STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of:

MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO and its AFFILIATED LOCAL NO. 2

To Initiate Arbitration Between Said Petitioner and

GREENDALE SCHOOL DISTRICT

Case 23, No. 38962
ARB - 4465

Decision No. 25499-A

Sherwood Malamud
Arbitrator

APPEARANCES:

Podell, Ugent and Cross, S.C., Attorneys at Law, by Monica M. Murphy, Suite 315, 207 E. Michigan St., Milwaukee, Wisconsin, 53202-4905, appearing on behalf of the Union.

Davis and Kuelthau, S.C., Attorneys at Law, by Gary M. Ruesch, Suite 800, 250 E. Wisconsin Avenue, Milwaukee, Wisconsin, 53202-4285, appearing on behalf of the Municipal Employer.

JURISDICTION OF ARBITRATOR

On July 18, 1988, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm) 6.c, Wis. Stats, with regard to an interest dispute between Milwaukee District Council 48, AFSCME, AFL-CIO and its Affiliated Local No. 2, hereinafter the Union, and the Greendale School District, hereinafter the District or the Employer. An arbitration hearing was conducted on September 23, 1988, at which time the parties presented documentary evidence and testimony. The record was closed as of September 23 except for the submission of certain specifically identified exhibits which were timely submitted by each party. Briefs and reply briefs were exchanged through the Arbitrator by November 25, 1988. Based upon a review of the evidence, testimony and arguments submitted and upon the application of the criteria set forth in Sec. 111.70(4)(cm) 7. a-j, Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

SUMMARY OF THE ISSUES IN DISPUTE

The final offers of the parties are in agreement on all items except for one area - health insurance. The wage issue is

resolved. The final offer of each provides for an increase across the board of 4%, effective July 1, 1987 and for an additional 4% increase, effective July 1, 1988. Both parties propose a two year successor to the 1985-87 Agreement the duration of which shall be from July 1, 1987 through June 30, 1989.

On the health insurance issue, the Union proposes that the status quo be retained.

The Employer proposes that employees who elect coverage from the "fee for service" carrier pay one-half of any future increase in premium above the amount paid during the 1987-88 school year, namely $302.32 per month for family coverage and $117.76 for single coverage. New employees hired after the date of the Award would receive a contribution toward health insurance premiums in the amount of the lesser of the average of monthly premiums for the appropriate coverage for the several HMO's offered by the District or the premium of the "fee for service" plan offered by the District. The precise language of the Employer's proposed change to Article XX, Section 1 of the expired agreement reads as follows:

> ...Health Insurance - ...The District agrees to provide and pay up to Three Hundred Two Dollars and Thirty-Two Cents ($302.32) per month for hospital and medical insurance premiums for regular full-time school year and full-time calendar year employees who require family coverage and up to One Hundred Seventeen Dollars and Seventy-Six Cents ($117.76) for hospital insurance for such employees who require single coverage.
>
> Effective July 1, 1988, these amounts will be changed to reflect the Board's payment toward the premium of the above referenced amount plus one-half (1/2) of any increase of said premium. The difference in premium, if any, will be paid on a payroll deduction basis by the employee.
>
> The District's contribution toward the health insurance premium for employees who are hired after ratification of this agreement will be limited to the lesser of the average premium cost as of July 1 of any year of the HMO programs offered by the District or the premium as of July 1 of the indemnity carrier plan in effect at the time. The difference in premium, if any, will be paid on a payroll deduction basis by the new hiree.

For school year 1988-89, the District switched carriers for its "fee for service" hospital and medical insurance to Blue Cross/Blue Shield. For school year 1988-89, the monthly premium for family coverage went down from $302.32 to $300.87, and the

monthly premium for single coverage went down from $117.76 to $117.24.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm) 7, Wis. Stats., and those criteria are described in the statute as follows:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.
>
> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
>
> i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
>
> j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND

The Greendale School District is located among the suburban school districts south of the City of Milwaukee. The Village of Greendale was established by the federal government as a planned

community, one of three such communities created by the federal government fifty years ago.

The collective bargaining unit which is the subject of this proceeding is the custodial unit. It comprises thirty-nine individuals, twenty-one of whom are employed "full-time" and eighteen of whom are employed on a "part-time" basis.

There are two other groups of organized employees in the District. Both the teachers and the clerical employees are represented in separate collective bargaining units by Council 10 of the Wisconsin Education Association Council. The total number of employees in the three collective bargaining units is two hundred and eight-six. Of that total, one hundred and eight-five are teachers, and sixty-two are clerical employees.

Both the Employer and the Union made an extensive record and argued at length in their briefs about bargaining history. Both parties presented evidence and argument concerning the language contained in past collective bargaining agreements on the health insurance issue in the custodial unit and the other two units. The stratified arrangement where new hires, but not employees already on staff, may be required to contribute to the cost of the health insurance premium was voluntarily achieved and included in the 1985-87 teacher collective bargaining agreement. The 1985-87 clerical agreement does not contain, what the Union in this case describes as a "grandfather clause" nor does the custodial unit contract for 1985-87 include that provision.

The District and the Association representing the teacher unit had to resort to an arbitrator's award to resolve their impasse over the issues of wages and health insurance for the 1987-88 and 1988-89 school years. Arbitrator Joseph Kerkman, in a decision issued pursuant to a Voluntary Impasse Resolution procedure, found the District's offer on health insurance outweighed its less favorable wage offer. The health insurance proposal adopted by Arbitrator Kerkman is similar to the proposal at issue here.

Subsequent to the issuance of the Kerkman Award on March 11, 1988, the clerical unit accepted both the language concerning new hires, the "grandfather clause", and the provision which mandates that future increases in the health insurance premium for the "fee for service" hospital and medical insurance program will be shared by the District and the individual employee already on staff on a 50-50 basis, the insurance caps language.

In addition to the record made concerning the language included in other agreements in past bargains, both parties submitted extensive evidence and argument concerning the proposals made by them in the negotiations which resulted in the impasse to be resolved by this Award. The chronology of the

negotiations leading to the impasse in the custodial unit is as follows. The parties exchanged proposals on March 11, 1987. On May 1, 1987, the Wisconsin Education Association Insurance Trust (WEAIT) notified the District that the "fee for service" plan would be cancelled effective July 1, 1987. WEAIT cited adverse selection as a result of substantial use by employees of HMO's as the reason for its decision to cancel coverage. The Employer subsequently sought other bids from other carriers. WPS was the only carrier which submitted a bid to provide "fee for service" coverage. On May 26, 1987, the Union filed a grievance alleging that the WPS coverage was not substantially equivalent to the coverage provided under the WEAIT policy. On May 28, 1987, the District and the Greendale Education Association (GEA) met with representatives of WEAIT and succeeded in convincing the insurance carrier to reinstate coverage. However, the carrier did so only after increasing the premium by 39.5%.

Both sides presented specific evidence with regard to the proposals and counterproposals made by each in June, 1987. Suffice it to say that on June 22, 1987, the Union filed the petition which ultimately resulted in the proceeding before this Arbitrator. Extensive efforts were made to mediate the dispute by W.E.R.C. Investigator Colleen A. Burns. The parties made many attempts to settle the matter voluntarily. The exchange of final offers occurred over a period of several months. The investigation was closed on May 31, 1988. Prior to the issuance of the Kerkman Award, the District had made proposals to the Union under which employees electing "fee for service" coverage would have to pay a portion of the premium for that coverage. In its submission of the second final offer subsequent to the issuance of the Kerkman Award, the District proposed language identical to the "grandfather clause" included in the clerical unit agreement. The District continued to propose that all other employees share in the cost of any future increases in insurance premiums for the "fee for service" coverage. In this final offer, the District proposed that employees on staff as of the date of the Award pay 50% of such future increases. That final offer is the final offer of the District, at issue here.

There is no evidence in this record to indicate that any prohibited practice charge or petition for declaratory ruling was filed with the W.E.R.C. concerning this District's proposal subsequent to the issuance of the Kerkman Award. Furthermore, there is no indication in this record that the Union was deprived of any opportunity to negotiate further over the changes made by the District in its final offer dated April 27, 1988.

POSITIONS OF THE PARTIES

The Union Argument:

The Union argues that the District's final offer should not be considered because it contains the "grandfather clause."

That clause was never proposed during the entire course of negotiations until April, 1988. Further, the Union notes that where the District specifies the amount of contribution for single coverage, the reference to medical insurance is omitted. The Union continues and notes that the word "premiums" is deleted from this first paragraph, as well. This further adds to the ambiguity inherent in the District's proposal, the Union argues.

The Union argues that the District included this "grandfather clause" only after the Kerkman Award was issued. It did so, because Arbitrator Kerkman based his favorable decision for the District, in part, on the presence of the "grandfather clause" in the teacher agreement.

The Union argues that in its decision the Wisconsin Supreme Court in Milwaukee Deputy Sheriffs' Association v. Milwaukee County, 64 Wis. 2d 651, 221 N.W. 2d 673 (1974), found that an interest arbitrator should not consider a proposal made by the employer subsequent to the filing of the interest arbitration petition. The Union urges this Arbitrator should apply the Wisconsin Supreme Court's reasoning to this case.

The Union emphasizes that it is attempting to maintain the status quo. It cites the decision of Arbitrator Flagler in Turtle Lake, (23275) 10/86 for the proposition that the party desiring to change the status quo must present a compelling need for the change. The Union argues that such need has not been demonstrated, here. The Union claims that the Superintendent of the District, the spokesman for the District in negotiations, informed the Union bargaining committee that this unit posed no problem to the District with regard to health insurance.

The Union notes that the premium cost declined slightly for the 1988-89 school year. This fact further demonstrates the lack of need for a change in the language.

The Union notes that over the past ten years health insurance premiums have increased 291% for family coverage and 352% for single coverage. During this same period of time, the wages for custodial employees have increased 76%. The Employer offer shifts this burden to employees least able to absorb this increase. The custodial employees would be required to pay this premium increases with after tax dollars, under the Employer's offer. Under the present arrangement, the premium paid on behalf of these employees is not taxable. The Union refers to its Exhibit 17 in which it demonstrates the increased cost of the Employer's proposal. The Union asserts that wages would increase and payroll taxes would increase to offset the increased cost to employees of purchasing health insurance with after tax dollars.

The Union argues strenuously that the bargaining history between this Union and the District differs substantially from

the bargaining history between the GEA and the District. The GEA, in their 1985-86 Collective Bargaining Agreement, agreed to a "grandfather clause" which required "new" employees to pay part of the insurance premium if they elect an insurance program the premium of which is in excess of the average premium of the HMO's offered by the District. Furthermore, during the bargaining for the 1987-89 Agreement, at one point in those negotiations, the GEA indicated a willingness to share in the cost of premium increases. The Union emphasizes it has never agreed to a "grandfather clause" or made any indication during bargaining that it would accept insurance caps.

The Union argues that just as the teacher unit is an inappropriate internal comparable so is the clerical unit incomparable to the custodial unit. The clerical employees agreed to the inclusion of the "grandfather clause" and the "caps" only after the issuance of the Kerkman Award. However, the health insurance benefit is enjoyed only by 35% of that unit as opposed to the 69% participation by employees in the custodial unit. The health insurance premium issue has much greater impact in the custodial unit than in the clerical unit.

The Union notes that in the arbitration decision which the GEA lost, the salary only increase for 1987-88 was 4.78% and for 1988-89, 5.14%. Here the parties have agreed to a 4% increase in each of the two years. Thus, there is no <u>quid pro quo</u> offered by the Employer to take away a benefit enjoyed by the custodial employees.

With regard to external comparables, the Union argues that the District's reliance on the bargaining units of the Village of Greendale, such as, the police, police dispatcher, and firefighter units is misplaced. Employees in those units do not perform duties similar to the custodians of the Greendale School District. The Public Works Department employees, who perform work most similar to the duties performed by employees in this unit, have their health insurance premium paid by the Village of Greendale. Although the employer only pays the premium for the HMO policies, the Village pays that premium of the highest cost HMO, whereas the Employer here, offers to pay only the average of the HMO's which the Employer chooses to offer in the District. The Village of Greendale, unlike the District's offer, pays the full cost of an HMO policy to employees who elect HMO coverage.

The Union notes that in prior arbitrations between the school district and the GEA, Arbitrators have recognized three tiers of comparables. The first tier comprises the school districts of Greenfield, Franklin and Whitnall. The second tier, the regionally comparable school districts, include Cudahy, South Milwaukee, St. Francis and Oak Creek. The remaining suburban Milwaukee school districts excluding Wauwatosa and West Allis/West Milwaukee comprise the third tier of comparables. The

Union notes that the custodial employees in the first tier of comparables are not required to pay any portion of their health insurance premium nor are they required to share in paying the increased cost of such premium. There is no "grandfather clause" included in their agreements. In the second tier, only Oak Creek has a "grandfather clause". Full-time employees in the balance of these districts do not require employees to pay insurance premiums. With regard to the third tier, Nicolet sets a dollar limit in its agreement. However, this limit increases from year to year. West Allis/West Milwaukee has a "grandfather clause" which the Union asserts evaporates, eventually.

The Union notes that the level of cost of health insurance premiums in Greendale lies in the median range of costs among comparable school districts. The Union asserts that the wage rates paid by comparable school districts is higher than the rates paid by Greendale. The wage rates for the custodial classifications in Greendale fall in the lower end of the spectrum of wage rates paid by comparable school district employers.

For all of the foregoing reasons, the Union argues that the Arbitrator should adopt its offer, which maintains the status quo as the offer to be included in a successor agreement effective July 1, 1987 through June 30, 1989.

The Employer Reply:

The Employer argues that the Union's reliance on Milwaukee Deputy Sheriffs' Association, supra, is without merit and a smoke screen. First, the Deputy Sheriffs' case arose under a different statute. It arose under procedures which differ substantially from those established by the W.E.R.C. under the interest arbitration provisions under Sec. 111.70, Wis. Stats. The Deputy Sheriffs' case is inapposite to this case. Settlement discussions continued through the filing of final offers and subsequent to the two investigation sessions with Commission Mediator Colleen Burns. Clearly, the District final offer is arbitrable.

The District points out that the Wisconsin Supreme Court never intended to preclude an arbitrator from considering an issue or subject which is germane to matters raised in negotiations prior to the filing of the petition. Here, the District raised the issue of health insurance contributions throughout negotiations. Arbitrator Kerkman in Kenosha Unified School District No. 1 (17368-A), 1980, rejected an argument similar to the one raised here by the Union, where he found that bargaining had indeed occurred over the subject matter included in the employer offer.

The District argues that the Arbitrator should reject the attempt by the Union to distinguish the internal comparables, the

teachers and the clerical units, from the custodial unit. Neither the teachers nor the clerical units had a dollar cap on the amount of the Employer contribution towards the payment of health insurance premium prior to the issuance of the Kerkman Award. The Employer argues that Arbitrator Kerkman found that such a premium sharing arrangement as proposed by the District, here, is an equitable basis for addressing the problem of increasing costs of health insurance. The Employer notes that the clerical unit also did not have a "grandfather clause" until it agreed to voluntarily include such a clause in the 1987-89 Agreement. The Employer argues that with the voluntary settlement in the clerical unit, the persuasive value of the Kerkman Award is magnified geometrically. The District notes that the level of fringe benefits is most dependent upon internal comparisons citing Arbitrator Imes in City of Waukesha (Fire Department), (18105-A) 1981, and Arbitrator Fleischli in Sturgeon Bay City Employees, Local 1658, (25270-A) 11/88. In the latter award, Arbitrator Fleischli gave no weight to external comparisons when dealing with the issue of the fringe benefit of insurance.

The District argues that the Arbitrator should ignore the Union's attempt to indirectly include wages as an issue in this case. The only item in dispute is the health insurance issue. The District argues that the Union has acted irresponsibly during the course of bargaining when it filed a grievance when WEAIT cancelled. The District argues that the Union offer of accepting a lower wage increase with the continued absorption of future increases in health insurance premiums does not address the problem of escalating costs of health insurance. The District argues that Arbitrator Kerkman recognized the inadequacy of this approach in his Award in the case between the GEA and the District. The District cites the decision of Arbitrator Nielsen in Port Washington - Saukville School District, (25016-B) 1988, where he rejected the indirect approach of including a nondisputed item to serve as the focus of the dispute. The District emphasizes that the issue here is health insurance not wages. The District concludes that the Arbitrator should select its final offer for inclusion in a successor agreement. The District argues that the Arbitrator should reject the head-in-the-sand attitude of the Union, in this case. A decision in favor of the Union would severely disrupt the labor relations process in the school district of Greendale in the face of the settlements achieved on this issue in the other two certified collective bargaining units. An award in favor of the District would prevent the Union from shirking its responsibilities in dealing with the health insurance problem. The District quotes the following passage from an award by Arbitrator Flagler in Rosholt School District (19933-A), 1983, in which he states as follows:

Interest arbitrators strive for consistency in order to

provide the parties with a framework of improved predictability concerning the probable outcomes of the process. The virtue of the predictability is that it encourages the parties to settle their contract disputes through direct negotiations.

The pursuit of consistency, however, may obscure the fact that each contractual impasse poses distinct and separate problems. The special character of those problems requires great care in determining which data are the most useful, and what weight should be assigned to the various, often contradictory, statutory criteria.

While this review addresses each of the required decision-making standards, the selection of the Board's position as the more reasonable recognizes the greater weight which attaches to recent dramatic changes in the economy. These changes affect each of the criteria in ways which must be factored into the final decision.

A review of interest arbitration over the years shows that most arbitrators consider those factors that the parties themselves rely in contract negotiations. In a real sense, the arbitrator is a surrogate for the parties when they reach impasse. The proper arbitral role is to carry forward the search for resolution to the settlement the parties themselves may well have arrived at had they not exhausted their own remedies. This means that the interest arbitrator is not free, any more than is the grievance arbitrator, to dispense his/her own brand of industrial justice to embark on new seas beyond those the parties' alone are responsible for navigating.

To remain a faithful surrogate requires the interest arbitrator to reconstruct as aptly as the available information permits, the essence of the bargaining relationship -- the evidence and the arguments of the parties themselves traditionally rely on to resolve their differences. This is the only approach which can nourish the collective bargaining relationship. The alternative would erode the parties' sense of responsibility for fashioning their own settlements and substitute external judgment for internal accommodation -- a result inimical to the purpose of the statute.

The Employer concludes its reply brief by noting that all other unionized employees in this district have the same level of benefits as those proposed by the District in its final offer. Were it not for the arbitration law, the parties would have come

to terms and reached an agreement which includes the final offer proposed by the District.

The District Argument:

The District argues that its proposal addresses the need for cost containment of health insurance costs. Its offer comports with the position paper issued by the AFL-CIO at its annual convention which the District quotes and which in part provides as follows:

> Successful cost containment, however, requires an informed, assertive and participatory role for representatives of workers and their families to insure that providing for patient health care needs remains the primary overriding goal of each health program and the overall health plan.
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> ...
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> ...In many instances, being aware of the potential cost containment program in some detail has resulted in a successful bargaining strategy of stopping a health benefit cut in return for union participation in the development of acceptable health cost containment programs including education of workers regarding rising cost of health care and its causes...

The District asserts that the Union, through its position in this arbitration proceeding, has failed to assume its responsibility and its share of the burden of attempting to stem the increase of health insurance costs.

The District asserts that its proposal will force the parties to explore options to stem the rise in those costs.

The District provides a chronology of events in the bargaining which has led to the impasse in this proceeding. The chronology of those events, in material part, is detailed in the Background section of this Award. It will not be repeated here.

The District emphasizes that its proposal addresses the criterion - the public interest - in that it attempts to contain the escalating costs of health insurance.

The essence of the District's argument is reflected in the following quote from its brief which appears at pages 9-10, as follows:

> Were this the ideal world of labor relations, the escalating cost of the health insurance plan compounded with the generous wage increase being provided by the

> Board in its final offer would lead the parties to seek an amicable solution to the health insurance problem. Simply stated, the Board offer would nearly approximate the outcome of voluntary collective bargaining.

The District anticipates the Union's argument that the District proposal would change the status quo with these arguments:

> First, the final offer of the Union itself provides ample justification for the Board's potential extension of the cost sharing. But for the Union's continued resistance to address the health insurance crisis head on, it would not be necessary to make this proposal. Second, since the Board's offer would provide a real incentive to both parties to negotiate seriously, effectively and successfully concerning health insurance alternatives, the outcome really depends, in part, on the Union. Third, other insurance providers are already available to Greendale custodians who wish to avoid any potential premium deductions in the future. Fourth, the parties have in the past changed insurance carriers in order to effectuate major premium reductions....Lastly, the Board offer is consistent with the floating dollar cap and competitive cost-sharing in the District and Village of Greendale contracts.

The District concludes this portion of its argument that its proposal addresses the public policy issue in noting that the clerical unit voluntarily accepted, the District's offer in this case, in its 1987-89 Agreement.

The District invited all three unions to participate in a joint health insurance committee meeting subsequent to the issuance of Arbitrator Kerkman's Award; only representatives of the custodians refused to attend. The District argues that only its offer will cause the Union to live up to its responsibilities.

The District notes that its offer will not cost the current staff any money during the term of the agreement. The dollar amounts provided in the final offer of the District exceeds the cost of health insurance premiums for the 1988-89 school year. There should be no cost to employees during the term of this agreement, should the Arbitrator select the District's offer for inclusion in a successor agreement.

The District emphasizes that Arbitrator Kerkman found the health insurance issue to be preeminent in his case. He was called on to resolve both the health insurance and a wage dispute. Subsequent to the issuance of his award, the clerical

unit voluntarily agreed to the inclusion of the health insurance language contained in the District's offer, here. Since both the teachers' and the clerical agreements contain the language at issue in this case, these internal comparisons should be given controlling weight, here.

The District cites the decision of Arbitrator Briggs in Dane County Professional Social Workers, (21694-A) 1/85, wherein he notes the purpose of health insurance caps is as follows:

> With health care costs increasing as they are, it is entirely possible that 1984 dollar caps proposed will not be sufficient to cover completely any future premium increases. But again, the resultant out-of-pocket cost to employees would undoubtedly influence them to explore lower cost plans with comparable benefit levels.

The District argues that this Arbitrator should reject the Union's approach to the resolution of the health insurance cost containment problem. The Union, at one point was willing to accept a 2% lower salary increase, in exchange for the District's continuation of the present language in the agreement. That language provides for the Employer to absorb and pay pay 100% of the premium and any increases in that premium. The District asserts that Arbitrator Kerkman was confronted with a bargaining proposal not unlike the Union's proposal here. He rejected that approach in his award.

The District concludes that:

> ...the same facts and bargaining history which supported the District's position with the GEA (Greendale Education Association) are present here. The consistency and predictability of the arbitration process would be lost if the process provided for inconsistent results within the same school district. Such a result would totally disrupt the collective bargaining process and encourage repetitious arbitrations in the hope of receiving inconsistent results.

The District maintains that this Arbitrator should follow the substantial precedent established through the Kerkman Award and through the voluntary acceptance of the language at issue here by the clerical union.

The District argues that its offer is the more reasonable and should be selected by the Arbitrator for inclusion in the successor two year agreement.

The Union Reply:

The Union emphasizes in its reply that it has never agreed to caps in any form. The dollar amounts stated in the expired agreement are there for the sole purpose of calculating the pro rata contribution of the Employer for health insurance premiums for part-time employees.

The Union responds to the charge of lack of participation in an insurance committee by noting that its initial proposal contains a provision for a committee to deal with health insurance. Furthermore, the Union maintains that it participated in the discussions of the joint committee on health insurance with the other Greendale unions. However, it found in the first meeting that the District simply stated what it intended to do. The Union asserts there was no opportunity for input from the employees.

The Union maintains that the District has failed to demonstrate a need for a change. The Union maintains that the District proposal does not solve the problem of increasing health insurance costs; it merely shifts the burden of those costs to the employees.

The Union concludes that its final offer should be selected by the Arbitrator for inclusion in the successor two year agreement.

DISCUSSION

Introduction:

At the very outset, it should be noted that whether the Arbitrator selects the final offer of the Union or the District for inclusion in the successor agreement, it is unlikely that this decision will have any immediate impact on any bargaining unit employee represented by the Union and currently on the staff of the District. The dollar amounts for premiums for family and single coverage provided for in the District's final offer for the 1987-88 school year exceed the costs of those health insurance premiums for the 1988-89 school year. With the change of carrier from WEAIT to Blue Cross/Blue Shield, there was a slight decrease in the cost of the insurance premium for both family and single coverage. The expiration of this agreement coincides with the expiration date for the health insurance policy. Should there be an increase in the "fee for service" plan, the impact of this Award will be felt at the expiration of this agreement.

In this section of the Award, the Arbitrator first addresses the issue raised by the Union concerning the arbitrability of the District offer.

The Arbitrator then proceeds to apply the above statutory criteria to the Employer and the Union offers. The Award concludes with the selection of the offer to be included in a successor agreement.

Arbitrability of Employer Offer:

The Union's argument that the District's offer is not arbitrable is based upon the decision of the Wisconsin Supreme Court in Milwaukee Deputy Sheriffs', supra. Questions concerning the arbitrability of a final offer should be raised with the Wisconsin Employment Relations Commission. The certification of the final offer represents to this Arbitrator that the Commission has determined that the Arbitrator has jurisdiction to accept and include either final offer into a successor agreement. It would be inappropriate, therefore, for the Arbitrator to look beyond the Commission's Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration issued under Decision No. 25499 on June 7, 1988. Accordingly, the final offer of the Employer is properly before the Arbitrator and it is arbitrable.[1]

Lawful Authority of Employer and Stipulations of the Parties:

The parties presented no evidence which may serve as a basis for distinguishing between their final offers with regard to the lawful authority factor.

The parties did not enter into any stipulations of agreed upon items. Rather, both parties chose to submit final offers which are consistent with one another except for the health insurance issue. This strategic decision of both parties makes the application of the statutory factor concerning stipulations inapplicable, here.

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[1]See the decision of the Wisconsin Employment Relations Commission in a case between a sister local of this Union in Milwaukee District Council 48 and the Milwaukee Area Vocational and Technical District, (17131-A) 8/79, in which the Commission directed that the final offer process be permitted to continue where one side desired to change its final offer. Although Milwaukee Deputy Sheriffs' was decided by the Wisconsin Supreme Court subsequent to the issuance of the above decision, the Deputy Sheriffs' case relates to a statute and process which differs from the recently amended procedures which govern the proceedings, in this case.

Interest and Welfare of the Public:

The Employer argues that only under its offer is there an attempt at controlling and confronting the escalating costs of health insurance.

The Employer argument is premised on the conventional wisdom that if an employee must pay a portion of the premium; it will impact on the employee's frequency of use of health care providers. No national studies were introduced or data provided with regard to the experiences of this or any other employer concerning the validity of this conventional wisdom. No data was submitted by either party as to whether the inclusion of deductables, as the parties did in the expired agreement, is more or less effective in arresting the increase in insurance costs.

In fact, it is the Employer which introduced the position paper of the AFL-CIO on the increase in health costs. That paper suggests that such increase is the result of hospital use. There is no evidence in this record with regard to the frequency of use of hospitals by those employees who elect the "fee for service" plans. In fact, it is the lack of available data from WEAIT with regard to rating experience that prevented the Employer from obtaining other bids back in 1987.

The record evidence on this criterion is inadequate for this Arbitrator to determine whether the interest and welfare of the public is best served through the selection of the Employer or the Union offer for inclusion in a successor agreement.

Comparison of Wages, etc. of the District Custodians with the Wages, etc. of Other Employees Performing Similar Services:

Under this criterion, the matter at issue, employee contributions for premiums for "fee for service" health insurance plans are to be compared to the level of contribution made by employees in comparable school districts. The Arbitrator follows the three tier comparability analysis established by Arbitrator Zeidler in South Milwaukee Schools, and followed by Arbitrators Yaffe, Fleischli and Kerkman in cases between the GEA and this school district.

The Employer focused its evidence and argument on data with regard to the organized units of employees employed in the Village of Greendale. That data is analyzed more appropriately, under criterion (e) discussed below.

Under the Zeidler paradigm, the first level of comparables, those most comparable to Greendale are Greenfield, Franklin and Whitnall school districts. The second tier of comparables includes the school districts of Cudahy, South Milwaukee, St. Francis and Oak Creek. The third level of comparability iden-

tified by Arbitrator Zeidler are the remaining Milwaukee Metropolitan Suburban Area school districts.

The available data from the first two tiers of comparables is sufficient; it is not necessary to analyze the data from the third tier in the determination of this case. The data contained in Union exhibit numbers 7, 8 and 9 and the Employer rebuttal exhibit R-1 serve as the basis for the following findings. The cost of the family premium, $302.32, for the 1987-88 school year is slightly below the average premium costs for school districts in the first two tiers of comparability, including St. Francis Schools, for school year 1987-88. The average cost for health insurance premiums among these comparables was $319.17 per month for family coverage for a "fee for service" plan.

For school year 1988-89 the premium cost of $300.87 in Greendale is well below the average cost of premium for these first two tiers of comparable school districts in which the average premium for the 1988-89 school year is $342.61.

The Union introduced evidence with regard to the wage rates of custodians in the comparable school districts. The Arbitrator had difficulty establishing valid comparisons between the various job titles for custodians employed by the various comparable school districts. There was inadequate information, either testimony or documentary evidence such as job descriptions, which could serve as a basis for comparison of wage rates. The Arbitrator attempted to limit the comparison to custodians in elementary schools; a job title prevalent in most, but not all comparable school districts. Even here, the data generated was of limited value. What data was generated, was analyzed and used by the Arbitrator in his consideration of the criterion labeled Overall Compensation, below.

It is clear from the data submitted by the Union that the wage increase of 4% for the 1987-88 school year and the additional 4% increase for the 1988-89 school year which are provided for in the final offers of each party to this dispute, closely approximates the average increase provided by the first two tiers of comparable school districts to its custodial employees.

With regard to the "grandfather clause" and cap on the amount of the Employer contribution, Union Exhibit No. 9, establishes that with regard to six of the seven comparables in the first two tiers (the Union presented no evidence with regard to St. Francis Schools), only Oak Creek has a "grandfather clause" requiring full-time custodians employed after January 1, 1984 to pay the difference if the employee elects a health plan which costs more than the lowest "fee for service" or HMO plan.

The above data supports the Union's position. The premium

cost of the "fee for service" plan in Greendale is lower than the premium cost for such a plan in effect in comparable school districts. Furthermore, the majority of the school districts most comparable to Greendale in the first two tiers of comparability do not include language in their agreements such as the "grandfather clause" or a dollar cap language at issue, here.

Comparison of the Wages, etc. of the District Custodial Employees with the Wages, etc. of Other Employees Generally in Public Employment in this Same Community and in Comparable Communities:

The Union argues that this Arbitrator should not give any weight to the evidence concerning the health insurance benefit enjoyed by employee bargaining units such as law enforcement officers and firefighting personnel in the Village of Greendale who perform duties dissimilar to those performed by the Greendale Schools' custodians. The Union misreads the statutory criterion. The statute calls for a comparison to be made between the District custodians and employees generally in public employment in this same community. It is appropriate therefore, that the health insurance benefits enjoyed by the employees in the various bargaining units of the Village be considered, in this case.

In all the village units except for public works, the employer contribution is approximately $238.00. If an employee elects a non-HMO policy, the difference in cost is to be paid by the employee. Furthermore, the amount listed is for the highest cost HMO provided by the Employer as compared to the District's offer, in this case, under which it is to pay the average of the premium cost of the HMO's provided and selected by the District.

The agreement covering public works and office employees in the Village specifies a dollar amount but it contains a provision under which any increases in premiums are to be paid by the Employer. The premium for the WPS insurance listed in the agreement is $274.00 for family coverage. It also appears that this unit and the Village are in arbitration for a successor agreement.

Although the language employed in describing the health insurance benefits for the various employee bargaining units of the Village of Greendale differ, it appears that there is a dollar limit as to the employer contribution which corresponds to the monthly premium costs for family coverage for an HMO or the highest cost HMO offered by the Village to its employees.

This criterion tends to support the final offer of the District.

Comparison of Wages, etc. of the District's Custodians with the Wages, etc. of Other Employees in Private Employment in the Same Community and in Comparable Communities:

The parties provided no data with regard to this criterion.

Average Consumer Prices for Goods and Services, Commonly Known as the Cost of Living:

The Union Exhibit No. 16 demonstrates that over the ten year period from July, 1978 through July, 1987, the cost of premiums for health insurance for family coverage have increased 291%. Those premium costs have increased 352% for single coverage during this ten year period. During this same time period, the largest increase experienced at any one job classification included in the custodial unit was 89%. The enormous disparity in the increase in the cost of health insurance and wages only emphasizes the need for action to slow the rate of increase of the cost of this benefit.

The Employer argues that its proposal that employees pick up any increase in premium costs above $302.32 on a 50-50 basis for employees presently employed by the District should serve to arrest or moderate the rate of increase in health insurance premiums, in the future. Again, as noted above under the discussion of the public policy criterion, there is little or no evidence in this record to support the Employer's premise.

On the other hand, the Union's proposal that the Employer pick up the full increase in premium costs, certainly, will not serve to moderate the rate of increase in insurance premiums.

Accordingly, the Arbitrator concludes that the cost of living criterion does not serve to distinguish between the final offers of the parties.

Overall Compensation:

In the expired agreement, the 1985-87 Agreement, the parties included an up front deductible of $100.00 with a maximum of $200.00 deductible per family. In addition, the parties included a preadmission review and second opinion for non-emergency surgery. These provisions were included in the specifications for the "fee for service" policy in an attempt to moderate the increase in cost of health insurance premiums. These deductibles were included in the teacher and clerical bargaining unit agreements, as well.

Although the Union argues that the salary levels of custodial employees in Greendale Schools fall within the lower half of the wage scales for custodial employees in comparable bargaining units, the Arbitrator has noted above that the available

record evidence is insufficient to support the Union's argument. No other evidence was provided by either party which would serve to distinguish between their final offers.

This criterion does not serve to distinguish between the final offers of the parties.

Changes...during the Pendency of the Arbitration Proceedings:

There have been no changes which would serve to distinguish between the final offers of the parties.

Such Other Factors...Taken into Consideration:

This is the significant factor and the factor which serves as the focus for most of the arguments of the parties. There are sub-categories of this factor which are analyzed by this Arbitrator in the application of this criterion. Those sub-categories are: Internal Comparables, Reasons for Changing the Status Quo and Bargaining History.

Internal Comparables:

As a result of the Kerkman Award, the 1987-89 Collective Bargaining Agreement between the District and the GEA includes language similar to the language proposed by the District in its final offer. In the teacher unit, approximately 78% of the teachers take advantage of the health insurance benefit. That compares with the 69% level of participation by custodial employees who choose to obtain health insurance coverage through the District. Only 35% of the clerical employees choose to obtain health insurance coverage through the District. Certainly, the teachers' participation in the health insurance program exceeds that of the custodians. Their agreement contains the provision sought by the Employer through this arbitration proceeding. Of the total of two hundred and eighty-six full-time and part-time employees employed by the District who are represented by collective bargaining representatives, the teacher unit contains approximately 65% of those employees.

Consistency in the level of benefits among employee groups is a widely accepted tenet in labor relations. An offer which maintains that consistency in the level of benefits should be accorded substantial weight. Such an offer meets an important need in the relationship of the Employer to its various bargaining units.

There is evidence in this record to indicate that the Employer and the collective bargaining representatives of the clerical and custodial employees have not maintained absolute consistency with regard to the terms and conditions and language of the health insurance program described in their respective

agreements. Although the GEA included the "grandfather clause" in their 1985-87 Agreement, that clause was not inserted into either the clerical or the custodial collective bargaining agreements. However, since the clerical unit has now voluntarily agreed to both the "grandfather clause" and the caps in their agreement for July, 1987 through June, 1989, the Employer demand for consistency in benefits as expressed through its final offer is accorded great weight by this Arbitrator. This subcategory of criterion (j) provides strong support for the selection of the Employer's offer for inclusion in the successor agreement between the District and the Custodial Union.

Change in Status Quo:

This Arbitrator observed in a case where health insurance was an issue in D. C. Everest Area School District, (24678-A) 2/88, that the following mode of analysis is to be followed when an arbitrator is considering whether a final offer proposing a significant change to the status quo should be adopted. That mode of analysis enjoys widespread acceptance among arbitrators.[2] (1) The party proposing the change, must demonstrate a need for the change. (2) If there has been a demonstration of a need for the change, then the party proposing the change must demonstrate that it has provided a quid pro quo for the proposed change. (3) Arbitrators require that tests numbers 1 and 2 be met through the submission of clear and convincing evidence by the party proposing the change.

In this case, the Employer has demonstrated by clear and convincing evidence, a need for the change. The need for consistency of benefits among the various employee groups of the employer meets this need test.

The Union has demonstrated through the reduction in the cost of the health insurance premium in the second year of the Agreement, the below average cost of a premium for this "fee for service" plan when compared to the cost of those plans among comparable districts and through the relatively limited level of participation by custodial employees in the District's "fee for service" health insurance program that there is no immediate need for the inclusion of the Employer's offer in this (1987-89) Agreement.

The following evidence, submitted post-hearing pursuant to a request made at the hearing on September 23, this Arbitrator finds compelling in weighing the need for the change in the health insurance language. In the custodial unit, only twenty-

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[2]See City of Plymouth (Police Department), (24607-A) 12/87, Arbitrator Krinsky; LaFayette County (Highway Department), (24548-A) 10/87, Arbitrator Bilder.

seven of the thirty-nine employees, 69%, participate in the District's health insurance program. Of the twenty-seven who participate, eleven or approximately 41% of those participating in the health insurance program have selected an HMO to serve their health insurance needs. Of the fifteen family policies taken by members of the custodial unit, seven of those policies are with an HMO and eight are with the "fee for service" provider Blue Cross/Blue Shield.

If the purpose of the Employer's proposal is to have employees consider using an HMO for their health insurance needs, it appears from the limited data provided that the custodial employees are doing so on a voluntary basis. The above data is significant in that on a percentage basis, the custodial unit has the largest percentage of employees who have selected an HMO to meet their health insurance needs among the District's three bargaining units. In the teacher unit, thirty-seven percent have selected an HMO to meet their insurance needs. This data appears to contradict the positions both parties have taken in their bargaining stance on this issue.

This data serves to mitigate the need for the changes proposed by the Employer in its final offer. Nonetheless, the need for consistency of benefits among the various bargaining units is sufficiently strong to outweigh the substantial mitigating factors against that need for immediate change. This need supports the District's offer.

Quid Pro Quo:

The Employer provided little evidence from which the Arbitrator might infer that any quid pro quo was offered for the change it proposes. The two year salary settlement is very close to the average settlement achieved in custodial units among the first two tiers of comparable school district employers. Furthermore, the Employer's offer to the teachers which prevailed in the arbitration proceeding before Arbitrator Kerkman was for salary only increases of 4.78% for the 1987-88 school year and 5.14% for the 1988-89 school year. The record evidence does not indicate the salary only increase generated in the settlement with the clerical unit. From the data available, the Arbitrator concludes that the parties submission of consistent final offers of 4% in each of the two years of the agreement in the custodial unit reflects the level of settlement achieved in the other custodial units. There is no element of quid pro quo in exchange for the sought after change.

The quid pro quo cannot be found in the absorption of a large premium increase by the Employer. Although the premium did increase substantially in July, 1987, the level of increase experienced by the District approximates the increase in premium experienced by other comparable school districts for the 1987-88

school year. The Employer position is not strengthened with the decrease in insurance premium which occurred subsequent to the submission and certification of final offers, in this case.

The Arbitrator finds that the Employer has failed to meet one of the two tests applied by arbitrators when a party attempts to change the status quo. The Arbitrator finds that this analysis is consistent with the analysis and conclusion reached by Arbitrator Kerkman in his award under the Voluntary Impasse Resolution Procedure between this District and the Greendale Education Association. Arbitrator Kerkman did not perceive the Employer's offer in the teacher case to represent a change in the status quo. Rather, Arbitrator Kerkman sets forth the rational for his adoption of the Employer's offer in this quote at pages 18-19 of his Award.

> The record establishes, as recited above, that new hires are subject to premium participation. It can not be argued, in the opinion of the undersigned, that if new hires may participate in insurance premiums, employees who have previously been hired by the Districts (sic) are immune from that treatment.

This Arbitrator understands that Arbitrator Kerkman found no basis for permitting employees already on staff to avoid contributing to the cost of health insurance premiums when new hirees were required to do so. The Kerkman Award represents an amplification of the status quo as he found it in the GEA and District 1985-87 Agreement. Clearly, in this case, the Employer offer here represents a change in the status quo. There is no "grandfather clause" in the 1985-87 Agreement.

Bargaining History:

As noted in the Background section of this Award, both parties presented extensive evidence and argument on the course of bargaining leading to this impasse. The only point worthy of any weight is that the Employer proposal to insert the "grandfather clause" affecting new hirees was introduced subsequent to the issuance of the Kerkman Award. However, the proposal affecting all employees already on staff, the introduction of caps or limits to the contribution of the Employer for the "fee for service" health insurance plan had been discussed throughout the slightly over one year that the parties had consumed in bargaining over this successor agreement. There is no evidence that the Union was prevented from submitting counter proposals on the "grandfather clause" amendment. This "bargaining history" argument is given little weight.

SELECTION OF A FINAL OFFER

In the above discussion, the Arbitrator finds that the external comparables, criterion (d) supports the Union position; criterion (e), the health insurance benefit as provided to other public employees employed in the Village of Greendale, generally supports the Employer position, in this case.

Criterion (j) Other Factors, is the factor central to the resolution of this impasse. The Employer has demonstrated a need for a change in the status quo to achieve consistency in the administration of the health insurance benefit. That need overrides the substantial evidence demonstrating efforts by individual members of the custodial unit who have, through their selection of carrier, recognized the need to moderate the escalating cost of health insurance premiums. However, the Employer has failed to meet its burden of demonstrating a quid pro quo for the inclusion of its final offer in a successor agreement. It is on that basis, that the Arbitrator has selected the Union's final offer for inclusion in the successor agreement.

The Arbitrator has considered the important argument raised by the Employer that an award in favor of the Union's final offer would interfere with the bargaining relationships in those units in which the insurance caps and "grandfather clause" have been included. However, the history of the recent bargaining relationship of all three units demonstrates that in the past there has been some lag in the introduction of a change achieved in the major collective bargaining unit of this Employer, the teachers, before that change is introduced into the agreements of the other units.

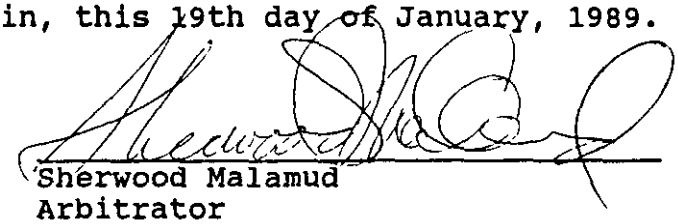
The Employer argues that an award in favor of the Union would be inconsistent with the award issued by Arbitrator Kerkman. The custodial unit and teacher unit cases are quite different. As noted above, Arbitrator Kerkman treats the Employer's offer in his case as a valid attempt by the Employer to further amplify the status quo and introduce some consistency in the level of benefits enjoyed by new hirees and teachers already on staff with regard to sharing in the increase in costs of health insurance premiums. Here, the Employer attempts to change the status quo. This Arbitrator recognizes that the need for consistency in benefits is one which overrides the substantial evidence in mitigation of need for a change present in this case. However, there is no evidence of any quid pro quo to justify the making of this change, in this case. Upon the receipt of this Award, the parties will have an opportunity to come to grips with the requirements of the two-prong test to effectuate a change in the status quo in bargaining which will soon commence on a successor to the 1987-89 Agreement.

On the basis of the above discussion, the Arbitrator makes the following:

AWARD

Based upon the statutory criteria found in Sec. 111.70(4)(cm) 7 a-j of the Wisconsin Statutes, the evidence and arguments of the parties and for the reasons discussed above, the Arbitrator selects the final offer of Milwaukee District Council 48, AFSCME, AFL-CIO, and its Affiliated Local No. 2, attached hereto, to be included in the 1987-88 and 1988-89 Agreement between the District and the Union.

Dated at Madison, Wisconsin, this 19th day of January, 1989.



Sherwood Malamud
Arbitrator

Second Final Offer of Local 2

Affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO

to the Greendale School District

A. All other provisions of the current extended Agreement (July 1, 1985 through June 30, 1987) shall remain unchanged, except as modified by the Stipulation of Tentative Agreements side letter of Agreement or by the following:

1. Update all dates in the Agreement to reflect the new agreement period.
2. Article II - Duration/Negotiations Procedure
   Section 1 - Duration: This Agreement shall begin the first day of July, 1987 and end of June 30, 1989.
3. Article IX - Rates of Pay:
   (1) Section 1 - Wages:
   Effective 7-1-87 4% across the board increase including bus driver rates.
   Effective 7-1-88 4% across the board increase including bus driver rates.
4. Article XX Health and Welfare Insurance:
   (1) Section 1 - Health Insurance: The District agrees to provide and pay up to $302.32 per month for hospital and medical insurance for regular full-time employees who require family coverage, and up to $117.76 per month hospital and medical insurance premiums for employees who require single coverage during the 1987-88 year. The District may, from time-to-time, change the insurance carrier or self-fund its health care benefit program if it elects to do so. The District shall notify the Union at least thirty (30) days in advance of any change and shall include all information provided by the carrier(s) to the District with the notification to the Union.

   The level of benefits of any plan shall be substantially equivalent to those in effect on July 1, 1986. Beginning November 1, 1985, however, there will be an upfront deductible of $100 with a maximum of $200 per family, with a preadmission review and second opinion for non-emergency surgery. Any changes in second opinion or preadmission review shall be negotiated with the Union before they take effect.

   In the event the dollar amounts for the 1988-89 insurance premiums exceed the amount set forth above, no charge will be made to the employee. The proration for part-time employees shall be based on this new dollar amount.

   The proration for the part-time employees' contribution to insurance premiums shall be based on full calendar year employment of two thousand eighty (2,080) hours.

5/27/88

No employee shall make any claim against the District for additional compensation in leiu of or in addition to his/her insurance premiums paid because he/she does not qualify for the family plan.

(2) Section 2-3 and 4: No change.

(3) Section 5 - Dental Insurance: The District agrees to provide and pay up to $43.72 per month for dental insurance for regular full-time employees who require family coverage, up to $16.13 per month dental insurance premiums for employees who require the single coverage.

The District may, from time to time, change the insurance carrier or self-fund its dental care benefit program if it elects to do so. The District shall notify the Union at least thirty (30) days in advance of any change and shall include all information provided by the carrier(s) to the District with the notification to the Union. The level of benefits shall be substantially equivalent to those in effect on July 1, 1986.

In the event the dollar amounts for the 1988-89 insurance premiums exceeds the amount set forth above, no charge will be made from the employee. The proration for part-time employees shall be based on this new dollar amount.

The proration for the part-time employees' contribution to insurance premiums shall be based on full calendar year employment of two thousand eighty (2,080) hours.

No employee shall make any claim against the District for additional compensation in lieu of or in addition to his/her insurance premiums paid because he/she does not qualify for the family plan.

(4) Section 6, 7 and 8: No change.

AFM
5/27/88

AFM
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