documents are subject to waivers, riders, addendums, amendments and attachments. The District points out the WEA Trust's layoff benefit is not contained in its policy documents, but rather in a separate brochure. For the BEA to now cry foul over the fact that the generic plan documents Dean Health Plan provided to it were not comprehensive, all inclusive or consistent with the other specific, written guarantees is hypocritical and its allegations ring hollow.

The District asserts that the BEA has led its members to believe that if they move out of the Dean Health Plan HMO provider network, they would no longer have coverage through Dean Health Plan although it was aware that its members could enroll in, and have coverage through, Dean Health Plan's National PPO network. Neither the District nor Dean could be expected to anticipate every BEA concern or question. If the BEA were truly concerned that its members would not have coverage if they moved outside of the Dean Health Plan's HMO provider network, then it should have asked for additional information about Dean Health Plan's PPO as it did regarding other benefits. Even after the BEA received the updated and corrected exhibits after the second day of hearing, it chose not to submit an accurate side-by-side comparison. In any event the BEA would not have voluntarily agreed to switch to the Dean Health Plans even if the District and Dean Health Plan had been able to provide the BEA with a complete, comprehensive plan document during the course of bargaining prior to interest arbitration. The District requests that the arbitrator make her decision based upon the final offers and the evidence in the record and not the BEA's mischaracterization of the process that lead up to this point.

In response to Association allegations that the parties' bargaining history supports its offer because its salary proposal for 2010-2011 is closer to the per cell average salary increases the parties reached from 1999 to the present, the District argues that its substantial proposal is part of its quid pro quo for the proposed health insurance change. The BEA is arguing against a larger than average salary increase. The BEA's contention ignores the fact that it has made a voluntary health insurance concession during nearly every bargain since 2003. On this basis alone, the District asserts that the bargaining history supports its proposed health insurance change and that its final offer would put the parties into the same position they would have occupied had they been able to reach full agreement at the bargaining table. In sum the District seeks to take the first step towards securing its financial future by offering the BEA not only a high quality set of plans, but also a set of plans that are structurally better-equipped to minimize future health insurance premium increases. It urges the arbitrator to select its final offer.

BEA Reply Brief

The Association argues that the District's reliance on the change in athletic conference is misplaced. The District's own argument should lead the arbitrator away from reliance on the athletic conference because it fails to acknowledge that the Wisconsin Interscholastic Athletic Association recognizes the geographic differences within the Capitol Conference as it has divided it into north and south divisions. Northern Division schools lie primarily in Columbia and Jefferson counties and are geographically distinct from Belleville and the remaining Southern Division schools. This segregation of schools by geographic location undercuts the District's argument that athletic conference schools should be presumed to be sufficiently proximate to constitute comparables.

Arbitral precedent does not support the inclusion of all Capitol Conference schools in the same comparability pool. Only one case supports the District's position and three previous arbitrators have accepted the comparables proposed by the BEA in the past. Thus, the arbitrator should acknowledge the historical weight of the Union's choice of commonly-agreed comparables especially in light of the desire for predictability insofar as comparables are concerned.

The BEA insists that the Cost of Living criterion clearly favors the BEA's offer. The BEA offer of 2.25% per cell for 2010 is .65% above the 1.60% increase in the July 2009 to July 2010 CPI-W. Even using the District's calculation of the consumer price index for 2010-2011, it is clear that this factor favors the BEA's proposal. It is closer to the CPI, as evidenced by the District's own chart. Likewise, the District chart demonstrates that the BEA's offer, at every salary benchmark, is closer to the settlement pattern of the comparables. No matter which of the two sources for cost-of-living analysis are utilized, the BEA's offer is clearly favored.

According to the BEA, the overall compensation criterion favors the BEA's offer. In its view, total compensation and total package are not interchangeable terms. Total package refers to an inflated number that is calculated using snapshot data that casts forward bargaining unit members as if no one ever leaves or enters the bargaining unit. In essence, this calculation forces the Union to pay for step movement over and over again. Conversely, total compensation represents the value of the salary and benefits earned by an employee. The District's total package numbers have inflated past settlements and total package should not be considered.

The arbitral overall compensation criteria are more accurately captured in the BEA's total compensation exhibits representing actual Belleville benchmark employees utilizing family or single insurance. An analysis of the total compensation shows that the District is merely diverting dollars from salaries to benefits against the teachers' will.

Only a few dollars separate the total compensation offers of the two parties. There is only a $1.00 difference in the costs of the Union's offer and the District's Dean POS offer at the schedule maximum benchmark for employees opting for single insurance. Likewise, only $65 separates the BEA's proposal from the Dean POS for employees opting for family insurance. Given these small differences, it is clear that the District does not need to change the status quo. The BEA membership's priority in maintaining WEA Trust benefits should be honored and the unnecessary change proposed by the District should not be imposed by the arbitrator.

From the BEA's perspective, the quid pro quo analysis supports the BEA's offer. The District's claim of a 4.55% total package as a quid pro quo is flawed because utilizing QEO costing inflates the cost of the settlement. This number does not represent an offer that the District ever proposed to the BEA. The .4.55% is the costing of the District's offer as if it were implemented on November 1, 2010. The District never offered the Union a 4.55% total package as a quid pro quo. The number has simply been inflated by the length of the arbitration process. Even if the arbitrator were to give weight to an analysis of the total package settlements, this favors the BEA's offer. Over two years, the BEA's proposal is .16% below the total package settlements, even among the District's comparables. The BEA's offer for 2010-2011 is only .07% higher than the total package settlement in the parties' matching offer for 2009-2010.

The districts with the highest total package settlements put the least amount of money into their teachers' salaries. These are the same districts that utilize Dean as the insurance provider. Among the established comparable pool, the average salary increase for teachers with the WEA Trust insurance was 2.0%, while the average salary increase for teachers in Districts where the provider is Dean was less than half that amount, 0.9%.

The fact that Dean insurance rates have increased more rapidly than WEA Trust rates during the last two years in every comparable district undercuts the District's argument that it needs to change the status quo. First, the Dean increase in insurance rates demonstrates that the District as the party with the burden cannot meet the burden of showing why a departure from the status quo is necessary. Second, the District's argument that a change in the status quo will put more money on the salary schedule is not supported by any of the comparables. Third, the District's arguments of future sustainability make no sense when the total package settlements in districts with Dean have been higher than the settlements in districts where the WEA Trust is the insurance provider. Finally, the District's fictional calculation suggesting increased pension benefits assumes "the net effect of the foregoing, assuming equivalent total compensation increases is that more money will go to salary increases than benefit increases in the future under the District's proposal." This has clearly not been the case for any comparable district utilizing Dean insurance.

The BEA insists that the District has not demonstrated a need to change the status quo. The District's representation that school districts throughout the state with the WEA Trust insurance are facing skyrocketing health insurance premium costs with Belleville being no exception ignores the fact that Dean insurance rates in every comparable district, increased more quickly during the last two years than any WEA Trust rate.

In reviewing the bargaining history of the parties, the BEA emphasizes that this history of retaining WEA Trust as the exclusive provider of health insurance with the grandfather proviso only shows how much value bargaining unit members have always placed on retaining the WEA Trust insurance benefit.

The District's own analysis of premium increases underscores that there is no need to change the status quo. By the District's calculation, WEA Trust premium rates have increased an average of 8.91% compared to an average premium increase of 8.71% for the Dean HMO. This is the case although the WEA Trust insures every BEA retiree. Even those few BEA members grandfathered under the Dean HMO plan, switched to WEA Trust insurance at retirement and more than 20% of WEA Trust enrollees are retirees. Given that members who reach retirement age are some of the most costly to insure, one can assume that Dean premium rates will increase more quickly if they are insuring a high-risk group of employees.

In the BEA's view, it is very likely that the pool rating offered by the WEA Trust has helped Belleville hold down premium increases when a significant portion of its membership is considered to be high-risk. The fact that the WEA Trust has been able to hold down premium increases also underscores the hard work of BEA members who have been willing to make plan design changes and insurance concessions to hold down premium increases. These results, achieved through voluntary settlements, highlight that there is no need to change the status quo.

The District's offer does not address health insurance premium cost increases. Reviewing the factors that drive up health insurance costs presented by the District's expert witness (increased utilization, new developments in medical technology, the aging population as a whole, the advent of specialty drugs and treatment and cost shifting from the government back to the nongovernmental sector), the BEA stresses that not one of these factors is unique to Belleville or the WEA Trust and the District's offer does not address any of these factors.

With Dean's limited provider network, supposedly designed to hold down insurance costs, Dean's HMO rates in District have increased at nearly the same rate as the WEA Trust. This is even more significant when one considers that in the last two years, in every comparable district utilizing Dean, the Dean premiums increased more than WEA Trust premiums. In spite of Dean's claims of cost saving through limited provider access, Dean offers no explanation for why its insurance premiums increased more dramatically than the WEA Trust rates. Furthermore, the discount comparison should be dismissed as it only speaks to Dean negotiating from retail prices. Moreover, no comparison was offered as to the discounts bargained by the WEA Trust. Moreover, there is no evidence that any of this applies to Belleville.

With respect to District arguments about long-term and short-term cost savings due to steering employee to Dean providers, the BEA alleges that this is simply cost-shifting the medical expenses to its members who may need access to medical providers outside of the limited Dean network who will suffer increased out-of-pocket expense for this care. Any analysis of BEA members' savings under the District proposal must give consideration to this fact.

The District's qualitative comparison of benefits highlights its negative bargaining tactics. In its comparison of benefits between the status quo WEA Trust plan and the proposed Dean plans, the District attempts to weaken the testimony of the BEA's expert regarding the substantial benefit differences. Its efforts only highlight the conflicting and ever-changing insurance proposals in its own offer. With respect to the service area/provider networks/coverage, the BEA notes that Dean HMO and POS policies clearly list as a reason for disenrollment, the "member has moved outside the service area." With respect to out-of-network costs, the District's assertion that they would be lower under the proposed Dean plans ignores three key facts. First, the WEA Trust's more extensive network make it likely that members will always be in-network so that members would be much more likely to incur out-of-network costs under the Dean plans. Second, the District ignores "reasonable and customary" charges that are not included in out-of-pocket maximums. Third, the District refers to a Dean PPO plan that was never shown to the BEA. The exhibit to which it refers was created between the first and second day of the hearing. With respect to physical, speech and occupational therapy benefits, the District cites Dean policies created between the first and second days of hearing. With respect to coverage for retirees and survivorship benefits, the District cites Dean insurance policy documents created between the first and second day of hearing.

The District's comparison of these benefits highlights the conflicting information provided to the BEA as it sought to analyze the District's proposed insurance policies and reinforces the BEA contention that the District's proposed offer could never represent the natural outcome of bargaining when it failed to provide the BEA with an accurate health insurance proposal. The arbitrator should not reward the District for this bargaining tactic.

Comparison of provider networks clearly demonstrates that the WEA Trust network is superior both locally and nationwide. More than 30% of the WEA Trust paid claims from May of 2009 to April of 2010 would have fallen outside the Dean Network. The District cannot refute this. From among the 30% claims that would be out of the Dean network, the District has identified only two providers that it believes are in the Dean network.

Dean's drug formulary changes leave unanswered questions. While the District points to Dean's decision to rescind its dramatic drug formulary changes which moved 88 drugs from Tier 1 to the more costly Tier 2, the BEA notes that Dean representatives failed to inform Stoughton teachers about these proposed changes days prior to a members' ratification vote and that in all likelihood, the rescission of the formulary changes was prompted by the outrage of several local teachers' unions who protested the changes.

The BEA asserts that its side-by-side comparison represents an accurate analysis of the Dean policies provided to the BEA. The BEA refutes the District's argument that the BEA's expert witness's testimony should be disregarded by referring back to the BEA's request for this information and the District unwillingness to provide the BEA with an accurate proposed health insurance policy. It stresses the District's continuous modification of the benefits in its proposal throughout the hearing itself. The Union notes that its witness testified from insurance plans, policies, riders, addendums, and amendments given to the BEA less than two weeks before the parties' first hearing date and points out that the information that its witness possessed is the only information available during the bargaining process. While the District's brief highlights the contradictory benefits contained in its policies, the District fails to address many of the substantial benefit differences between the status quo WEA Trust and the proposed Dean plans.

The Association also questions the credibility of the District's expert witness given that he will profit should the District make the switch from WEA Trust to Dean.

The BEA's offer is clearly supported by comparison of the health insurance premiums of other public sector employees. The BEA notes that the District spends much time discussing the state health insurance plan rather than dealing with the plans available to other public employees in Green County. The BEA argues that neither party's proposal contains the State Plan and the rates listed for the plan do not represent the cost of BEA member enrolling in the plan. Therefore, it should not establish the District's market for purchasing health insurance.

Instead, the District's market for purchasing health insurance is clearly represented more accurately by an examination of the insurance premiums of comparable school districts and the premiums of other represented public sector employees in Green County. The District's own charts illustrate that the BEA's proposal is strongly supported by Green County public sector settlements. The BEA's offer to maintain the status quo would represent a District contribution to family health insurance that is 4.34% below the average Green County public sector employer's contribution to family health insurance premiums. The District's contribution to the status quo single insurance premium would only be 3.96% above the Green County average. Therefore, there is no need to change the status quo given the comparable support for the Union's proposal. Conversely, the District proposal would place the District's contribution to insurance premiums significantly below the Green County average. Adopting the Dean POS would result in the District's contribution being 18.19% below the average contribution to single insurance premiums and 13.65% below the average contribution to family premiums. Looking at the proposed HMO would represent even greater deviations from the average resulting in District contributions 18.19% below the average for single coverage and 16.12% below the average for family coverage. The District offers no explanation as to why the District's contribution to health insurance should be 15 to 20 per cent below the Green County comparables.

The BEA asserts that the public sector support for the BEA's proposal is even more compelling considering that the wage settlements of Green County employees are also closely aligned to those contained in the BEA's offer. According to the BEA, Green County represents a more accurate public sector comparison than Dane County. All but one of the eight school districts in the established comparable pool are either completely, or partially, within Green County and centered around the Monroe labor market. The only exception is Barneveld which is entirely within Iowa County. Only Belleville and New Glarus are partially within Dane County. The District's own analysis of where its teachers reside based upon zip code data reveals that the vast majority of BEA members reside in Belleville or New Glarus. The city of Belleville is geographically located on the Dane County/Green County line while New Glarus is entirely within Green County. The established comparable pool, and the residences of BEA members suggest that Belleville teachers are more likely to experience economic factors similar to other public sector employee in Green County and should be compared to those employees.

Looking at Dane County public sector employers' insurance contributions demonstrates that both parties' offers are significantly above the Dane County average. This further buttresses the argument that Green County, rather than Dane County, is the appropriate public sector comparison.

Belleville's insurance costs are in line with comparable districts especially when Belleville's greater than average employee contribution to the premium is considered.

The District's argument that it needs to change the status quo based upon ever-increasing premiums does not address the dramatic increases in Dean insurance premiums over the last two years, nor has it proven that a change in the status quo health insurance provider will consistently put more money into the salary schedule since that has not occurred with respect to any of the comparables. The average base salary increase for teachers with WEA Trust insurance among comparable schools was more than double the base salary increases of teachers with Dean insurance.

The BEA claims that the District argument that it needs to change the status quo based upon benchmark changes ignores two key facts. First the District's historical benchmark ranking reach back to 2001, yet the District is seeking to expand the comparable pool. It is disingenuous for the District to use a newly constructed comparable pool to suggest that there has been benchmark slippage. Second, under both offers, Belleville will be third of eight among the established comparables at the BA Base and second of eight at the salary schedule maximum.

In terms of post employment retirement benefits, the BEA notes that it has already made recent retirement concessions. The District's expenditures on retiree benefits are roughly 1% of the District's 2009-2010 maximum revenue limit. Despite this fact, the District argues that this case is about sustainability. Both parties should be allowed to address future costs in future bargains.

The District has not met its burden as the party seeking a significant change from the status quo because Belleville is not an outlier on health insurance costs or carrier. BEA has in the past proactively addressed health care costs through voluntary settlements with the District. BEA member pay a greater than average percentage of health insurance premiums and the BEA has made retirement benefit concessions. Teacher salaries and benefits comprise a shrinking percentage of the District's budget. The District can financially afford to maintain the status quo WEA Trust health insurance benefit.

In response to anticipated District arguments that a recent arbitral award[2] supports the District's contention that it has adequately met its burden, the BEA distinguishes that decision in several respects. First, in Milton, the parties had reached several stipulations containing improvements for association members. This is not the case here. Second, the costs of the parties' offers in that case were dramatically different, roughly $400,000 separated the parties' offers over the term of the agreement. Here there is only about $40,000 separating the offers and the BEA's offer costs less. Taxpayers in that school district had low levy rates and high incomes per tax return but the arbitrator was not provided levy rate and income data for all schools with the comparable group which "cut against" the weight given to this comparison. In contrast, in Belleville there is a disparity between low levy rates and high incomes which is more extreme than that in *Milton*. Among all of its established comparables, Belleville has the lowest levy rate and the second highest income per tax return. In *Milton*, the district under levied during the 2009-2010 school year, while here the District has under-levied eight times in the last ten years.

[2] Milton School District, Dec. No. 33020-A (Shaw, 11/10)

Under the district's offer in *Milton*, the district's contribution to health insurance would fall from third to seven of twelve comparables. Here, the District's offer has a much more drastic impact dropping the employer's contribution to eight of nine under either proposed Dean plan. In Milton the parties submitted very little information regarding the health insurance benefits of non-school district public sector employees in stark contrast to the instant case where the BEA's proposal is strongly supported by public sector employees' insurance benefits in Green County. Here the District's offer would put their contribution to health insurance 15 to 20% below the Green County comparables.

The district offer in Milton was statistically closer to the CPI than the association's offer. Therefore, the arbitrator found that this factor favored the employer. Using any measure here to determine the CPI, the BEA's offer is closer to the cost of living increase. In Milton, the district offered a dual choice between Dean and Mercy Care, two different health care plans. This helped address the network limitations of Dean Insurance. There was no discussion in Milton regarding an ever-changing Dean health insurance policy. This significant issue here was not present in that case.

In the BEA's view, there is no dispute that the BEA's offer is supported by the comparable settlements. Even the District's charts illustrate that the BEA's offer varies only slightly from the comparables.

The statutory criteria require the arbitrator to consider the District's ability to pay either of the parties' offers. The District has not demonstrated that it is unable to afford to maintain the status quo WEA Trust insurance. It admits as much claiming that this is about the District's sustainability. Sustainability, however, is not the arbitral criterion.

The District does not refute that it is in strong financial condition and can afford to maintain the teachers' status quo insurance benefit. The status quo is clearly not burdening the taxpayers of Belleville given the consistent under-levying in which the District engages. The District has not demonstrated an inability to pay but, rather an unwillingness to do so. This criterion favors the BEA.

The BEA's offer should be selected.

DISCUSSION:

This case involves offers which depart from the norm usually considered by interest arbitrators. The BEA's offer for the second year of the agreement with respect to wages is substantially less (2.25% per cell) than that of the District's (4.8% per cell). The BEA's total compensation package proposal for the two years (3.30%) also costs less than that of the District (4.55%). The BEA has made such an offer reducing its salary demands presumably to maintain its WEA Trust health carrier and plan. In order to meet its burden of proof for change of the status quo with respect to the health insurance, the District has provided a quid pro quo in the form of salary increases greater than those proposed by the BEA. Analysis of these offers vis-à-vis the statutory criteria reflects this increasingly more common situation.

Costing Method:

The BEA strenuously objects to the District's reliance on the cast forward method of costing that was required under the QEO law arguing that with the repeal of the law, and maintains that this arbitrary costing method should be retired because it is no longer valid. As Arbitrator Shaw noted in *Milton*,[3] this dispute between the cast forward method versus reliance upon the actual cost of the offers is not a new one. His adoption of Arbitrator Kerkman's reasoning in *Deerfield Community School District (Teachers)*, Dec. No. 26712-A (Kerkman, 8/91) is sound and will be utilized in this case as well. The undersigned will utilize cast forward analysis to compare the parties' offers to those of the external comparables because it provides for better contrast and comparison among the comparables, especially with respect to salaries and total package offerings. However, the actual cost of the offers will be discussed in reviewing the factors dealing with the interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed offers because it provides a more accurate picture of the District's financial status.

Comparables:

Unless there are significant changed circumstances, arbitrators have been hesitant to change established comparables. Changed enrollments, changed athletic conference, and geographical proximity or distance are the factors to consider in determining whether these circumstances exist.

Here, the parties have, based on three prior arbitration awards and past bargains, established a comparable pool consisting of school districts who were members of the former State Line League Athletic Conference. In a 1985 interest arbitration, Arbitrator Imes utilized these districts (Albany, Argyle, Barneveld, Black Hawk, Juda, Monticello, New Glarus, and Pecatonica) as stipulated comparables. In 1987, the BEA sought to expand the comparable group to include those districts within a fifty-mile radius of Belleville because only a small number of the established comparables were settled at the time of the parties' interest arbitration hearing. The District objected and the arbitrator upheld the parties' prior comparable group. For the third interest arbitration in 1993, the parties stipulated to the State Line League districts as comparable.

There have been changes since 1993 with respect to Belleville's WIAA conference membership. The State Line League became defunct and Belleville was included in the Capitol Athletic Conference during the 2006-2007 school year. Districts that are members of the Capitol Athletic Conference along with Belleville are: Cambridge, Columbus, Lake Mills, Lodi, Marshall, New Glarus, Poynette, Waterloo, and Wisconsin Heights. Of the old State Line League districts, only New Glarus and Belleville were included in the Capitol Athletic Conference.

[3] *Milton*, at p. 31.

Since 1993, enrollments in Belleville, Barneveld and New Glarus have increased significantly, while the other districts in the old State Line League have not increased or have declined. With respect to the Capitol Athletic Conference, as of 2009, Belleville's enrollment was sixth out of the ten districts in that conference.

It should be noted that the districts in the Capitol Athletic Conference are geographically spread apart and not contiguous to Belleville. The conference is comprised of districts which circle Madison as a ring, spanning seven counties: Green, Lafayette, Iowa, Dane, Jefferson, Dodge and Columbia counties. Given the geographical distance between the districts, the Capitol Athletic Conference has been subdivided into northern and southern divisions. Belleville has been assigned to the Capitol South Division along with Cambridge, Marshall, New Glarus, Waterloo, and Wisconsin Heights.

The Association argues that only those members of the previously established comparable pool, i.e, districts that were members of the old State Line Conference, should be considered as comparables in the instant case. The District would include them but also include all of the public school members of the new Capitol Athletic Conference based upon changed circumstances.

Neither party presented evidence as to the geographical proximity of the Capitol Athletic Conference districts to Belleville in terms of miles. Rough maps were provided. It is fair to conclude that by breaking the conference into northern and southern divisions, presumably the WIAA has taken geographical proximity into consideration for sports purposes. The District has made a persuasive case that at least some of the districts from the Capitol Athletic Conference should be included in the comparable pool based upon their enrollments as compared to Belleville and the fact that they are now in the same athletic conference. The BEA's point that some of these districts are located far from Belleville and do not share the same labor pool and economic conditions is also well-taken. This is especially the case with respect to some of the districts in the northern division of the Capitol Athletic conference such as Poynette and Columbus.

Given the changed circumstances, it is fair to include some of the districts in the new conference's southern division as comparables in the instant matter.

Accordingly, it is determined that the members of the Old State Line League and the Southern Division of the Capitol Athletic Conference are appropriate comparables for consideration in this matter. The comparable districts are therefore: Albany, Argyle, Barneveld, Black Hawk, Juda, Monticello, New Glarus, Pecatonica, Cambridge, Marshall, Waterloo, and Wisconsin Heights.

Statutory Criteria

Neither party contended that the District does not have the authority to fund the BEA's offer. Neither party cited any stipulations of the parties as weighing for or against its offer. Accordingly, no weight is given to the "lawful authority of the municipal employer" or "stipulations of the parties" factors. As noted above, both parties have submitted matching wage proposals of 1.8% per cell for the first year of the agreement. The matching first year salary offers are also given no weight. It is the remainder of the factors, in particular, the parties' health insurance proposal and total cost packages for the second year of the agreement which determine the outcome in this case. Just as in *Milton,*[4] health insurance is the primary issue in dispute and will be given controlling weight. The parties' wage offers for the second year as they affect both wage and total package comparisons with the comparables will be discussed below.

The difference in costs between the BEA's offer[5] for the second year ($6,041,682[6] versus $5,994,624[7]) and that of the District for the second year ($6,083,077[8] versus $6,062,904[9])) is calculated at anywhere between $41,000 and $68,000 depending upon which party's costing exhibits one relies upon. The District did not provide an actual cost for the two offers. The parties do agree that comparing 2009-2010 to the 2008-2009 base line year utilizing the cast forward method results in the sum of $3,777,262 versus actual costing of $3,674,875 by the BEA for those years utilizing a scattergram.[10] A $102,387 difference exists depending on the costing method utilized.

It should also be noted that the BEA's offer under either method of costing costs less for the two year contract period.

Unlike the situation in *Milton*, where the differences between the two offers were much greater, i.e., some $400,000; here, the cost differences are not so dramatic. Nevertheless, the District's ability to meet the costs of the proposed offers and the interests and welfare of the public must be evaluated.

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

When looked at narrowly, of course, regardless of its financial condition, the District has the financial ability to meet the costs of the BEA's proposal *for the term of the collective bargaining agreement* because its own proposal costs more than that proposed by the BEA.

The BEA wants nothing more than for the arbitrator to focus on these two years, arguing that there will be future bargains to address future health insurance problems. The District insists that it has exceeded the BEA's offer solely to provide a lucrative quid pro quo for its desired health insurance change that will be fiscally advantageous both now and into the future.

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[4]Supra. at p. 37.
[5] Utilizing former QEO cast forward assumptions.
[6] BEA Exh. 4-2.
[7] District Exh. 402.
[8] BEA Exh. 4-3
[9] District Exh. 401.
[10] BEA Exh. 4-4.

The District appears to be in reasonable financial shape at the present time in comparison to the comparables advanced by either party. Between 2004 and 2008, the District's Fund 10 revenue increased more than 23%. This was 4.5% greater than the statewide average. Despite under-levying for eight of the past ten years, the District's total allowable revenue increased by more than 138% between 1993 and 2009 as compared to the state average of 85.8%. It further appears that Belleville's property values are high having increased by 311% from 1993 to 2009 and it has kept its mill rate low, its mill rate having decreased by 59.9% for the same period. The District's property taxes have increased by an average of 4.2% annually since revenue limits were implemented in 1993 and by an average of 5.75% annually since 2004. The District has made the fiscal policy decision not to levy taxes to the maximum revenue limit. This can be construed as evidence that the taxpayers of Belleville are not being overly burdened since the District has chosen not to tax to the max. However, it can also be construed as evidence of wise fiscal policy on the part of the District in retaining some of its ability to levy should the unplanned for occur.

Although the District's enrollment rose in the past seven years, it anticipates a slight drop in enrollment during the next few years.

The District has kept its taxes low by dipping into its fund balance. As a result, its fund balance has declined since 2005 in both total dollars and as a percentage of revenue limits. It has decreased by nearly 6% annually and by more than 24% since 2005. As of the 2008-2009 school year, the District's fund balance ranked 7th out of the 13 comparable districts. As of June 2008-2009, its fund balance as a percentage of revenue limit is 6% less than the average of the comparables. Because the District is obligated to make capitol improvements in its 2009-2010 budget carried over from its 2008-2009 budget, its Fund 10 balance will be even lower.

The District did not provide income per tax return information for its proposed comparables, but Belleville taxpayers have the second highest income per tax return of the old State Line League districts. They rank third out of 13 in total levy for 2009-2010 and 13 out of 13 of the comparable districts in mill rates for 2009-2010.

In sum, Belleville is not a district in distress, but it is one impacted by the same economic forces as those facing its comparables. The District can afford the BEA's offer for the next two years. The real question, however, is whether it should be compelled to fund the WEA Trust into the future if the BEA's offer is selected.

The District, through voluntary bargaining in 2003 agreed to the WEA Trust as the primary carrier eliminating a dual-choice option in 2003-2004, with a number of employees grandfathered into the Dean HMO. The District's experience with the WEA Trust and Dean HMO plans family premiums since that time is as follows:

Family Plan Premium			**Family Plan Premium Increase**	
Year	WEA Trust	Dean HMO	WEA Trust	Dean HMO
2003-2004	$13,273	$10,561		
2004-2005	$13,436	$11,287	1.23%	6.87%
2005-2006	$14,485	$11,287	7.81%	0%
2006-2007	$16,482	$12,938	13.79%	14.63%
2007-2008	$18,307	$14,294	11.07%	10.48%
2008-2009	$19,451	$15,106	6.25%	5.68%
2009-2010	$20,918	$15,906	7.54%	5.30%
2010-2011	$21,547	$17,003	3.01%	6.90%
Average Annual Premium Increase			8.91%	8.71%
Total Premium Increase			$8, 274.00	$6,442.00

From this table, it is evident that the actual premium costs of both plans have risen by over 8% each year. The cost of the Dean HMO has remained much less expensive and as of 2010-2011, it was almost $1800 less expensive for that year. The Dean POS option presumably would have been more expensive than the Dean HMO, had that been offered as an option.

Potential costs to the District and the Employee for 2010-2011 under both offers look like this:

Family Plan	**Annual Premium**	**District Contribution**	**District Cost**	**Employee Contribution**	**Employee Cost**
WEA Trust PPO	$21,547	90%	$19,392	10%	$2,151
Dean POS	$18,426	95%	$17,504	5%	$921
Dean HMO	$17,003	100%	$17,003	0	0
Single Plan					
WEA Trust PPO	$9,507	90%	$8,556	10%	$951
Dean POS	$7,087	95%	$6,732	5%	$354
Dean HMO	$6,540	100%	$6,540	0	0

Should the District’s offer be selected, there will be substantial savings to both the District and the BEA members. BEA members opting for the family premium will save over $1200 should they switch to the Dean POS; for those opting for the single premium switching to the Dean POS will realize almost $600 in savings. Should they switch to the Dean HMO, the savings will be even greater.

For the 2010-2011 school year, the record reveals that of the twelve comparable districts, six have the WEA Trust, 4 have a Dean Health Plan or dual choice Dean HMO/POS plans, while two have dual choice Dean and Physicians Plus plans. Five out of the top 6 most expensive plans for family premiums are WEA Trust plans, with the

Dean Plan at Monticello also falling into the top five. The average cost of a family premium for the comparable districts is $19,137 as compared to Belleville's $21,547 for continuation with the WEA Trust. The Dean Health POS would cost $18,425.76, while the Dean HMO would cost even less at $17,003.40.

In making comparisons of premium costs with the comparables, for family premiums in 2008-2009, Belleville had the third highest premium.[11] For 2009-2010, Belleville rose to second place for full family premiums,[12] and for 2010-2011 should it retain the WEA Trust, it will be third again in paying the highest premium.[13] With regard to single premiums, the story is similar. In 2008-2009, Belleville paid the second highest rate.[14] In 2009-2010, it ranked third highest.[15] For 2010-2011, should it retain the WEA Trust, it will rank third in paying the highest single premiums.[16]

When consideration is given to the higher percentage of premium contribution that exists for Belleville employees, for 2009-2010, the District contribution for family premiums was still the third highest.[17] For 2010-2011, the District's contribution to the family premium will be fourth highest.[18] For 2009-2010, the District's contribution to single premiums will be fourth highest,[19] while in 2010-2011, it will be fifth highest.[20] Given these rankings, it is apparent that the District in Belleville is contributing above the average of the comparables, even with the increased percentage contribution made by the Belleville teachers.

Should the District's offer be selected with all BEA members opting for the Dean POS plan, for 2010-2011, the amount of the full premium in Belleville vis-à-vis the comparables drops substantially. Its ranking with respect to full family premium costs will result in Belleville dropping to 10th out of 13. For full single premiums, it will drop to 11th of 13. If the increased District premium contribution is taken into consideration, the District's contribution in actual dollars toward the premiums will rank 9th of 13 for family premiums and 10th of 13 for single premiums.

Along with erosion in its rankings vis-à-vis the comparable districts as to dollars spent for health insurance, there is little doubt that forcing the teachers to change their health insurance carrier would have a negative impact on the morale of the teachers, especially those required to change providers or nearing retirement. That being said, it is obvious that health insurance costs are sky-rocketing and almost all of the school districts are having difficulty keeping up with the increased premiums in light of OPEB obligations and the insecurity of how much the state will contribute to school district

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[11] Dist. Exh. 1106.
[12] Dist. Exh. 1107.
[13] Dist. Exh. 1108.
[14] Dist. Exh. 1106.
[15] Dist. Exh. 1107.
[16] Dist. Exh. 1108.
[17] Dist. Exh. 1107.
[18] Dist. Exh. 1108.
[19] Dist. Exh. 1107.
[20] Dist. Exh. 1108.

budgets. While the District does not have an inability to pay for the Association's offer in 2010-2011, there is a serious question as to whether it can and/or should continue to pay the significant differences in premiums by continuing the status quo given the likely economic forecast with respect to the funding of public school districts and the state of the economy in the entire state as well as the south central Wisconsin geographical region.

Having concluded that Belleville is essentially in good financial shape and that its taxpayers have not been over-taxed given the extent of underlevying that has occurred, that it has the financial ability to fund either offer for the term of the agreement, and the extent of teacher discord that would occur should the BEA members be compelled to abandon the WEA Trust, neither proposal is favored under this criteria.

The Comparables – Both Internal and External

Internal

The District argues that because its administrators, support staff, and 10 of the BEA members are enrolled in the Dean HMO, that the internal comparables favor the District's offer. Administrators are not represented by any labor organization and cannot be considered as evidence of comparability. That administrators have the Dean HMO is relevant insofar as it supports the District's attempt to treat all of its employees equally. The support staff is, however, another matter as it is represented and has agreed to go with the Dean HMO. Internal comparables are not controlling here in light of the very different job functions performed by the support staff versus the professional educators at issue herein. Furthermore, in most school districts, arbitrators will not find that the "tail wagging the dog" should result in compelling the "dog" to accept a lesser benefit.

The District does, however, make a good point about the 10 teachers who have opted to remain grandfathered into the Dean Health Plan HMO. This provides some evidence of comparability of the Dean Plans with the WEA Trust and of teacher satisfaction with the Dean HMO. Internal comparability slightly favors the District's offer, but is not determinative.

External

As stated above, with regard to health carriers in the comparables, for the 2010-2011 school year, six comparables have the WEA Trust, 4 have a Dean Health Plan or dual choice Dean HMO/POS plans, and two have dual choice Dean and Physicians Plus plans. The comparables are evenly split. Assuming that the two with the dual choice Dean and Physician's Plus options provide greater network choice than Dean health plans alone, it could be argued that they favor the BEA slightly.

With respect to comparisons of premium cost, as set forth above, the District will continue to remain in third place for payment of the highest premiums under the BEA offer. The districts with WEA Trust plans have had, with one exception, the five highest premiums among the comparables for the last two school years and all of the districts with WEA Trust are in the top half of the group with respect to premium costs. However, under the District's offer, Belleville would fall very close to the bottom of the pack in both total premium costs and the District's contribution to the premiums. The dramatic departure from the average with respect to contribution of premium costs favors the BEA's offer.

With respect to the percentage of premium contribution by the district employers for the single premium policy, of the twelve comparables for a single premium in 2010-2011, four pay 100% of the premium, four pay 95%, one pays 96%, one pays 90%, one pays 93%, and one pays an average of 79%. The average percentage contribution for single premiums on the part of the districts is 94.8%. With respect to the family percentage contribution, three districts pay 100%, one pays 98%, five pay 95%, one pays 93%, one pays 90%, and one pays an average of 79%. The average percentage contribution for family premiums by comparable districts is 94.5%. The District's improved percentage offer of 95% of the Dean POS plan, as part of its quid pro quo, comes closer to the comparables average than the BEA's 90% contribution but it contributes a greater per cent of the premium to much less expensive plans.

No attempt was made to compare the benefits contained in the health plans of the comparable districts other than identification of the carrier, so no analysis was made in terms of actual benefits offered under the various districts' health care plans.

Because there is so much erosion with respect to the District's position in the rankings with respect to premium payments and moneys paid by the District for premium contributions should its offer be selected, it is concluded that the comparables favor the BEA.

<u>Other Public Employees</u>

Because the District straddles both Dane and Green Counties, it is fair to make comparisons with public sector employees in both counties.

Dane County Deputy Sheriffs, Attorneys, and Supervisory Law Enforcement employees with collective bargaining agreements settled for years 2010-2011 and Health Care Professionals, Social Workers, and Professional employee bargaining units settled for 2008-2009 and 2009-2010 are seeing monthly health care employer contributions to the premiums for family coverage of approximately $1139.29 and for single coverage of $484.80.[21] Green County as an employer's contributions to premiums for its county employees effective 5-1-2010 are $1,689 for family coverage of which the employee pays 10% and $686 for single coverage, the employer paying 10% of the premium.

This compares to the BEA offer of $712.99 for single coverage and $1613.32 for family coverage and the District's Dean POS offer of monthly premium payments of $1458.71 and $561.04 for family and single premiums.

[21] Dist. Exh. 1161.

No information was provided as to the health insurance premiums or contributions made by other municipal employees within either Dane or Green Counties.

Both parties' offers as compared to Dane County employer contributions are significantly above average, the BEA offer being $481.93 greater for a family contribution with the Dean POS being $324.62 greater. With respect to Green County employer contributions, both offers are less for the family premium. The BEA offer for family premiums is $73.28 less. It is, however, $27.19 more for single coverage. The District's Dean POS offer is $230.59 less for family premiums and $124.74 less for single coverage premiums. Given these differences, it is concluded that the health care premium prices and employer/ employee contributions of other public sector employees do not favor either offer.

<u>Employees in Private Employment</u>

The BEA did not provide any information with regard to private employment. The District, through the Kaiser Family Foundation and Health Research's Educational Trust Annual Survey,[22] did provide general information as to the average cost of a health insurance plan and the employer employee contributions attendant in 2009. The average annual premiums for employer-sponsored health insurance are $4,824 for single coverage and $13,375 for family coverage 5% higher than for family premiums in 2008. There is a significant variation around the average annual premium as a result of factors such as benefit differences and geographical location with 20% of workers with family coverage being in plans where the annual total premium is at least $16,050. Another 21% of workers are in plans where the family premium is less than $10,700. On average, covered workers contribute 17% of the total premium for single coverage and 27% for family coverage. This information was general in nature and not focused upon Wisconsin or south central Wisconsin as a geographical area.

Another study by the New America Foundation Health Policy Program was based upon reported data from 2008 and projections thereafter. As of 2008, it maintained that the full cost of family premiums was $13,559. It noted that by 2016, people seeking family health insurance through their employer will see some of the largest increases in their required contributions because required contributions for employer-sponsored insurance will more than double between 2008 and 2016.[23]

In the Citizen Action of Wisconsin Insurance Cost Rankings 2008, the Madison area ranked lowest of the state metro areas for both family and single coverage premium cost while the Monroe area ranked fifth lowest. The report noted that according to an actuarial analysis, Wisconsin health care costs will nearly double between 2007 and 2017.[24] Although the information is not directed to the private sector in south central Wisconsin, it does buttress the District's argument that health insurance premiums are

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[22] District Exh. 1193.
[23] Dist Exh. 1200 at p. 3.
[24] Dist. Exh.1183.

lower in the private sector as is coverage. It also supports District arguments that health insurance costs are only expected to keep skyrocketing. Because it is so general in nature and neither party based specific arguments on it, this data does not favor either offer.

Wages, Total Compensation, and Benchmarks

As indicated above, wages in this matter are not controlling. Since both offers increase each cell by 1.8% in 2009-2010, this does not impact upon whether or not they retain their benchmark status. For 2009-2010, Belleville ranks 4th highest at the BA Base, 6th at the BA Max, 8th at the MA Max, and 4th at the Schedule Max. For 2010-2011, one of the comparables, Waterloo was not settled.

The evidence suggests that, for 2010-2011, the BEA members under the BEA's offer will retain their respective positions or improve slightly at most of the benchmarks. Belleville will rank 3rd at the BA Base, 6th at the BA Max, 2nd at the MA Max and 3rd at the Schedule Max.

Under the District's offer for 2010-2011 with its salary quid pro quo, Belleville will improve even more dramatically. It will rank 3rd at the BA Base, 5th at the BA Max, 1st at the MA Max, and 3rd at the Schedule Max.

Wage and benchmark analysis separately does not speak to what the parties are offering when health insurance proposals are involved because wage and insurance issues are economic issues which must be considered together to realistically evaluate the parties' proposals.[25] Because the wage and health insurance costs are interlinked under the "overall compensation" factor, parties will often argue that an increase in one should serve as a quid pro quo for a concession in the other.

The BEA scaled down its demands for salary to retain the WEA Trust insurance. It may very well be that at some point the BEA's determination to retain the WEA Trust as its carrier, results in such an imbalance in the salary schedule that this will create a serious problem if the District's pay is no longer competitive with its comparables.. This is not the case at the present time.

The parties do not agree on the total compensation proposed by each offer. The District in its brief summary argues that the total package compensation in the BEA's offer is 3.30% as compared to the total compensation of 4.55% under the District's offer.[26] The BEA maintains that its 2.25% per cell offer represents a 3.65% total package and that the District's 4.89% per cell offer represents a 4.36% total package settlement, noting that the parties have used different WRS rates in the calculation of the total compensation. The BEA's total compensation package is less costly because the District is offering the increased per cell salary increases as the quid pro quo. The total compensation factor will be addressed in the quid pro quo insurance discussion below.

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[25] See *River Falls School District (Custodial),* Dec. No. 30959-A (2005) (Torosian) at pp. 27-28.
[26] District Brief, p. 1.

Cost of Living

Arbitrators have used both the Consumer Price Index (CPI), and the settlement patterns among comparable bargaining units on the theory that the patterns can cast light upon the cost of living in any given geographical area and, can reflect the context for appropriate wage offers in any given geographical area.

There was a 1.60% increase in the July 2009 to July 2010 CPI-W, (Consumer Price Index for Urban Wage Earners and Clerical workers). The BEA's offer of 2.25% per cell for 2010-2011 salary schedule is .65% above the 1.60% increase. The District's proposed cell increase to the salary schedule of 4.89%, which includes its quid pro quo, far exceeds the CPI-W. Evaluation under the Cost of Living standard is generally applied as a measure to analyze whether the increases that employees are receiving through the offer of each party at least meet increases in the cost of living through inflation and the rise in the price of goods and services. The BEA's salary increase comes closer to the actual CPI-W for the applicable time measured. Where as here, it is clear that both offers rise to and exceed the CPI-W, as a measure of which economic offer is more reasonable, it is somewhat lacking because the explanation set forth above. As it is a statutory criteria, the undersigned finds that the CPI-W favors the BEA's offer.

Settlement patterns in this case are also instructive. The BEA's offer comes closest to the patterns enjoyed by the comparables, because the District has increased its salary and total compensation package to offer a substantive quid pro quo for its health insurance proposal. Settlement patterns are not as relevant in evaluating the cost of living in this case because the District's offer is outside the pattern based on its offering the quid pro quo. The BEA's offer as compared to settlement patterns is obviously closer, however, the comparable district's are not attempting to change carriers and health insurance plans. In sum, this factor slightly favors the BEA, but it is not controlling.

Other Factors:

<u>Quid Pro Quo Analysis</u>

Both parties agree that the WEA Trust PPO with District contributions of 90% is the status quo. The BEA argues that the undersigned should evaluate the District's proposed departure under the traditional three-pronged test insisting that there is no compelling need which would support the change. When it comes to the issue of escalating health insurance costs, more recently interest arbitrators have held that there is a lesser need for a quid pro quo and/or that no quid pro quo is needed. As Arbitrator Honeyman noted in *Iowa-Grant School District (Support Staff),* Dec. No. 32684-A (9/25/09) at p. 17:

> In general when a labor organization agrees with the municipal employer on a less expensive benefit, it may logically expect something in return. But the present circumstances of this municipal employer, as well as the

> circumstances governing the reasonableness of health insurance costs generally, are currently anything but ordinary. It is not merely that the national debate concerning how to address extraordinarily high health insurance costs has reached a crescendo; the assumption of what constitutes a reasonable baseline expectation is a local matter as much as a national one. Here, that assumption has been thrown into doubt by the availability of a generally well-regarded alternative to the labor organizations plan at markedly lower costs. Since the escalation in health costs began in earnest, the concept of "status quo" is itself challenged by such cost increases, which necessarily change the parties' economic expectations even without any change in contract language.

Arbitrator Honeyman found that the financial circumstances of the municipal employer in that case as well as the circumstances governing the reasonableness of the health insurance costs generally were anything but ordinary. Here, to the contrary, it is concluded that the District is not in financial difficulty and is struggling with the same economic factors and health insurance costs as other comparable districts.

Arbitrator Engmann in *Cassville School District (Support Staff),* Dec. No. 32649-A (10/06/09) p. 21, observed that the traditional rule requiring a quid pro quo with respect to benefits should be viewed as follows:

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

Here it is uncontroverted that health care costs are escalating at unprecedented and unanticipated rates. Neither party seriously disputes that this is a significant problem, but the BEA claims that it has sought to keep the premium costs low through past bargains by agreeing to modifications in the WEA Trust insurance and agreeing to a greater employee percentage contribution towards the premiums than the external comparables. It also stresses that the Dean plans have seen their own share of dramatic increases in the last two years. The WEA Trust cost has not, through time, become significantly out of line with the comparables. The District has not introduced any evidence which would distinguish its situation from the six districts that have retained the WEA Trust and the one comparable district with an expensive Dean plan.

It should also be pointed out that the District voluntarily agreed to limit itself to the WEA Trust as the primary carrier in 2003. The escalation in insurance costs had already commenced at that time. The District has not shown itself to be in such a financial condition as to be unable to afford to continue to pay the WEA Trust premiums. While it would like to use that money for other purposes, it has not shown that funding the BEA offer will significantly impact on its finances now or in the near future. Because the District has not distinguished its situation from those of the external comparables facing the same economic forces as it does and because the BEA has been willing to modify both the plan benefits and its contribution to health insurance to retain the WEA plan, it cannot be concluded that the District has made a compelling case for needing to change the status quo.

Arbitrators are generally hesitant to impose, through interest arbitration, benefits or concessions that the parties would not voluntarily make at the bargaining table. The BEA has made it clear that it would rather have its “Lexus” insurance plan than increased wages or any other enticements under any and all circumstances. The District acknowledges as much in its brief bemoaning the BEA’s intransigence. While the BEA’s position may be unwise in either the short or the long run, the question here is whether the BEA can be compelled to change from the WEA Trust to Dean by applying the statutory criteria and general arbitral law for changing the status quo during this term of the collective bargaining agreement. Here the BEA has fashioned an offer where it is proposing total compensation costing less than that proposed by the District. This is partially due to the District’s inclusion of a generous quid pro quo to gain selection of its offer. Because the BEA’s offer with respect to its salary proposals and its total compensation is reasonable, even with the high WEA Trust premium, and not out of line with the external comparables, it is preferred unless the District can claim some special circumstances.

First the District has not shown that the rising health costs were unanticipated when it agreed to the WEA Trust as the primary carrier. Second, it has not shown that its position vis-à-vis the high costs of the WEA Trust is distinguishable from that of six of the twelve external comparables. Third, it has not shown that its financial status is so precarious that it cannot continue to fund the WEA Trust insurance for the term of the collective bargaining agreement and into the near future. If the District’s financial status had been precarious or its taxpayers unduly burdened, a compelling need for the change could have been accepted.

The District has not met its burden of establishing the necessity for the change given the external comparables and the reasonableness of the BEA’s total economic package. The District represented that its intent was to offer the BEA comparable benefits under the Dean POS and HMO. Because during the hearing, the exact benefits kept changing or being clarified, it was difficult for the arbitrator and the BEA to ascertain exactly what benefits would or would not be covered under the Dean proposals.

It is true that, at least with respect to retiree coverage, the District and Dean Health Plan submitted evidence that it was Dean's intent to match the current District and WEA Trust retiree coverage programs to the extent that anyone who is currently covered by the plan would continue to be covered. However, other documents suggested that this might not be the case. Although the Dean Plan is generally a well-respected health care insurer and provider, under the evidence adduced in this case, it cannot be concluded that the District has met its burden of establishing that the plans offered were comparable to the coverage currently enjoyed by BEA members under the WEA Trust.

The District cites the recent arbitral award,[27] where Arbitrator Shaw found that proposed Mercy/ Dean health care plan benefits were comparable to those offered by the WEA Trust, which cannot be concluded herein. He also found that it was doubtful that the parties in that case foresaw the problems of the rising WEA Trust costs when they agreed to go into the WEA Trust insurance plan. The arbitrator placed great emphasis in the monetary difference between the two offers which he concluded would carry into the future. As noted above, the sum separating the parties in that case was substantial as compared to the sum separating the parties in the instant dispute. Looking at where the district would fall with respect to the comparables as far as employer contribution, Arbitrator Shaw noted that under the district's offer, Milton would fall to the middle of the comparables. That is not the case here. These differences, along with the District's financial condition and the BEA's modest total package proposal, warrant a different result.

Notwithstanding the generous quid pro quo that the District is offering, it cannot be concluded that there are sufficient compelling reasons to force the BEA to accept a different carrier and different plans for the term of this collective bargaining agreement.

Accordingly,

AWARD

The final offer of the BEA is selected and incorporated into the parties' July 1, 2009 through June 30, 2011 collective bargaining agreement.

Dated this 13th day of December, 2010, in Madison, Wisconsin.

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Mary Jo Schiavoni, Arbitrator

[27] *Milton School District*, Decision No. 33020-A (Shaw, 11/2010).