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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Voluntary
Impasse Procedure of:

Decision No. 25728

ANTIGO EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION

Sherwood Malamud
Arbitrator

and the

ANTIGO SCHOOL DISTRICT

APPEARANCES:

Thomas J. Coffey, Executive Director, Central Wisconsin UniServ Council-North, P. O. Box 1606, Wausau, Wisconsin 54402-1606, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by Ronald J. Rutlin, with assistance on the brief by Shirley M. Strasser, Research Associate, 401 Fifth Street, P. O. Box 1004, Wausau, Wisconsin 54402-1004, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On October 17, 1988, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Mediator-Arbitrator under a voluntary impasse procedure agreed to by the Antigo Educational Support Personnel Association, hereinafter the Union, and the Antigo School District, hereinafter the District or the Employer. Pursuant to the voluntary impasse procedure, the Mediator-Arbitrator made an unsuccessful attempt to mediate the dispute at a meeting on December 6, 1988. Hearing in the matter proceeded on December 6, 1988, at the District's offices in Antigo, Wisconsin. By agreement of the parties, post-hearing submissions of additional documentary evidence was made by December 12, 1988. Briefs were submitted by January 17, 1989, and they were exchanged through the Arbitrator on January 18, 1989. Based upon a review of the evidence, testimony and arguments submitted and upon the application of the criteria adopted by the parties at the outset of the hearing in this matter and pursuant to their voluntary impasse procedure, the Arbitrator renders the following Award.

Background

The School District includes the City of Antigo. The City of Antigo is the county seat of Langlade County. The Union represents the 22 employees employed by the District as maintenance, custodial and housecleaning employees. The only other organized group of employees are the 200 teachers, who are represented by the same Central Wisconsin UniServ Council-North.

The parties' voluntary impasse procedure tracks the procedural and substantive statutory scheme in effect prior to the amendments made to the Municipal Employment Relations Act through 1985 Wisconsin Act 342. Under the voluntary impasse procedure, the parties waived investigation by the Wisconsin Employment Relations Commission.

In the next section of this Award, the Arbitrator summarizes the two issues in dispute. Then, the statutory criteria are set forth under which the Arbitrator is to select the single final offer of either the Union or the Employer for inclusion in a successor agreement for the 1988-1989 and 1989-1990 school years.

In the Discussion section, which follows, the Arbitrator summarizes, where appropriate, the salient arguments of the parties, and he indicates after the analysis of each criterion whether it supports the final offer of the Union or the Employer. This mode of analysis is applied to each of the two issues, health insurance and wages. The Award concludes with the section in which the Arbitrator states the reasons for his selection of the final offer of the Union or the Employer for inclusion in a successor agreement.

SUMMARY OF THE ISSUES IN DISPUTE

Wages

The Employer proposes a wage increase of 5.4% per cell effective July 1, 1988, and to increase the 1988-89 rate by an additional 4.5% effective July 1, 1989.

The Union proposes a wage increase of 4% per cell effective July 1, 1988. It proposes to increase the 1988-89 rate by an additional 4% effective July 1, 1989.

Health Insurance

The Employer proposes that its contribution be limited to 90% of the monthly health insurance premium, effective July 1, 1988.

The Union proposes that the status quo be maintained. The Union proposes that the Employer continue to pay 100% of the cost

of both the single and family premium for an employee's hospital and surgical group insurance plan.

The Costing of Each Proposal

The total cost increase for the 1988-89 school year over the total costs for salary, fringes and other rollups is 6.86% under both the Employer and the Union offers. Similarly, the total cost increase in wages, fringes, and rollups for the 1989-90 school year over the 1988-89 school year under both proposals is 5.2% (\$30,230 under the Employer offer and \$30,272 under the Union offer). The parties' offers differ substantially at the wage component of the total costs of their wage and health insurance proposals. The Employer proposes to increase wage costs in 1988-89 over the 1987-88 school year by \$22,462 or by 5.69%. The Union proposes to increase wage costs in the first year of the agreement by \$16,990 or 4.3%. There is a slight difference in the cost of the wage component of each offer in the second year of the agreement. The Employer proposes a \$20,042 increase in costs which equals 4.8%. The Union offer contains a \$19,501 or 4.7% increase in the second year of the agreement.

The Employer proposes the larger wage increase in the first year of the agreement as a quid pro quo for its proposal to have employees contribute toward the cost of premiums for health and surgical insurance by assuming 10% of that cost.

With regard to the health insurance component of the costing, the parties know the premium costs for the 1988-89 school year. They project a 12% increase in premium for the second year of the agreement.

All 22 bargaining unit members take family coverage under the hospital and surgical insurance plan. For the 1987-88 school year the Employer cost for 100% of the premium was \$51,132. In 1988-89, the Employer proposes to pick up \$60,682 of that premium. The Union proposal of the status quo would require the Employer to pay \$67,424. In the second year of the agreement, the parties' projection of premium increase would have the District pay \$66,750 towards employee health insurance premiums under the District's proposal that the Employer pay 90% of the premium. Under the Union proposal, the Employer would pay \$74,167, the full cost of family coverage for health and surgical insurance for the 22 person bargaining unit.

STATUTORY CRITERIA

The parties agreed that the Arbitrator should apply the following statutory criteria to determine this dispute:

7. "Factors considered." In making any decision under the arbitration procedures authorized by this

subsection, the mediator-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 and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

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

f. 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.

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

h. 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.

DISCUSSION

Introduction

This part of the Award is divided into three sections. In the first section, the statutory criteria are applied to the proposals of the parties on the health insurance issue, the principal issue in this dispute. In the second section, the statutory criteria are applied to the wage component of the

parties' proposals. The third section contains the reasoning of the Arbitrator supporting his selection of the final offer of one party for inclusion in the successor agreement.

I. HEALTH INSURANCE

a. and b. Lawful Authority of the Municipal Employer and Stipulations of the Parties

No argument was presented by either party with regard to these two criteria. Neither criterion serves to differentiate between the final offers of the parties.

c. The Interests and Welfare of the Public

The Employer makes several arguments with regard to this criterion. The District presented evidence concerning the enormous loss of crops suffered by farmers in Langlade County as a result of the drought of the summer of 1988. The Employer notes that the school district is highly dependent on the condition of the agricultural economy. Approximately 22% of the District tax base when measured by full value by classification comes from the agricultural economy. Langlade County suffered damage to its crops as a result of the drought to the extent of 75% - wheat, 76% - barley, 24% - potatoes, 90% - pasture, 60% - green peas, 76% - oats, 50% - corn, and 67% - hay. Christmas tree farmers suffered enormous losses as a result of the drought. Young seedlings perished. The rafting business located in the eastern portion of the county suffered as a result of the low waters on the Wolf River. The Employer argues that its proposal for cost containment of health insurance premiums will provide relief to the school district taxpayer now and in the future.

The Union counters the Employer arguments concerning the drought and its impact on area farmers. The Union introduced evidence that approximately 47% of the farms in Langlade County participate in the State of Wisconsin's Farmland Preservation Program. In addition, the Union points to the drought assistance loan program put into effect at the end of last summer to assist the farmers in dealing with the consequences of the drought.

The Union argues that the Employer's proposal would increase costs to the District's taxpayers. The Employer's higher wage proposal will generate increased costs for social security and pensions which would not have to be paid if those same District dollars are spent to pay for health insurance premiums.

The Union notes that the District was the beneficiary of an unexpected and unbudgeted surplus of \$80,639 from state aids. The District's costs rank 295 out of 385 K-12 school districts. The Union notes that the total package costs of both the Union

and Employer offers are about the same.

The Arbitrator finds that the total dollar cost impact of both offers is the same. The selection of one offer or the other will have no impact on the taxpayers of the District.

The Employer argues that the selection of its offer will produce cost containment and savings in the future which will enure to the benefit of the District's taxpayers. The Employer assumption of future savings is based, in part, on cost shifting, i.e., the shifting of a part of any increase in premium to be paid by the District's employees rather than solely by the Employer. The notion that this will generate some savings is based on the assumption that employees will restrain their use of the health care system in order to contain cost increases.

This argument assumes that if employees pay for the benefit; they will not use it as frequently. There is no empirical evidence in this record, no reports of any empirical studies conducted which supports this assumption. It is equally logical that employees who pay for the benefit will use it with greater frequency in order to get their money's worth. This assumption is one which must be validated through an empirical study rather than through arguments based on "self-evident" postulations. Furthermore, the literature presented for arbitral review by the Employer, the publications of the International Benefits Foundation indicates that the increased costs in health insurance premiums are generated by the increased cost of hospitalization which, in part, is due to the shifting of costs from medicare patients to private pay patients who have medical and surgical insurance. A sharing of premium will do nothing to retard the increase of that segment of premium attributable to the increase in hospital charges to private pay patients. Based on the literature presented, the slowing of the increase in premium growth would be more readily achieved through the inclusion of a deductible rather than by having the employees pay a portion of the premium.

The other assumption underlying the Employer argument is that if employees contribute towards the premium they will value the benefit. In this case, the 22 bargaining unit employees must realize that they are foregoing a larger wage increase to maintain the Employer's full contribution toward health insurance premium. In and of itself, that supports this assumption underlying the Employer position. It also supports the Union's position in that the increase in insurance premiums consume Employer dollars which would otherwise be available for wage increases.

The Arbitrator concludes that the interest and welfare of the public neither suffers nor is furthered by the proposals contained in either offer. This criterion does not generate a

preference for one proposal over that of the other.

d. Comparability

The parties do not agree on the list of municipal employers to which the District is comparable for purposes of comparison of the wages, hours and conditions of employment of these custodial, maintenance and housecleaning employees to the wages, hours and conditions of employment of employees in similar classifications. The Employer suggests that the following school districts geographically proximate to Antigo serve as comparables in this case. Those districts are: Bowler, D. C. Everest, Elcho, Menominee, Merrill, Rhinelander, Wausau, White Lake and Wittenberg-Birnamwood. The Employer suggests that the City of Antigo and Langlade County serve as comparables in this case. The Employer argues that not only are the districts listed geographically contiguous to the Antigo School District, but that these districts compete for employees in the same labor market. The Employer quotes Arbitrator Johnson from his decision in School District of LaCrosse, (16327) 9/78 in which he observed that:

The geographic labor market for custodians and janitors is a very limited one. There is no validity in using the 15 cities of comparable size in Wisconsin for this group. Such comparison is appropriate for teachers whose labor market is statewide. It is also appropriate for firefighters and police officers for the reason that there are no other comparisons that can be found within the communities within the immediate area. It is not appropriate for janitors and custodians.

The Employer cites in its brief other similar observations made by other arbitrators on this point concerning the narrow geographic labor market of custodial employees: Haferbecker in Vernon County, (17716) 9/80; Weisberger in Clintonville School District, (23061) 5/86; Briggs in Montello School District, (19955-A) 6/83. The Employer notes that Arbitrator Yaffe set forth other well-recognized arbitral criteria for the identification of the comparability pool in his decision in School District of Mishicot, (19849-A) 2/83. Yaffe stated that:

It would appear that the most objective criteria to utilize in selecting the comparable employer-employee relationships are:

1. Similarity in the level of responsibility, services provided, and the training and/or education required of such employees.
2. Geographic proximity.

3. Similarity and size of the Employer.

Arbitrator Grenig in School District of Kohler, (19674-A) 11/82 further refines these criteria with regard to school districts when he notes that:

Communities are comparables when they are substantially similar in geographic proximity, student attendance, number of employees, full value taxable property, and state aid.

The Union argues that external comparability should be given little weight in the determination of this case. Rather, factor 7.f., such other factors -- internal comparability should serve as the basis for the determination of this dispute. Nonetheless, the Union suggests that the Wisconsin Valley Athletic Conference, of which Antigo School District is a member, should serve as the external comparability pool of schools. In addition to Antigo, that conference includes the school districts of: D. C. Everest, Marshfield, Merrill, Rhinelander, Stevens Point, Wausau, and Wisconsin Rapids.

The Union notes that during the course of bargaining, the school district made reference to the Wisconsin Valley Schools as a source of comparability. The Union further argues that the Employer's comparability grouping was compiled solely for the purpose of this proceeding and it constitutes comparability shopping.

The Arbitrator finds that the comparability question is a difficult one, in this case. The Antigo School District employs a teaching staff of 187.5 FTE.¹ The School District of Bowler employs 36.4 teachers; Elcho 35 teachers; Menominee 72.3; White Lake 24.72. The data on school enrollments and total equalized value further mirror the enormous disparity between the size of Antigo School District and these smaller school districts. Geographic proximity and contiguity are the only similarities shared by the School District of Antigo and the small districts suggested by the Employer as comparables. The Arbitrator finds that this geographic proximity and contiguity is insufficient, by itself, for these districts to serve as comparables to Antigo.

On the other hand, the School Districts of Stevens Point and

¹This staffing number is based on the computation of the size of the teaching staff made by the Wisconsin Department of Public Instruction. That number differs from the number of teachers which both parties would identify as the size of the unit for bargaining purposes. However, the DPI number from Basic Facts is useful in comparing the relative size of the various districts.

Wausau are more than twice the size of Antigo. For example, the teacher FTE for Wausau is 458.8 and for Stevens Point, 402.2. The student populations of each district is: 7737 for Wausau and 7186 for Stevens Point. The School Districts of Wisconsin Rapids and Marshfield are some distance from Antigo. Marshfield is similar in size, total equalized value, and would ordinarily serve well as a comparable. However, it is outside of the narrow geographic area or labor market area for custodial and housecleaning personnel. Although Wisconsin Rapids is larger than Antigo, its size alone does not exclude it from serving as a comparable. However, like Marshfield, it lies outside of the narrow labor market for Antigo custodians.

The Arbitrator would not ordinarily include Wausau and Stevens Point as comparables to Antigo, because of their size and the substantially different character of these communities from Antigo. However, both the Employer and the Union suggests Wausau as a comparable school district. This Arbitrator believes that the identification of an appropriate comparability pool is best left to the parties. For the limited purpose of this proceeding involving these custodial employees, the Arbitrator has identified a comparability pool which includes the districts suggested by both the Union and the Employer: D. C. Everest, Merrill, Rhinelander and Wausau. As a result of the inclusion of the much larger School District of Wausau and the weighting that has in this case, the Arbitrator has included the School District of Wittenberg-Birnamwood which is contiguous to Antigo and which is approximately half the size of the Antigo School District as a comparable for this case. In addition, the municipalities of the City of Antigo and Langlade County are included as comparables. The School District of Antigo is in the same community as these two municipalities. The language of this comparability factor, under 7.d., requires the inclusion of these municipalities in any comparability grouping.

The Arbitrator has developed this comparability grouping rather than accept the Wisconsin Valley Athletic Conference as the comparability grouping for two reasons. First, there is evidence that with regard to the bargaining for this particular unit, the parties have not agreed upon a comparability grouping. Secondly, the Arbitrator agrees with the observations of Arbitrators Johnson and Haferbecker that the labor market for custodial and housecleaning personnel is much narrower than the labor market for professional employees, such as teachers.

In Chart No. 1 the Arbitrator has listed the comparable districts and municipalities and noted thereon the full cost of the family coverage for health insurance, the employer contribution towards that full cost and the size of any deductible for the school years 1986-87 through 1988-89. The data reflected in Chart No. 1 tracks a trend. In 1986-87 the full cost of the health insurance in Antigo Schools was \$15.84 below the monthly

Name of Employer	1988-89			1987-88			1986-87		
	Full Cost	Employer Paid	Deductible	Full Cost	Employer Paid	Deductible	Full Cost	Employer Paid	Deductible
City of Antigo	274.28	247.32 (90%)	100	276.42	209.20 (75%)	None	276.42	209.20	None
Langlade County	159.47	159.47	300	149.12 11/1/87 (1/1/87 218.96)	149.12	300	(1/1/86 275.09) 7/1/86 218.96	(1/1/86 247.58) 218.96	100 300
D. C. Everest Schools	198.12	188.21 (95%)	100	180.11	171.10 (95%)	100	163.74	155.55 (95%)	100
Merrill Schools	337.83	304.05 (90%)	100	241.65	217.49 (90%)	100	202.44	182.20 (90%)	100
Rhinelanders Schools	220.80	220.80	300	220.80	220.80	300	204.44	204.44	300
Mausau Schools	196.01	174.41 (90%)	Major Med. \$25/per- son/qtr. then 80% coverage	165.74	149.17 (90%)	Major Med. \$25/per- son/qtr. then 80% coverage	150.60	135.54 (90%)	Major Med. \$25/per- son/qtr. then 80% coverage
Hittenberg-Birnamwood	245.46	220.91 (90%)	300	214.28	192.85 (90%)	100-1300 on Major Med.	193.82	174.44 (90%)	Major Med. 100- 1300
Antigo Schools		234.53 (90%) Board Offer	None	200.62	200.62	None	185.65	185.65	None
	260.59	260.59 Union Offer							
Average Difference Antigo From Average	233.14 +27.45	216.45 44.14	217 plus exclud- ing Mausau	206.87 -6.25	187.10 +13.52	160 exclud- ing Mausau & Hitten- berg- Birnam- wood	201.49 -15.84	182.90 +2.75	160 ex- clud- ing Mausau & Hitten- berg- Birnam- wood

average of the comparability pool. Since the Employer picks up 100% of that contribution and many of the comparables do not, the Employer payment was but \$2.75 per month above the contribution of the average of the comparables.

For the 1987-88 school year the full cost of the premium in Antigo was only \$6.25 below that of the average. However, the difference in Employer contribution between that of the Antigo schools and the average of the comparables increased to \$13.52. In 1988-89, if the Union offer is accepted, the Antigo School District would contribute \$44.14 more than the average contribution of comparable employers. If the Employer offer is accepted then it would only pay \$1.19 above the average of the comparables.

In addition, Chart No. 1 reveals that 5 of the 7 comparables pay less than 100% of the premium. All of the comparables maintain some form of deductible. The Antigo Schools has no deductible under its health insurance plan.

On the basis of the above discussion, the Arbitrator concludes that the external comparables support the Employer's proposal for cost sharing of premium contributions. The Arbitrator concludes that, under this criterion, the offer of the Employer is to be preferred.

f. Overall Compensation

The Employees in this unit contribute 15% toward the cost of the dental insurance premium. A contribution for an insurance premium is not unknown to these employees. Accordingly, this factor serves to support the Employer's proposal.

e. Cost Of Living

Inasmuch as, the total cost of both the Employer and Union offers are identical over the course of the two year period of the agreement, this criterion does not serve to differentiate between the Employer and Union offers with regard to which one should be included in a successor agreement.

g. Changes in Any of the Foregoing Circumstances

The parties presented no evidence with regard to this criterion. The Arbitrator finds that this criterion does not serve to distinguish between the offers of the parties.

h. Such Other Factors . . . Which Are Normally Or Traditionally Taken Into Consideration In The Determination of Wages, Hours And Conditions of Employment Through Voluntary Collective Bargaining, Mediation, Fact-Finding, Arbitration Or Otherwise Between the Parties In The Public Service Or In Private Employment

This is a significant factor in this case. The Union argues that it should be determinative of this dispute. There are a number of subcategories to this factor which are analyzed separately by the Arbitrator. Those subcategories are: Internal Comparability; basis for changing the status quo and bargaining history.

Internal Comparables

There are two bargaining units with which the Employer bargains, the teachers and this unit of custodians. The remainder of the employees of the District are not represented. However, all the employees and administrative personnel of the District enjoy the same health and surgical insurance benefit.

In negotiations for a two year agreement for the 1988-89 and 1989-90 school years with the 200 employees in the teacher unit, the Employer proposed that the teachers pay 10% of the cost of premium for health and surgical insurance. However, prior to the issuance of any arbitration award, the District and the representative of the teacher unit agreed to a two year contract for the 1988-89 and 1989-90 school years. Under that agreement, the District dropped its proposal that teachers pay 10% of the monthly premium for health and surgical insurance. As a result, for the duration of that agreement, the District will continue to pay 100% of the premium for the health and surgical insurance benefit.

The Employer presented evidence that the salaries of non-represented and administrative personnel had not been resolved with finality as of the date of hearing in this matter. However, the Employer did not act unilaterally to require those employees to contribute 10% towards the health and surgical insurance premium. If the Employer offer is adopted by the Arbitrator, these 22 custodial employees will be the only employees required to make such contribution.

The Union argues that the Employer is attempting to have the small custodial unit establish the nature and extent of a major fringe benefit, health insurance. The Union asserts that the Employer's bargaining tactic, in this regard, is similar to having the tail wag the dog.

The Employer argues that the notion of tails and dogs, etc., are not principles of collective bargaining which should be given any recognition under this or any other statutory criteria. The

Employer argues that it is attempting to institute this change. The Employer asserts that it must start somewhere.

The record evidence indicates that historically there is consistency among all the District's employees as to the nature and scope of the health insurance benefit. The level of contribution is consistent among all employees. The teacher unit is the major unit. If the Arbitrator were to adopt the Employer's proposal, it is entirely possible that it will not be able to achieve that change in the teacher unit. The Employer backed off of making that change in this very round of bargaining. On the other hand, if that change were achieved in the teacher unit, the historical pattern of consistency of the health insurance benefit between this unit and the teacher unit and, for that matter, the other employees of the District would make it difficult for this unit to resist any change made to the level of contribution achieved in the teacher unit. The adoption of the Employer offer, here in this case, would destroy the consistent pattern established as to the level of contribution present between the two organized units and among all employees of this District.

Changing the Status Quo

This Arbitrator in D. C. Everest Area School District, (24678-A) 2/88 and most recently in Greendale School District, (25499-A) 1/89 observed that where a proposal is made to change the status quo arbitrators follow the following mode of analysis:

- (1) The party proposing the change, must demonstrate a need for the change.
- (2) If there has been a demonstration of the 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.

Chart No. 1 reflects a trend whereby the size of the Employer contribution is increasing relative to the size of the contribution made by comparable employers. The \$44 differential when projected over a 12 month period represents a significant cost differential.

Although 5 of the 7 comparables listed in Chart No. 1 obtain some employee contribution towards the cost of the health insurance premium, the data reflected in that chart reveals that the slowest rate of increase of premium occurs in districts with a significant deductible. For example, in Rhinelander which pays

100% of the premium, the increase in the amount of the monthly premium is a little over \$16 over a period of three years. Both in absolute dollars and as a percentage of total premium, the increase in premium is slowed significantly through the introduction of a deductible rather than through having employees pick up a percentage of the premium. The impact of the imposition of a deductible as compared to the percentage paid by employees is reflected in the experience of the City of Antigo during this 1986-87 1988-89 period. In 1986-87, the City had no deductible. The full cost of its premium was \$276.42. The Employer paid \$209.20 towards that premium or 75% of it. A \$100 deductible was put in place in 1988. In 1988 the cost of the premium, \$274.28, is two dollars less than it was in 1986. Under the agreement achieved in that municipality, the Employer payment went up to \$247.32 or 90%.

In this case, the Employer has established that health insurance premiums are increasing at a far greater rate than any other single element in the cost of living. In fact, the parties assume a 12% increase in health insurance premium for next year. That rate of increase far exceeds the increase in wages achieved by private or public sector employees for the last 5 or 6 years. However, Chart No. 1 and the information contained in the reports published by the International Benefits Foundation would strongly indicate that the most effective tool in slowing the increase in the cost of health insurance premiums is the institution of a deductible rather through the institution of the cost sharing proposed of the Employer.

Furthermore, since the Employer has chosen to institute this benefit with the custodians rather than with the dominant unit, the teachers, it appears that there is considerable question as to whether a change which is limited to the custodians would have a substantial impact on the total costs of the District. In other words, if there is a need for a change, the evidence suggests that the Employer proposal is not the one most effective solution or method which would best address that need.

Quid Pro Quo

Chart No. 1 reveals that each bargaining unit employee would have to assume over \$500 in costs to maintain family coverage under the Employer proposal. Yet, the Employer higher wage proposal produces, on the average among the 22 bargaining unit employees an increase of approximately \$252.

Nonetheless, the higher increase in wage proposed by the Employer provides a higher base for further increases. The increase proposed is above the level of settlements achieved among comparable employers and in the private sector. The custodial unit is ranked number 1 or 2 among the comparables in each of the classifications (where data is available). The

Employer offer in this regard does represent an offer of a real quid pro quo.

Bargaining History

During the course of the hearing, the Union attempted to submit evidence concerning the proposals, counter proposals and tentative agreements accepted and rejected during the course of bargaining. The Employer objected to the introduction of this evidence. The Arbitrator sustained the objection.

Although arbitrators have often stated that they serve as surrogates for the parties in these interest arbitration proceedings, it is this case that underscores the limitation of that approach.

Arbitrator Petrie notes, in his decision in Mukwonago School District, (25380-A) 12/88, which this Employer quotes extensively in its brief, the difference in purpose between interest arbitration in the private sector and interest arbitration in the public sector. Arbitrator Petrie observes that:

Certain important considerations must be kept in mind in addressing status quo questions in the interest arbitration process. It must be recognized that there is a significant distinction between private sector interest impasses, where the parties have the future right to strike or to lock out in support of their bargaining goals, versus public sector impasses, where the parties lack the right to undertake strikes or lockouts. A complete refusal to allow innovation or to consider changes in the status quo in the latter context, would operate to prevent unions from gaining the progressive and innovative changes achieved by their private sector counterparts in across the table bargaining, and such a refusal would also operate to prevent public sector employers from gaining important changes through the collective bargaining process, which changes have already been enjoyed by certain private and/or public sector counterparts.

. . .

Arbitrator Petrie then goes on to quote Arbitrator Howard S. Block, as follows:

The role of interest arbitration in such a situation (private sector interest arbitration) must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity--the reliance on a set of tested and established guides.

In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies (strike or lock out).

The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table. (parenthetical notes added) Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, UCLA, 1972, p. 164-165.

Arbitrator Petrie continues to distinguish between the private sector and the public sector interest arbitration process in the following remarks in the Mukwonago Schools award, supra:

Although Arbitrator Block was principally addressing employer resistance to union requested change or innovation in a context in which the union lacked the ability to strike, the principle has equal application to the situation where an employer is proposing innovation or change, which is being resisted by a union. If public sector interest neutrals were precluded from recognizing change or innovation, the matter could not be rectified by the parties' in their next negotiations, at which time they had the power to undertake economic action in support of their demands! A union dedicated to avoidance of change in a context where all impasses moved to binding interest arbitration, rather than being open to strikes and lockouts, could forever preclude an employer from achieving change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.

Arbitrator Petrie rejects the notion that in public sector interest arbitration all changes must be achieved at the bargaining table. This Arbitrator would suggest that the essential reason why the role of interest arbitrator in the public sector differs from that of the interest arbitrator in the private

sector is the result of another factor. In the public sector, the interest arbitrator is called upon to apply certain defined and often interpreted statutory criteria. Although these criteria often track the market analysis which might be followed by an interest arbitrator in the private sector, on occasion, the interest arbitrator in the public sector must confront a significant argument concerning the interest and welfare of the public which a private sector interest arbitrator need not address. In this regard, changes in state aid formulas might reflect the increased support of rural school districts at the expense of urban school districts. Such trends may have a significant impact in a particular case and would have to be accounted for and analyzed by the public sector interest arbitrator.

However, it is impossible for a public sector interest arbitrator to act as a surrogate, in the manner in which the private sector interest arbitrator would act, and meet the additional challenges so eloquently stated by Arbitrator Petrie in his award in Mukwonago Schools, supra. It is noteworthy, that under the criterion Such Other Factors an arbitrator must consider what would result from an arbitration analysis in a "private sector" type case were the Arbitrator to act as a surrogate for the parties. The language of this criterion requires the Arbitrator to consider factors weighed in private sector interest disputes.

This Arbitrator has discussed at length his role in this case for two purposes. First, since this Arbitrator agrees with the analysis of Arbitrator Petrie in Mukwonago Schools, the role of the Arbitrator is not to serve as a surrogate, but to apply the statutory standards. Consequently, evidence with regard to what the parties did or did not do in bargaining is properly excluded. Otherwise, the interest arbitration hearing could well turn into a prohibited practice proceeding.² Such evidence tends to unduly expand the scope of the hearing. It is burdensome to the process. It is on that basis, that evidence relating to alleged agreements reached during the course of bargaining, were excluded from the record. If the Arbitrator were to act as a surrogate, certainly such evidence would be the best evidence of the agreement the parties would have reached had they been left to their own devices.

²In Greendale School District, supra, both parties presented extensive evidence on the conduct of each during negotiations leading to the arbitration hearing. Neither party objected to the introduction of that testimony. It should be noted, that there are occasions when the conduct of the parties during bargaining should be admitted. Such an exception occurred and was duly noted in Brodhead School District, (22908-A) 7/86.

Secondly, the Employer proposes a significant change. In order for an Arbitrator to avoid imposing what amounts to nothing more than his opinion on the parties, it is necessary that the third prong of the status quo test be met. The third prong of that test is that the party proposing a change must present clear and convincing evidence of the need for the change and that its proposal effectively addresses that need; the quid pro quo must be clearly established. Where the evidence presented is clear and convincing, the chance for error is reduced. Caution is necessary because the arbitration process does not have the flexibility available to the parties at the bargaining table.

Here, the need for a change has been established. That need is the cost containment and arrest in the increase of insurance premiums. The solution proposed by the Employer, the employee sharing in premium contribution, does not appear to effectively address that need. Furthermore, since the Employer chooses to attempt to make this change in the small custodial unit, rather than in the large teacher unit or among its unrepresented employees, the historical consistency among all this District's employees with regard to this benefit could well be destroyed.

The quid pro quo offered by the Employer clearly is a quid pro quo. The Union has raised a significant question as to whether it is sufficient. The Arbitrator need not determine that question in light of his finding concerning the need for the change and the impact such a change would have in destroying the consistency of benefits enjoyed by all employees of this district.

The Arbitrator concludes that this criterion supports the Union proposal.

WAGES

Criteria a., b., c., f., g., and h. do not serve to differentiate between the offers of the parties on the wage issue.

Comparability

As noted above, the wage level enjoyed by members of this bargaining unit at each of the classifications included in this unit rank high among the comparables. Ordinarily, a lower wage offer would tend to bring the wage levels towards the average. Such a lower wage offer would ordinarily be preferred. However, since the higher wage proposal is made as a quid pro quo for another proposal made in the Employer's final offer, it is appropriate, therefore, to analyze that wage proposal to ascertain whether indeed the offer made is a quid pro quo. Secondly, it is appropriate to analyze the offer made to determine the extent to which the wage offer exceeds the average wage increase offered among the comparables. In this manner, the amount of the

guid pro quo may be calculated.

The municipal settlements approximate 3.5%. The other school district settlements approximate 4 to 4.5%. The Union proposal to increase wages only by 4.3 and 4.7% in the first and second year, respectively, of this two year agreement closely approximates settlements achieved in other school districts. It exceeds the settlements achieved among municipal employers. Very little evidence was submitted concerning the level of settlements among the private sector employers.

The amount of the guid pro quo offered by the Employer in this case approximates 1.3 to 1.5 percent

Were it not for the guid pro quo nature of the Employer total proposal, the level of settlements among other custodial employees in comparable school districts, in the City of Antigo and Langlade County would otherwise support the Union proposal. In light of the unique character of the issues in this case, the Arbitrator concludes that this criterion provides support for the acceptance of both the Union and the Employer proposals.

Cost of Living

Since the cost of living as reflected in the consumer price index published by the Bureau of Labor Statistics incorporates not only wages but other factors as well, this Arbitrator uses this criterion to measure the total cost of the wage increase proposed by each side. In this case, the total costs are identical. Therefore, this criterion does not serve to distinguish between the final offers of the parties or establish a preference for one proposal over that of another.

SELECTION OF THE FINAL OFFER

The application of the criteria to the two issues in this case, health insurance and wages, produces a meaningful difference on the health insurance issue. The application of the criteria to the wage issue does not serve to distinguish between the offers of the parties as to which one should be included in a successor agreement.

On the health insurance issue, the comparability and total compensation criteria support the Employer offer. The factor, h. Such Other Factors. . . supports the Union proposal.

The Arbitrator finds that the criterion Such Other Factors should be given significantly greater weight in this case for the following reasons. First, the adoption of the Employer proposal would result in the elimination of consistency in the level of contribution toward premium among employees of this district. The adoption of the Employer offer in the case of this relatively

small unit, could well result in a situation in which only the employees of this unit would make any contribution toward health insurance premium. However, more significantly, the record evidence seems to indicate that the Employer proposal would not significantly arrest the rate of increase in health insurance premiums. Since the Employer seeks a significant change in the manner in which the health insurance benefit is funded, it must meet the tests detailed above through the presentation of clear and convincing evidence. It has failed to do so in this case.

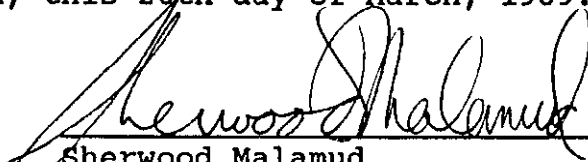
For its part, the Union proposes to maintain the status quo on the insurance contribution issue. It proposes a wage increase which closely approximates the level of wage settlements achieved by comparable employers. In addition, the total cost of its offer is equal to that of the Employer.

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

AWARD

Based upon the statutory criteria found in the Municipal Employment Relations Act prior to the amendments to that Act made by 1985 Wisconsin Act 342, specifically at 111.70 (4).(cm).7.a-h. of the Wisconsin Statutes, upon the evidence and arguments of the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Antigo Educational Support Personnel Association, attached hereto, together with the stipulations of agreed upon items, to be included in the 1988-89 and 1989-90 Agreement between the District and the Union.

Dated at Madison, Wisconsin, this 20th day of March, 1989.



Sherwood Malamud
Arbitrator

RECEIVED

DEC 18 1988

S. MALABU
ARBITRATOR

FINAL OFFER OF ANTIGO EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION

DECEMBER

SEP 29 1988

RECEIVED

1. Revise Appendix A, Wages and Classifications - See attachment

20K 9/26/88

APPENDIX "A"

Wages and Classifications

July 1, 1988 - June 30, 1989

	<u>Start</u>	<u>2 Years</u>	<u>Rate Per Hour</u>		<u>15 Years</u>	<u>20 Years</u>
			<u>5 Years</u>	<u>10 Years</u>		
CUSTODIAN II Aniwa, Lily, District Delivery/Inventory	\$8.40	\$8.55	\$8.65	\$8.77	\$8.85	\$8.95
CUSTODIAN I East, Crestwood, Mattoon, Pleasant View, River Grove, Spring Valley, North, West, Jr. High, Jr. High Night Gym, Boiler Room Night	\$8.89	\$9.07	\$9.15	\$9.26	\$9.34	\$9.43
AUDIO-VISUAL/ASSISTANT MAINTENANCE, HEAD PAINTER*	\$9.31	\$9.45	\$9.53	\$9.65	\$9.72	\$9.82
MAINTENANCE	\$9.61	\$9.76	\$9.85	\$9.94	\$10.05	\$10.13
HOUSECLEANING PERSONNEL	\$7.57	\$7.65	\$7.77	\$7.87	\$7.97	\$8.06

Night Shift Differential Pay: All night custodians shall receive a fifteen cent (0.15) per hour shift differential pay for second shift duty and twenty cent (0.20) per hour shift differential pay for third shift duty in addition to the above rates. Any employee who is permanently or temporarily assigned to night shifts shall receive the differential pay.

Paydays: Paydays for all employees shall be every other Friday.

*Head Painter: Will receive this wage when running the summer paint crew.

zoe 9/26/88

APPENDIX "A"

Wages and Classifications

July 1, 1989 - June 30, 1990

	<u>Start</u>	<u>2 Years</u>	<u>Rate Per Hour</u>		<u>15 Years</u>	<u>20 Years</u>
			<u>5 Years</u>	<u>10 Years</u>		
CUSTODIAN II Aniwa, Lily, District Delivery/Inventory	\$8.74	\$8.87	\$9.01	\$9.14	\$9.28	\$9.41
CUSTODIAN I East, Crestwood, Mattoon, Pleasant View, River Grove, Spring Valley, North, West, Jr. High, Jr. High Night Gym, Boiler Room Night	\$9.25	\$9.38	\$9.52	\$9.65	\$9.79	\$9.92
AUDIO-VISUAL/ASSISTANT MAINTENANCE, HEAD PAINTER*	\$9.68	\$9.82	\$9.95	\$10.09	\$10.22	\$10.36
MAINTENANCE	\$9.99	\$10.13	\$10.26	\$10.40	\$10.54	\$10.67
HOUSECLEANING PERSONNEL	\$7.87	\$8.01	\$8.14	\$8.28	\$8.41	\$8.55

Night Shift Differential Pay: All night custodians shall receive a fifteen cent (0.15) per hour shift differential pay for second shift duty and twenty cent (0.20) per hour shift differential pay for third shift duty in addition to the above rates. Any employee who is permanently or temporarily assigned to night shifts shall receive the differential pay.

Paydays: Paydays for all employees shall be every other Friday.

*Head Painter: Will receive this wage when running the summer paint crew.

zpc 9/26/88