

REC'D JUL 23 1990

STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

Daniel Nielsen, Arbitrator

**MANITOWOC EDUCATION
ASSOCIATION**

Decision No. 26263-A
Appointment: 01 /16/ 90
Public Hearing: 02 /26/ 90
Hearing: 03 /07/ 90
Record Closed: 05 /21/ 90
Award: 06 /27/ 90

To Initiate Arbitration Between
Said Petitioner and

**MANITOWOC PUBLIC SCHOOL
DISTRICT**

Appearances:

Kettle Moraine UniServ Council, 3811 Kohler Memorial Drive, Sheboygan, WI 53081, by Ms. Ellen M. MacFarlane, Executive Director, appearing on behalf of the Manitowoc Education Association.

Nash, Spindler, Dean and Grimstad, Attorneys at Law, 20 East Waldo Boulevard, Manitowoc, WI 54220-2992, by Mr. John M. Spindler, appearing on behalf of the Manitowoc Public School District.

Arbitration Award

On January 16, 1990, the undersigned was appointed by the Wisconsin Employment Relations Commission to act as arbitrator of a dispute between the Manitowoc Education Association (hereinafter referred to as the Association) and the Manitowoc Public Schools (hereinafter referred to as either the Board or the District) over the terms of their collective bargaining agreement for the 1989-90 and 1990-91 school years. A petition was filed requesting a public hearing, and the undersigned met with the parties for that purpose at the District's offices in Manitowoc on February 26, 1990. Members of the public who spoke were:

- Ms. Peggy Maule
- Mr. Hans Mueller
- Mr. Paul Blashka
- Mr. Dick Rietz
- Dr. Donald Lewellen
- Mr. Bill Springer
- Mr. Mark Lucas
- Mr. Jon Dalton

Several speakers urged that the status quo be maintained on insurance, and that the level of benefits offered by the District not be eroded. Other speakers noted that private industry has adopted co-payments, that the public sector should not be immune to market forces, and that co-payments were a legitimate means of controlling insurance costs. The public hearing was then adjourned.

A mediation was held on March 7, 1990 in Manitowoc, Wisconsin. The mediation effort was unsuccessful, and a hearing was held immediately thereafter, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The record was held open for the submission of additional exhibits concerning area settlements, and the parties submitted post-hearing briefs and reply briefs. The reply briefs were exchanged on April 30th. However, in light of additional evidence (in the form of an arbitration award in the Two Rivers schools) contained in the District's reply brief, an opportunity for additional comment related to the Two Rivers award was extended to the parties. The record was closed on May 21st.

Now, having fully considered the testimony, exhibits, other evidence, arguments of the parties and the statutory criteria contained in Section 111.70 Stats., and being fully advised of the premises, the undersigned makes the following Award.

I. The Final Offers

There are two issues in dispute in this case. The first relates to when summer paychecks are to be paid. The Association proposes to maintain the current system, whereby salary payments for July and August are paid on or about July 6th, unless a teacher requests early payment in writing, in which case the summer paycheck is issued within ten days after the last day of school. The District proposes to have a single date for payment of summer checks "no later than the last Friday in June" and to eliminate the early payment option.

The major issue in dispute concerns health and dental insurance. The Association proposes to change the level of contribution for teachers who teach less than full-time. Currently the Board pays 11/12ths of the premium for teachers employed more than half-time, and a pro-rata premium contribution for those who teach less than half-time. The Association's final offer would require pro-rata premium contributions for all teachers who teach less than full-time.

The Board proposes to introduce an 80/20 co-payment for the first \$3,000 of covered expenses, up to an annual maximum of \$600 per person and \$1200 per family, beginning on July 1, 1990. The Board also proposes a mandatory pre-admission certification for non-emergency admissions; a revision to the mental, nervous, drug and alcohol treatment coverage paying 90% of the first \$10,000 for in-patient services and 90% of the first \$1,000 of outpatient services with 50% co-payment thereafter; incentives to encourage outpatient treatment; and a change in the premium contribution. Effective July 1, 1990, and through the second year of the contract, the Board would pay up to \$350.00 per month for family coverage and \$150.00 per month for single coverage, rather than the current 11/12ths of the premium.

II. Statutory Criteria

This dispute is governed by the terms of Section 111.70(4)(cm)7, the Municipal Employment Relations Act. MERA dictates that arbitration awards be rendered after a consideration of the following criteria:

- "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 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

employees generally in public employment in the same community and in comparable communities.

f. 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 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 of employment, and all other benefits received.

i. Changes in any of the foregoing 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."

While each criterion is not discussed in detail, each has been fully considered in arriving at this Award.

III. The Positions of the Parties

A. The Position of the District

The District takes the position that its offer is the more reasonable under the statutory criteria, and should be adopted in this proceeding. The party seeking to change the status quo bears the burden of showing three things:

- (1) that there is some need for a change;
- (2) that there is some support among the comparables;
- (3) that a quid pro quo has been offered to the other party.

The District asserts that all three of these factors are present in this case.

The need for some controls on compensation costs is shown by the 14.36% increase in property taxes devoted to education in Manitowoc between 1989 and 1990. A primary force in this increase has been insurance premiums, which have increased by 32% for family plans and 63% for single coverage between the 1988-89 and 1989-90 school years. Dramatic increases of this type have been experienced by other school districts across the state as well. These rapidly escalating costs call for some change in the traditional health insurance packages.

The District proposes to introduce an 80/20 co-payment for the first \$3,000 of covered services, effective July 1, 1990. The District estimates that this will reduce premiums by 10% to 12%. Services in excess of \$3,000 would be paid by the insurer at 100%. In conjunction with this offer, the District will pay up to \$350.00 per month for the family plan and \$150.00 per month for the single plan for every month of the year. Currently, the District pays the full premium for only 11 months of the year, with the employees paying the twelfth month's premium.

The concept of co-payment and/or deductibles is widely accepted by the private sector companies in the Manitowoc area. While it is less common in the public sector, with only West Bend and Wauwatosa teachers having a co-payment arrangement, the District notes that AFSCME Local 71, representing the 47 custodial and maintenance employees of the District, has agreed to an 80/20 co-payment as part of its contract settlement. This plan also covers all of the District's unrepresented employees. The District argues that co-payment is not unheard of in the public sector, and the teachers are the only major group in the Manitowoc Schools

who do not currently have an 80/20 co-payment plan in effect at this time. In sum, there is some support for the District's proposal among the comparables.

Turning to the question of a quid pro quo, the District points to several items in its final offer and the stipulations which offset the change in the insurance. The most obvious of these is the District's willingness to pay towards the premium twelve months a year, rather than the current eleven month contribution scheme. The \$350 premium cap proposed will pay the entire cost of insurance in the 1990-91 school year, whereas the teachers would have been obligated to pay 8.33% of the premium under the old system.

The second element of the quid pro quo is the tentative agreement reached on salaries. A structural change was made in the salary schedule in 1989-90, whereby the first step was eliminated and an additional step was added to the top of the schedule. Not only does this change increase the starting pay for Manitowoc's teachers, but it provides a substantial increase for experienced teachers at the top of the schedule. The average increase received by the District's teachers is 6.5% in 1989-90 and 6.23% in 1990-91. In dollar per teacher terms, the salary increase averages \$1,980 in 1989-90 and \$2,027 in 1990-91. These percentage increases rank Manitowoc first in 1989-90 among the primary comparables, and second in 1990-91. In absolute dollar terms, Manitowoc ranks third out of four in both years of the contract. The settlement compares very favorably with those in the comparable districts, as well as surrounding districts as reported by the Wisconsin Association of School Boards.

Additional improvements were included in the tentative agreements, including low cost availability of college credits, increases in summer pay and travel pay, increases of 17% and 13% in extracurricular pay in the two years of the contract, a mentor program which pays senior teachers \$600 to guide and advise new faculty members, and an enhancement of retirement benefits, increasing the payout to \$100 per year of service from \$40, and offering teachers the option to accept the payout in cash or apply it to insurance. Viewing the agreement as a whole, the District argues that the financial improvements extended to the teachers should more than compensate for the requested change in insurance benefits.

Turning to the minor issue of summer paychecks, the District argues that it seeks only to eliminate the administrative burden of preparing an additional payroll for teachers who wish to receive their summer pay within ten days of the end of school. Rather than paying a normal summer payroll on or about July 6th, and an early payroll for teachers requesting payment within ten days from the end of school, the District would pay all summer pay on the last Friday in June. This is a reasonable compromise which eliminates an administrative expense while providing summer pay to the bulk of the teachers several weeks earlier than they would otherwise receive it.

For all of the foregoing reasons, the District asks that its offer be adopted.

B. The Position of the Association

The Association takes the position that its offer best preserves the status quo, and should be selected in this proceeding. Initially, the Association urges that the historical comparables for Manitowoc are the other three schools of the Fox River Valley Conference -- Fond du Lac, Sheboygan and Green Bay. These schools have been relied upon in bargaining, and established by past arbitrations. This grouping constitutes the *primary comparables for this proceeding*. In addition to the primary comparables, Appleton, Kaukauna, Kimberly, Menasha, Neenah and Oshkosh offer valuable guidance as to area settlements. These schools, comprising the Fox Valley Athletic Conference, can be considered as secondary comparables given the change in the statutory language broadening the range of comparisons that may be drawn among employees providing similar services.

Analyzing the offers under the statutory criteria, the Association points out that, not only does the District have the lawful authority to implement the Association's status quo position, it has maintained the current insurance system for 17 years and the summer paycheck provisions for 16 years. Thus, no argument can be made under criterion "a", nor is there any dispute over the stipulations for the parties, criterion "b" of the statute.

Criterion "c" goes to which offer best serve the interests and welfare of the public, and the ability of the employer to pay the cost of the offers. The Association maintains that the morale of the teaching staff is central to the quality of the public schools. *The significant reductions in health insurance benefits proposed by the*

District will certainly have an adverse impact on morale, as well as reducing the supposed value of the salary agreement. The District cannot support this drastic change through an inability to pay argument. At most, there is an unwillingness to pay, and that unwillingness is not justified when costs and taxing capacity in Manitowoc are compared with the primary comparables. At \$190,556, the equalized value per pupil is \$25,659 above the average in Manitowoc, while total school costs per pupil, at \$4,236, are \$648 below the conference average. Thus the tax effort in Manitowoc does not compare with that is area schools.

Turning to comparisons with employees performing similar services under criterion "d", the Association notes that salary settlements in the Green Bay and Fond du Lac schools average \$2,056 in 1989-90 and \$2,157 in 1990-91. In the secondary comparables, the increases are \$2,049 and \$2,112. The tentative agreement in Manitowoc calls for salary increases of \$1,980 and \$2,028. Thus there is a disparity in salary which will, as a practical matter, be increased by the District's insurance co-payment scheme. Should a teacher be required to use the health insurance and pay 20% of the cost, the co-payment will reduce the teacher's effective income. Additional reductions may be achieved through the dollar cap proposed by the District, since there is no guarantee that the cap will cover the increase in insurance premiums. These reductions are uncalled for, given the smaller than average salary increases over the contract term.

While the Board justifies its position on insurance by pointing to increased premiums, the Association argues that monthly premiums in comparable districts are similar to those prevailing in Manitowoc. The primary comparables averaged \$94.43 for single coverage and \$244.26 for family coverage in 1988-89. Among secondary comparables, the single coverage averaged \$93.44, while family premiums averaged \$237.61. In Manitowoc, the corresponding rates were \$81.00 and \$233.80. Thus Manitowoc paid lower insurance rates than surrounding schools prior to this contract term. In 1989-90, the rates increased in Manitowoc to \$132.57 for single coverage and \$309.30 for family coverage. The average of primary comparables increased to \$113.52 for single plans and \$286.13 for family plans, while secondary comparables increased to \$111.72 and \$286.24. Given this precipitous increase, the Association argues that it is fair to assume another large boost in 1990-91. At that time, the dollar cap proposed by the District will put the burden of paying the increase on the teachers, while the co-payment plan will

increase their exposure to actual medical costs. The Association notes that the proposed dollar cap is inconsistent with the percentage systems in use in the primary comparables, where Sheboygan, Green Bay and Fond du Lac all pay 100% of the single premium, with Sheboygan paying 90% of family coverage, Green Bay contributing 94% and Fond du Lac 100%. The secondary comparables also strongly support a percentage system for contributions to health insurance, with four of the six paying 100%, one contributing 90% and Kimberly paying a dollar amount which has historically been 100% of the premium. The current 11/12ths system in Manitowoc has set a 91.67% contribution rate for the Board since 1973, and neither the current premium rate nor the pattern among the comparables justifies any change in the system.

While the Board will argue that the AFSCME agreement on insurance for District custodians is relevant under criterion "e" -- comparisons with other public employees generally -- the Association notes that the preponderance of arbitral authority rejects comparing teachers with non-teachers. Further, there are important distinctions between the Board's contract with AFSCME and the final offer in this case. The Board and AFSCME agreed to dollar caps, but added the phrase "or 95% of either premium, whichever is higher." No such protection is offered to the teachers. Moreover, the mental, nervous, alcohol and drug benefit in the AFSCME contract is substantially better than that in the Board's offer to the teachers. Whereas the AFSCME agreement provides for 90% payment of up to \$50,000 of inpatient services annually, the final offer here provides 90% of the first \$10,000. Similarly, AFSCME received 90% payment of the first \$1,000 for outpatient services, and 80% thereafter to a lifetime maximum of \$10,000. The offer to the teachers simply allows for 90% of the first \$1,000 and 50% payment thereafter. These are critical differences which render the two offers non-comparable.

The AFSCME agreement may be further distinguished by the significant quid pro quos which the Union received for agreeing to co-payments. Just cause and progressive discipline language were added to the contract, and monetary benefits such as a sick leave payout on retirement, comp time, improvements on LTD coverage and retirement benefits, and an additional longevity benefit were received in exchange for the insurance concession. All of these were in addition to the three 5% a.t.b. salary increases over the contract term. Such offsetting concessions are not apparent in the teacher negotiations. Again, the Union stresses that there are

sufficient teacher settlements in this case to allow "apples-to-apples" comparisons, without looking to non-teacher data.

The Association urges rejection of comparisons with private sector employees under criterion "f", since there can be no reliable comparison between the duties of public school teachers and those of workers in the private sector. Furthermore, the available information regarding total compensation for private sector employees is insufficient to make meaningful comparisons.

Criterion "g" mandates consideration of increases in the cost of living. The Association notes that CPI increases are generally subsumed in increases among comparable districts. Teacher settlements have not historically tracked the cost of living, and the level of settlement in other school districts is generally held to be determinative where the final offers are inconsistent with the inflation rate.

The Association argues that the record is insufficient to make comparisons of total compensation under criterion "h", since salary structures and actual benefit levels vary widely from district to district. Criterion "i" -- changes during the pendency of the proceedings -- is similarly irrelevant to the decision in this case.

Finally, the Association argues that its offer is supported by consideration of criterion "j" -- other factors normally or traditionally considered -- since it continues the status quo on both summer paychecks and insurance. The district's offer not only lacks support among the comparables, it fails to meet the traditional test for changes in the status quo. Arbitration is not an innovative process, and it is well established that a change in the status quo through arbitration can only be accomplished through a very persuasive showing of need for the change and the offer of a quid pro quo to the other party. Here, the need for a dollar cap and a 20% co-payment has not been established by the District. There is no evidence that these measures are a suitable response to the insurance rate increase. Even if that had been established, no buyout has been offered to persuade the teachers to accept a reduction in benefits or a change from the 11/12ths premium contribution system.

For all of the foregoing reasons, the Association urges acceptance of its final offer.

C. The District's Reply Brief

The District rejects the Association's claim that the \$350 contribution to family premiums and \$150 contribution to single premiums will adversely affect teachers. In conjunction with the 80/20 co-payment feature and the other changes proposed, the District's offer on health insurance will yield premiums in 1990-91 of \$135.63 for single coverage and \$296.64 for family coverage. This compares to projected costs for the current plan of \$147.86 for the single plan and \$326.77 for the family plan during the same contract year. The contribution limits proposed by the District will be an improvement for teachers over the current system, where they are obligated to pay towards the cost of insurance premiums.

The District concedes that a teacher might theoretically be obligated to pay up to \$600 for single insurance claims and \$1200 for family insurance claims. However, this is offset by the elimination of the teachers' one-twelfth premium contribution. In order for a teacher to lose money under the district's proposal, the teacher would have to have insurance claims in excess of \$678.15 if single, and \$1,483.20 for a family. Claims below that amount would yield an advantage to the teacher under the District's proposal. Teachers who are not heavy users of medical services would clearly benefit from the District offer.

While the District acknowledges that the primary comparables do not support its position, it contends that solely relying on school district comparables will entail disregarding the need for at least a partial solution to rising costs as well as the efforts being undertaken in private industry to address the problem of health insurance. It also requires that the arbitrator ignore the internal settlement with AFSCME. Cost sharing is not a new concept in Manitowoc, and the District's plan simply substitutes a sharing of service costs for the current sharing of premium costs.

As to the requirement of a quid pro quo, the District reiterates the arguments made in its initial brief, and notes that the premium savings to the District of \$30 per month are matched and offset by the premium savings to teachers of \$296.64 per year. Another direct financial benefit to teachers is extended by the increase of \$60 per year of service in the retirement benefit. Together, the premium pick-up and the retirement benefit easily outweigh any negative impact of the co-payment. The District also points to the recent arbitration award in Manitowoc's sister city of Two Rivers, where the salary schedule is quite a bit less remunerative than is

Manitowoc's. This highlights the generosity of the salary settlement in Manitowoc and enhances the economic benefits which are extended in the overall settlement and which may fairly be considered part of the quid pro quo for the insurance package changes.

D. The Association's Reply Brief

The Association asserts that its position on insurance is plainly the more reasonable. While the District argues that some change is necessary, the Association points to the fact that the current system already shares premium increases by requiring teachers to pay one-twelfth of the premium each year, no matter how much it increases. The District is seeking to make major changes in plan design and in the premium payment system, designed solely to shift costs to the teachers, with no assurance that it will have any long term effect of cost containment.

The District's citation of West Bend and Wauwatosa as comparable districts using an 80/20 co-payment system is blatant comparable shopping. Those districts have never been looked to for guidance by the bargainers in this district. They are well removed from Manitowoc geographically, and absolutely no statistical evidence of comparability has been offered to justify their use.

Similarly, the District's citation of settlement statistics for WASB regional groupings is an attempt to modify the comparables to the District's advantage. Like West Bend and Wauwautosa, these schools have never been used by the parties in Manitowoc, and have no bearing on this set of negotiations. The Association again stresses that Green Bay, Fond du Lac and Sheboygan are the historically accepted comparables.

While the District claims that its dollar caps will pay the entire insurance premium in 1990-91, the District must recognize that this is not guaranteed. Otherwise, the Association argues, they would not have included the proviso in the AFSCME agreement promising a minimum of 95% payment in that year. The Association reiterates its belief that the AFSCME insurance agreement is quite substantially different than that at issue here, and particularly notes that the AFSCME plan enhances the coverage for nervous, mental, alcohol and drug, while the District's offer to the teachers would actually reduce these benefits.

In response to the District's claim that the tentative agreements and premium dollar cap serve as a sufficient *quid pro quo* for the co-payment plan, the Association notes that a teacher whose family used the insurance and incurred the \$1200 annual co-payment would lose two-thirds of salary increase negotiated between the District and the Association. The Association rejects the notion that any *quid pro quo* has been made available to offset such an economic hardship. Further, the Association notes that it has already conceded one point on insurance in its final offer by going to a straight pro-ration of insurance premiums for part-time teachers, in lieu of the current 11/12th premium for those working between half-time and full-time.

Finally, the Association urges rejection of the comparisons drawn to the Two Rivers award. Previous arbitration awards, and the arbitrator in Two Rivers, have found that the two districts are not comparables. Further, insurance was not in issue in Two Rivers, and reliable data is not available for comparing the award in that district with the offers in Manitowoc.

IV. Discussion

The central issue in this dispute is the District's proposed change in the insurance provisions of the contract. The summer paycheck issue is quite minor in comparison, although it has been fully weighed in arriving at the overall conclusion. The decision turns, however, on whether the Board has made its case for the sweeping changes it seeks in plan design and funding for the insurance benefit. I conclude that it has not, and therefore select the final offer of the Association.

The District's proposal make three significant changes in the teacher's health insurance in the second year of the contract. First, it introduces a new co-payment plan under which faculty members pay 20% of the cost of covered services up to a maximum of \$600 per person or \$1200 per family. There is currently no such co-payment for basic services, although there is a 20% co-payment, as well as a \$100/\$300 deductible for major medical. The second change is in the nervous and mental disorder / alcohol and drug coverage, where benefit levels are set at the minimum state mandates. Finally, the funding for insurance is changed. The status quo is District payment of the full premium for eleven months of the year and teacher payment of the premium for one month, in effect a premium sharing of 91.66% and 8.33%. The District proposes instead a flat dollar contribution of up to \$350.00 per month for family coverage and up to \$150.00 for single coverage. This payment is limited to the contract year only, presumably to eliminate any obligation by the District to pay for premium increases during a contract hiatus.

A. Comparisons

The parties have argued at length over the comparability of other employers and employees. There is little argument, however, over how the comparables line up. The District's position has no support in comparable teacher units. While it is true that the West Bend and Wauwautosa School Districts have 80/20 co-payment plans in place, those districts have guaranteed full payment of premiums as part of the bargain. More to the point, the parties in Manitowoc have never relied on either of those districts as reference points for bargaining in the past. Those provisions may well stand for the proposition that co-payment plans are not completely unheard of in the educational sector, but there is no serious dispute over the fact that the overwhelming majority of teacher contracts do not feature co-payments for basic medical services.

Neither do any of the primary comparables in the Fox River Valley Athletic Conference have employer contributions expressed in dollar amounts. Instead, each school makes contributions based upon a percentage of the premium, with Fond du Lac paying 100% of both the single and family premiums, Green Bay contributing 100% of the single premium and 94% of the family premium, and Sheboygan paying the full single and 90% towards family coverage. Consideration of settlements with public employees performing similar services strongly supports the status quo position of the Association.

Private sector comparisons, on the other hand, show considerable acceptance of co-payment plans in the area. Survey data submitted by the District indicates that 83% of private employers on the eastern shore employ some sort of co-payment plan. While the Association argues that it is not proper to draw comparisons between teachers and private employees, the logic of that position is far more compelling in the area of wages and rates of increase in wages than it is when considering fringe benefit plans. The market for teachers may dictate substantially different wage rates and wage increases than does the market for many private sector positions, but the pressures exerted by rising health insurance costs, and the possible responses to those increases, are not materially different from one sector to another.

The advantage enjoyed by the District among private sector comparisons is limited, however, by the lack of information surrounding the circumstances in which the co-payment plans evolved. The degree of union representation among private sector workers, and whether the co-payments are long established conditions or relatively recent responses to insurance increases, in particular, make it difficult to directly compare the prevailing conditions shown by the District's survey data with the offers in this set of negotiations. Another point of concern is the terminology used in the private sector surveys, and particularly Employer Exhibits 6 and 7, which are not clear on whether the co-payments are limited to portions of the health insurance - - major medical -- rather than all health coverage. On balance, however, the record is sufficient to establish a favorable pattern for the District's offer among private sector employers in the area.

Consideration of other public employees generally yields a somewhat mixed result. The District has been unable to point to groups of non-teacher public employees who

participate in a co-payment system, with the important exception of all other employees of the Manitowoc Schools. During the pendency of the arbitration proceedings, agreement was reached with the AFSCME affiliate representing the District's maintenance and custodial workers on a three year contract. The contract, among other things, called for the 80/20 co-payment proposed by the District. The contribution system and the nervous and mental / alcohol and drug benefit were also changed, although the changes were not identical to those offered to the teachers. The new health insurance scheme was then extended to all non-represented employees of the District, leaving the teachers as the only employees covered by the former health insurance system.

Given the conflicting results from the comparison criteria, it is necessary to weigh the impact of each comparison against that of the others. The private sector data suffers from the limitations already noted, and is accorded less weight than public sector settlements. As between the comparisons drawn with other teachers, and those with other District employees, the undersigned has addressed this issue previously:

"The general rule is that an internal pattern of settlements on economic issues should not be upset by an arbitrator. The exceptions to this would be an instance where the level of compensation for a particular class of employees has fallen or risen to a level where it is completely out of sync with the labor market for that type of employee, as shown by external comparables, or where the bargaining unit at issue so dominates internal negotiations that forcing it to comply with the internal pattern would amount to the proverbial 'tail wagging the dog.'"

"The policy favoring adherence to established internal patterns of settlement is rooted in declared public policy of encouraging "voluntary settlement through the procedures of collective bargaining." Failure to honor an existing pattern will undercut voluntary collective bargaining, since it tells other units that they should have taken their chances in arbitration, rather than settling on terms that, while less than ideal, were consistent with other internal settlements. Moreover, the use of arbitration to secure superior benefits or conditions of employment will inevitably have an adverse effect on the morale of other workers. Placing aside considerations of how an inconsistent result in this case might affect other workers, the internal pattern should be favored since it is more likely to realistically reflect the outcome of successful negotiations. In most cases, an employer which has adopted a firm position in favor of uniformity will not

abandon that position for the sake of settlement with one hold-out unit."

In the area of insurance benefits, a uniform internal pattern is particularly persuasive. Internal consistency of general benefits is a legitimate goal of most employers, and is generally supported by arbitrators. While wages will generally vary from occupation to occupation, depending upon market conditions for workers' skills, the level of insurance benefits across a work force is far less likely to be skill-specific and far more likely to be standardized as to elements such as plans offered, deductibles, and degree of contribution. Unless the benefit is demonstrably substandard, and not made up for in some other component of the compensation package, external comparables will not generally have great weight in disputes over the features of an insurance plan." Dane County (Sheriff's Dept.) Dec. No. 25576-A (2/6/89) at pages 13-14, emphasis added.

As the foregoing makes clear, the Association's argument that external comparables should prevail over internal patterns is contrary to well-established arbitral principles, and the policy of stability in labor relations set forth in Section 111.70 where the dispute concerns benefit levels. This assumes, however, that the internal settlements are predictive of what a voluntary settlement in this unit would have been if bargaining had been successful. The undersigned does not believe that such a conclusion can be drawn in this case.

As noted by the Association, the agreement reached with AFSCME is distinct from that contained in the District's final offer in several important respects. The benefit for mental disorders and drug and alcohol treatment is more generous in the AFSCME contract, providing up to \$45,000 annually for in-patient treatment as compared with \$9,000 in the final offer to the teachers. Outpatient services are provided to AFSCME represented employees at 90% of the first \$1,000, just as in the offer to the teachers. However, the AFSCME benefit extends to 80% payment thereafter, while the offer to the teachers would allow only 50% payment after the first \$900. Although neither party to this dispute has provided information on the current mental disorder benefit, it is clear that AFSCME has been granted a substantially better insurance package in this respect than the teachers would realize under the District offer.

The more dramatic and important distinctions lie in the area of premium contribution. As noted above, the District offer would impose dollar caps on the premium

contributions, initially setting them at \$350.00 per month for family coverage and \$150.00 per month for single coverage. This is a significant change from what is now, for all practical purposes, a percentage based cost-sharing arrangement. While the District predicts that this will constitute full payment for the second year of the contract, its offer is plainly intended to switch the burden of negotiating over increases to the Association. This is inherent in the use of dollar figures, and in the hiatus language, limiting the contribution level to that prevailing in the contract year. The AFSCME contract, by contrast, commits the District to paying the higher of either the dollar figure or 95% of the premium, and does not limit the District's exposure to premium increases during a contract hiatus. In short, the AFSCME agreement improves the employees' existing protections against premium increases by committing the District to pick-up a higher percentage of the premium cost, while the offer to the teachers increases the employees' exposure to insurance costs by introducing a new concept of fixed dollar contributions. This is a substantial difference, with long term implications for the bargaining postures of the parties.

Even if the differences between the District's final offer to the teachers and its settlement with AFSCME were not substantial, there would remain the problem of imposing the settlement reached by the much smaller unit on the much larger unit. With all due respect to the District's custodial employees, it remains true that the bellweather agreements in school districts are generally those struck by the faculty. The policy favoring consistent internal patterns is rooted in the supposition that successful voluntary collective bargaining would have led the members of the holdout unit to accept the same conditions as were agreed to by their fellow employees. That supposition breaks down where the holdout unit is also the dominant force in bargaining with the employer, and the employer is seeking to have the "tail wag the dog." The teachers' unit is some five times the size of the custodial unit, and it seems unlikely that the pattern established by the much smaller unit, even if identical to the proposal to the larger unit, would be viewed as setting the agenda for teacher negotiations. This is not to say that the AFSCME settlement is irrelevant, only that the fact of the settlement being reached on terms similar to those sought by the District from the teachers will not create a presumption in favor of the District's position.

The important distinctions between the District's offer to the Association and the deal struck with AFSCME, and the fact that the AFSCME unit is substantially smaller

than the teachers' unit, render the District's claim of a binding internal pattern unpersuasive. Elements of the District's offer find support among private sector comparables and some non-teacher public sector comparables, while the Association's position is uniformly supported by other teacher units and by some non-teacher public sector units. The undersigned concludes that the comparability criteria are closely balanced enough as to be inconclusive.

B. Status Quo

The District notes that there must be some evidence of comparability in order to change the status quo, and, as a practical matter, this is true. Arbitration is intended to be a reflection of collective bargaining rather than a substitute, and historically has been a conservative and non-innovative process. The broad issue before an interest arbitrator is whether the change sought through arbitration could have been secured at the bargaining table. If there is no support for the proposal among the comparables, the arbitrator will reasonably question the proposal's viability in negotiations, and will require very strong evidence that the unique provision being requested is shaped to respond to a unique need or problem.

Notwithstanding mixed or unfavorable comparables, a change in the status quo may be achieved through arbitration where the party proposing the change can convincingly prove:

- (1) That there is a need for a change;
- (2) That the proposed language meets the identified need without imposing an undue hardship on the other party;
- (3) That there has been a quid pro quo offered to the other party of sufficient value to buyout the change.

The need in this case is identified as flowing from the sharp increase in insurance rates in 1989-90 and the prospect of continuing increases in the years to come. Co-payments, it is asserted, will moderate the increases and offer a measure of control over the insurance costs.

While the Association is correct in noting that health insurance premiums in Manitowoc are still below those in the Green Bay schools, the undersigned is

persuaded that a 32% increase in the family premium in one year, coupled with a 64% increase in the single premium justifies an effort by the District to seek some change in the insurance provisions. The question remains, however, whether the changes sought are designed to address the identified need.

Certainly the introduction of co-payments and other cost containment features will reduce the rate of increase in insurance premiums, by shifting costs from the insurer to the employee. The increased cost of insurance and a desire to control it does not explain, however, the District's desire to simultaneously introduce a dollar cap system on premium contribution in place of the long-established percentage system. The District offers no explanation of the impact that dollar caps can have on premiums. Their most obvious purpose would instead be to gain an important tactical advantage in collective bargaining in the short run and, in the long run, shift a greater percentage of the cost of premium increases from the employer to the employees. This does not have a direct impact on premiums, merely on who pays the premium. As noted above, the District's health insurance burden is not out of the ordinary for comparable school districts¹, and the shift of premium costs through a dollar cap is supported by neither internal patterns nor external comparables.

The District's insurance proposal will address the problem of increasing insurance rates, insofar as the 80/20 co-payment feature and the rather innocuous pre-admission review and outpatient incentives are concerned. The record is not adequate to measure the impact of the change in psychological coverage. The switch from an 11/12ths contribution to dollar caps does not appear to be directed to the identified need, and in this respect the District's offer does not meet the test for changes in the status quo.

Assuming for the sake of this discussion that the co-payment plan addresses the insurance cost problem without imposing an undue hardship on the District's teachers,² there remains the question of whether a quid pro quo has been offered to

¹ No cost figures were made available for the private sector insurance plans.

² While I make this assumption for the sake of argument, the evidence shows no other group of teachers in the comparable districts exposed to the financial hardship inherent in a

the Association for this concession. The District argues that the quid pro quo consists of the salary settlement, several other aspects of the tentative agreements, and the offer to pay a dollar cap which will cover the projected cost of the premium in the second year of the contract.

The salary settlement will generate increases in both years of the contract which are comparable to those received by other area teachers who have not made such dramatic changes in their insurance coverage, and the lack of data on package costs and benefits in other school districts makes it difficult to assess exactly how much of the economic package might have been intended to buy out the insurance proposal. The retirement payout benefit stressed by the District would represent an increase of \$60 per year of service, or \$1200 for a retiring teacher with 20 years of service. This is a valuable benefit, but is the equivalent of one year's co-payment for a teacher with a family using the changed insurance. The valuing of a quid pro quo is difficult for a third party, but given the potential exposure of all members of the teaching staff, it is difficult to accept that the enhancement of the one time retirement payout would have been sufficient to achieve voluntary agreement on the insurance package during negotiations.

Turning to the District's specification of a dollar amount sufficient to cover the entire premium in the second year of the contract, the undersigned has already noted that this is a two-edged sword for the teachers. The District's proposal places the onus on the teachers to bargain an apportionment of increases, rather than having insurance costs automatically apportioned according to the traditional 11/12ths formula. The language limiting the premium contributions to the term of the contract would seem to place the risk of increases during a contract hiatus solely on the teaching staff. These are significant advantages for the District, and if the specification of a larger dollar amount is the quid pro quo for any change in the insurance, it would more likely be the payoff for accepting the demise of the percentage based cost sharing system than the co-payment plan. This conclusion is buttressed by the fact that AFSCME accepted the co-payment plan only after the District agreed to guarantee a minimum contribution of 95% of the premium --an

co-payment plan, and only two districts in eastern Wisconsin with such a plan, both of them the result of voluntary bargains.

improvement from the previous contract -- and substantially improved the psychological services coverage.

While any one element of the insurance offer might be justifiable in isolation, as the co-payments apparently were to AFSCME, taken as a whole they represent a radical and comprehensive change in the insurance benefits. Given the complete lack of support for the overall package among the comparable districts and public employers in general, the District bears a heavy burden of proving that they are suited to a peculiar need and might have been voluntarily accepted in successful bargaining with the Association. The District has not offered any explanation of how its proposal to add dollar caps will solve the problem of escalating insurance costs, and has not adequately identified the quid pro quo for its co-payment proposal, and has thus failed to meet its burden.

On the basis of the foregoing, and the record as whole, the undersigned makes the following

AWARD

The 1989-91 collective bargaining agreement shall incorporate the Final Offer of the Manitowoc Education Association, together with the stipulations reached in bargaining.

Signed this 27th day of June, 1990 at Racine, Wisconsin:

Daniel Nielsen, Arbitrator