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**WISCONSIN EMPLOYMENT
RELATIONS COMMISSION**

State of Wisconsin
Before the Interest Arbitrator

In the matter of the petition of

NEW HOLSTEIN SCHOOL DISTRICT

Daniel Nielsen, Arbitrator
Decision No. 26348-A

To Initiate Arbitration Between
Said Petitioner and

Appointment: 03/21/90
Public Hearing: 04/25/90
Hearing: 04/25/90
Record Closed: 06/11/90
Award: 08/11/90

**NEW HOLSTEIN EDUCATION
ASSOCIATION**

Appearances:

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

Wisconsin Association of School Boards, Inc., Post Office Box 160, Winneconne, WI 54986 by Mr. William Bracken, Director of Employee Relations, appearing on behalf of the New Holstein School District.

ARBITRATION AWARD

On March 21, 1990 the undersigned was appointed as interest arbitrator pursuant to Section 111.70, MERA to resolve an impasse in negotiation over a contract for the 1989-90 and 1990-91 school years between the New Holstein School District (hereinafter referred to as either the District or the Board) and the New Holstein Education Association (hereinafter referred to as the Association) over wages and health insurance for all fulltime and regular part-time teaching personnel of the District. On April 25th, the undersigned conducted a public hearing, mediation and evidentiary hearing at the District offices in New Holstein, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The parties submitted post hearing briefs and reply briefs, and the record was closed on June 11, 1990.

Now having considered the evidence, the arguments of the parties, the statutory criteria, and the record as a whole, the undersigned makes the following Award.

I. The Final Offers

The final offer of the Association proposes to modify the predecessor contract by incorporating the tentative agreements reached in bargaining, and by increasing the salaries by 4.5% per cell in each year of the contract, yielding a BA Base of \$19,757 in 1989-90 and \$20,646 in 1990-91.

The final offer of the District proposes to modify the predecessor agreement by incorporating the tentative agreements reached in bargaining, and by increasing wages in 1989-90 by an average of \$1700 per teacher, applied to the salary schedule on a dollar per cell basis, with a BA Base of \$20,121. In 1990-91 wages would increase by an average of \$1800 per teacher, applied to the salary schedule on a percent per cell basis, with the Base rising to \$21,016. The District would also amend the health insurance provisions of the collective bargaining agreement by adding:

"Teachers shall have an amount of money deducted from their paychecks to cover the cost of the heart, liver, heart/lung transplants benefits. Effective with July 1, 1990, the District will pay the remaining 95% of a single or family 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 employes 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 of the criteria is not discussed in detail, each has been considered in arriving at the Award.

III. Arguments of the Parties

A. The Position of the District

The Board takes the position that this case turns on a simple analysis of the comparable settlements. The Board's position is more consistent with the settlement pattern, and the trend of settlements. The Board's offer is also preferable because it maintains the status quo by alternating a "dollar per cell" with a "percent per cell" system for distributing salary increases, more closely reflects the points of comparison to the other area settlements, and because the Association's attempt to gain a salary settlement out of line with other Districts where full insurance is provided.

The Board alone has provided total package costs, and those calculations must therefore be accepted:

		<u>Salary Only</u>		<u>Total Package</u>	
		<u>\$ per</u>	<u>%</u>	<u>\$ per</u>	<u>%</u>
1989-90	Board	\$1,700	5.8%	\$2,707	6.9%
	Assoc	\$1,826	6.2%	\$2,859	7.2%
1990-91	Board	\$1,804	5.8%	\$2,765	6.5%
	Assoc	\$1,847	5.9%	\$2,957	7.0%
1990-91 Using actual rather than estimated dental ins. rates:	Board			\$2,781	6.5%
	Assoc			\$2,973	7.0%

These total packages compare with total package settlements in comparable districts in the athletic conference of:

Kewaskum - \$3,136 per returning teacher / 7.4% increase over 1989-90
 Sheboygan Falls - \$2,970 / 7.4% Two Rivers- \$2,697 / 6.4%

The Board urges that these three comparables be carefully analyzed, since the conditions underlying these settlements bear on the weight each should be accorded. Two Rivers is particularly instructive. Arbitrator Leonard Bessman's Two Rivers award establishes that the going rate for teacher salary increases where the final offer includes 100% payment of health insurance is \$1600 per year. The Association in this case has steadfastly refused to make any concession on insurance, demanding

100% payment. Given this, the Board has no incentive to pay the teachers \$475 more over the term of the contract than their colleagues in Two Rivers.

The Board urges that the Kewaskum settlement be accorded less weight in this proceeding, noting that it is the southern-most district in the athletic conference, being located in Washington County, in the sphere of urban Milwaukee County. Arbitrators in Kewaskum have used a variety of comparables, including sets which completely exclude New Holstein. This highlights the distinctions between the two districts, with New Holstein being a rurally oriented school system and Kewaskum being a suburban wage leader. The Board does note that an insurance concession was part of the relatively high settlement in Kewaskum.

The Sheboygan Falls Award by Arbitrator Oestreicher disfavors the Board's offer in its result, but the rationale for the award is helpful to the Board's position. The arbitrator accepted the Sheboygan Falls Board's position demanding a 5% concession on insurance in each year of the contract. He rejected, however, the Board's relatively low \$1640 salary only increase in each year. The Board in this case seeks a 5% change in insurance only in the second year of the contract, having fully paid the insurance in the first year. Furthermore, the Board has offered appreciably more salary money to its faculty than did the Board in Sheboygan Falls.

While the Association has proposed to use comparables beyond the athletic conference, the Board argues that the comparables for New Holstein are well established and should not be disturbed. Arbitrators Chatman and Yaffe both rejected prior efforts to look beyond the athletic conference, even though in Yaffe's case there was only one settlement in the conference. The Union's attempt to use geographically proximate districts rather than established comparables is an approach that flies in the face of the general policy favoring stability in labor relations. The Board notes that data is available for three of the seven comparable districts in the athletic conference and there is no need for searching out additional comparables. Even if the number of settlements is insufficient to establish a pattern under the public sector comparability criterion, the answer, the Board asserts, is to rely upon the other statutory criteria.

Turning to the substance of the dispute over salary structure, the Board urges the Arbitrator to reject the Association's effort to change the status quo. The parties

voluntarily agreed in the last contract to freeze advancement over the two years and apply a dollar per cell increase in the first year and a percentage increase in the second. This represents the status quo, and is a pattern the Board paid dearly to achieve. By alternating dollars per cell and percent per cell, the Board insures that the base salaries do not suffer nearly as much erosion as they would under a flat percent per cell approach. This balances the needs of experienced teachers, who benefit from a percent per cell approach, with the needs of beginning teachers, who do better under a dollar per cell distribution. The long term implications of the Association's offer are disastrous for a Board, such as the New Holstein Board, which has the need to regularly hire inexperienced teachers.

Since the Association is seeking to change the status quo on distribution of salary increase, the Board argues that it bears the burden of proving a need for the change and demonstrate that a quid pro quo has been offered to buyout the change. There can be no compelling need to change a system voluntarily agreed upon only one contract ago, and there is no evidence whatsoever of a quid pro quo for the requested change. Thus the Board's offer on the structure of the schedule should be favored.

The Board argues that the offers on amount of increase are roughly equal when compared with the existing trend, with the Board falling \$102 below the salary average over the two years of the contract, and the Association exceeding the average by \$65. The Board points out that the average is the product of only three settlements, and will likely decrease as more settlements are recorded. The salary settlements in New Holstein over the past three years have exceeded the average of the comparables by a total of \$391, and the Boards' slightly below average offer over this contract must be viewed in this light.

The advantage of the Board's position is dramatically illustrated when benchmark increases are compared. In the first year of the contract, the Board's offer more nearly reflects the average benchmark increase at three of the seven benchmarks. In the second year, however, the Board's offer is superior to the Association's a five of seven. deviating further from the average at only the MA Maximum and the Schedule Maximum. This advantage is heightened when one considers the fact that the benchmark rankings of the District have steadily improved over the past three years, from an average of 6.14 in the conference in 1986-87 to 5.00 in 1988-89.

Six of the seven benchmarks have improved by either one or two places during that time, and the MA Base has maintained its position. The benchmark rankings will remain relatively unchanged in 1989-90 under either party's offer. While the District is below average at each benchmark, the conference salaries are tightly bunched, and as a practical matter not every district can be above average. The benchmarks most in need of attention are the base salaries, which is where the District has attempted to direct its salary money. The weakness of the salary schedule at the benchmarks is ameliorated somewhat, the Board argues, by the fact that it contains ten educational lanes, the most of any conference school. The Board also points out that the District has the second highest average salary in the conference.

The Board draws the Arbitrator's attention to the data showing that pay increases for workers across the state of Wisconsin averaged 4.5% in 1988 and between 5% and 5.3% in 1989. Major collective bargaining agreements settled in 1989 yielded average wage increases of 4% for that year. Contrasted with these increases, the 5.8% wage offer of the Board is generous indeed, exceeding settlements in the private sector, public sector and internal comparables. The Board's offer also comes in well in excess of the cost of living, a separate criterion under the statute, and one which the Board demands be given independent weight in this proceeding.

A review of the overall compensation received by New Holstein teachers demonstrates that the faculty is well compensated, with a fringe benefit package described by Arbitrator Yaffe as "...at the minimum, competitive, and superior in some respects in that it contains a severance pay benefit..." as well as a good longevity feature. The severance pay benefit has generated a total of \$577 per teacher since 1982-83, when spread across the entire unit. In 1989-90, the District paid out an average of \$153 per teacher, for a total of \$14,709 in severance benefits. This is \$160 more than the entire difference between the parties' offers for that year. The Board also notes that the maximum severance benefit of \$7200 is vastly more generous than the maximum in other districts. If the severance benefit is appropriately weighed at \$153 per year and the \$88 per year in higher dental insurance rates are factored in, the Board's offer is clearly the more reasonable in this proceeding. The Board urges the Arbitrator to reject a narrow "wages only" approach to this case, and accept the reasoning of other arbitrators who have stressed the importance of considering overall compensation costs. This is

particularly appropriate in these times when many disputes are driven by insurance costs rather than wages.

The Board argues that the interests and welfare of the public will be best served by selection of the employer's final offer. DPI studies show that there is no teacher shortage looming, and the laws of supply and demand suggest that a lower salary is called for. The Association has shown no evidence that the District cannot retain qualified staff members with the current level of wages, and of the six teachers leaving in the past two year, five have retired and one was encouraged to leave. As for the Association's suggestion that the farm economy is booming, the District points out that the disastrous drought is still being felt, as noted by the University Extension's report concluding "...at the end of the decade, Wisconsin farmers as a whole were in a substantially weaker financial condition than they were at the beginning." The Board also points out that Arbitrator Chatman rejected, in a prior arbitration, the Board's concerns over the dismal economy. Consistency demand that the current arbitrator not use an improving economy as a factor supporting the Association.

The tax climate cannot be ignored, and the need for property tax relief is a major political issue. Wisconsin has the largest gap between state and local tax effort, which is the 3rd largest in the U.S., and tax capacity, which is 14% below the U.S. average. This problem is especially acute in rural areas, where per capita income lags, farm values have fallen, and unemployment exceeds that in urban areas. Collective bargaining does not exist in a vacuum and the arbitrator should consider economic and political realities in shaping his award.

Health insurance is the major issue in dispute, with the Board seeking a relatively modest change in the second year of the contract. The issue of insurance is essentially an economic one, with the central question being how much money can be devoted to salaries and how much to insurance. By seeking a 5% contribution to insurance in the second year, the Board is attempting to achieve a rational balance between the two components of the compensation package. In two of the three comparable districts, the Boards also sought to strike some balance between these two elements. In Kewaskum, the arbitrator accepted the school board's reasoning on insurance, but rejected its wage proposal. In Sheboygan Falls, the school board proposed a much smaller wage increase than has the New Holstein Board (\$210 less

over the two years of the contract) and sought a 5% concession in both contract years. By contrast, the Board here has made a reasonable wage offer, and seeks only a 5% concession in the second year of the contract.

Health insurance costs have sky rocketed in recent years, rising by 85.4% between the 1986-87 school year and the 1990-91 school year. The absolute costs of insurance in New Holstein are the second highest in the conference, costing \$157 more per year for family coverage than the conference average (excluding the anomalous Kewaskum figures). Just as the Association seeks comparability in wages, the Board seeks comparability in insurance costs.

Employers across the nation and in Wisconsin all face the same problems with soaring health care costs, and are uniformly seeking to either share costs, cut benefits, adopt managed care systems and/or install wellness programs. The Board does not seek to reduce benefits, but does reasonably ask for some employee involvement in paying for the current system.

The Board recognizes that it seeks a change in the status quo, and thus has a burden to show a need for the change, that the change is reasonable and that there is some *quid pro quo* for the change. The Board stresses, however, that the change is not substantial, since the parties have already agreed that employees will pay some share of health care costs, in that employees pay a modest monthly sum for organ transplant coverage.

The enormous increase in premiums over recent years has been recognized by arbitrators in area districts as evidence of a need for change. In particular, the arbitrator in Sheboygan Falls expressly found employee contributions were good public policy, since they addressed the cost issue without reducing benefits. The Board's proposal will demand a contribution of only \$229 per year from teachers with family coverage, hardly an unreasonable demand in light of the \$32,803 average salary under the Board's offer in 1990-91.

The Board does not believe that a quid pro quo is absolutely required in the case of health insurance changes, since the rapidly escalating costs present changed circumstances and reality dictates a change whether it is accompanied by a quid pro quo or not. The Board, however, has offered a quid pro quo, by building in a

higher salary increase in 1990-91 when the insurance change will take effect than has been offered in 1989-90. The Two Rivers award establishes the reasonable salary increase for maintaining full insurance at \$100 less than the Board's offer in the first year of the contract and \$200 less in the second year. The \$300 by which the New Holstein offer exceeds the Two Rivers settlement is a substantial quid pro quo, particularly when viewed in the context of the already outstanding fringe benefit package.

A modest shift in costs will drive home to employees exactly how expensive insurance is and give them a stake in controlling usage and eliminating unnecessary coverage. The only possible route to a solution of the health care dilemma, the Board argues, is for a partnership to be forged between the employer and the employees. Shared ownership of the insurance plan is the ideal means of bringing about a shared commitment to finding ways of containing costs.

The Board's position finds substantial support among private sector firms, which as previously noted are taking a variety of steps to contain insurance costs, including cost sharing. These private sector figures are significant, since there is no valid reason for limiting fringe benefit comparisons to a teacher to teacher basis. 75% of local firms surveyed by the Board require a contribution to family health coverage, as did 66% of the medium to large firms in a recent Bureau of Labor Statistics survey. Even in the public sector, the Board notes that 42% of all public school teachers make contributions to family health insurance. This figure increases to 60% if only the schools in CESA #7 are considered. These figures reflect, or are reflected, in arbitral thinking on health care cost sharing. Many arbitrators have accepted the notion that sharing in the premium is a reasonable response to escalating costs, and is preferable to cuts in benefits.

The Board urges the arbitrator to reject the national policy studies proffered by the Association as proof of a need for higher teachers' salaries. These studies point to many structural problems in education, and arbitrators have been reluctant to award exorbitant increases based upon them since salary increases bring no accompanying changes in the structure of education, and because the policy concerns raised by the studies are better addressed on the state and federal level.

Finally, the Board contends that Association comparisons with non-teaching professionals are fatally flawed because they take no account of the twelve month work year for such professions.

For all of the foregoing reasons, the District asks that its final offer be adopted in this proceeding.

B. The Position of the Association

The Association takes the position that its final offer is the more reasonable under the statutory criteria and should be adopted. Initially the Association argues that the schools of the Eastern Wisconsin Athletic Conference are the appropriate primary comparables for this district. Given that there are but three settlements within the conference, and only one the result of a voluntary agreement, the Association proposes that geographically proximate school districts of roughly the same size be considered as secondary comparables. This is appropriate given the 1986 change in the statute, broadening the scope of the comparability criteria for similar employees by deleting the requirement that the comparisons be drawn only among "comparable communities." The Association also urges that some consideration be given to statewide comparisons.

Analyzing its position in light of the statutory criteria, the Association first notes that neither the lawful authority of the municipal employer nor the stipulations of the parties are in issue. With respect to criterion "c", the interest and welfare of the public are best served, the Association submits, when teacher morale contributes to a high quality school system. Morale is directly tied to compensation, and the District here proposes to reduce the insurance benefit for teachers who already lag behind the conference average at six of the seven benchmarks. Given that the employer plainly has the ability to pay the increases sought by the Association, its refusal to settle must flow from an unwillingness to pay. This unwillingness, however, has no basis in economic reality. As noted, the teachers are paid below the average. The District pays \$2,717 per pupil for compensation costs, while the state average is \$125 above that figure. The District ranks 299th in the state in comparison cost per pupil and has not overstretched its taxpayers in order to pay educational costs.

The Association points to national studies such as A Nation Prepared, Time for Results and Beyond the Commission Report which have concluded that one major

factor behind declining educational quality is low pay for teachers, and teaching's resultant unattractiveness as a profession. The long term public interest in improving the status of the teaching profession should outweigh any short term desire to hold down school costs.

Turning to criterion "d", the Association asserts that its offer most closely reflects the increases realized by other area teachers. The average salary increase in the athletic conference is \$1782, or 6.15%, in 1989-90, and \$1825, or 5.93% in 1990-91. The Association's offer seeks increases of \$1822, or 6.20%, and \$1825, or 5.90% in the two years of the contract. The Board offer would provide salary increases of \$1700 in 1989-90 and \$1804 in 1990-91, or 5.80% in both years. Area district comparisons, beyond the athletic conference, show even greater support for the Association's offer, with the average increases being \$1799 (6.29%) in 1989-90 and \$1911 (6.02%) in 1990-91. Finally, the state averages support the Association. The average for all settled schools shows a first year increase of \$1766 and a second year increase of \$1862. For districts of similar size, the state average is \$1748 and \$1846 across the contract. By comparison with any comparable group, the Association's offer is preferable.

A Benchmark analysis also highlights the favorable offer of the Association. The District's teachers are wage followers, falling below the average at all but the BA Maximum. The parties offers deviate from average increases in the three settled districts as follows:

1989-90 Differences from the Average		
<u>Benchmark</u>	<u>Association</u>	<u>District</u>
BA Minimum	\$ - 138	+ 226
BA Step 7	\$ + 389	+ 522
BA Maximum	\$ + 726	+ 636
MA Minimum	\$ -1307	- 972
MA Step 10	\$ -1064	-1088
MA Maximum	\$ - 799	-1006
Schedule Maximum	\$ - 2231	-2462

1990-91 Differences from the Average		
<u>Benchmark</u>	<u>Association</u>	<u>District</u>
BA Minimum	\$ + 50	+ 420
BA Step 7	\$ + 651	+ 778
BA Maximum	\$ +1037	+ 928
MA Minimum	\$ - 1145	- 805
MA Step 10	\$ - 1120	-1159
MA Maximum	\$ - 925	-1158
Schedule Maximum	\$ - 2894	-3152

In each year, the Association's offer is closer at five of the seven benchmarks.

Looking at the health insurance plans in comparable districts, the Association contends that the premiums in New Holstein in 1988-89 were 14¢ per month higher than average for family coverage and \$1.47 per month lower for single coverage. In 1989-90, the rates are \$2.99 per month below average for family coverage and \$3.37 per month lower than average for single coverage. Furthermore, six of the seven conference schools paid 100% of the cost in 1988-89. While the Kewaskum teachers have accepted a 3.5% co-payment in the current bargain, they received a significant package of concessions from their Board for that change, including an IRS Section 125 Plan, a revised index, and new language relating to retiree health insurance. No such quid pro quo is evident in New Holstein, where teachers will already pay the cost of their transplant benefit and thus share in the insurance premium.

The Association strongly discourages any effort to draw comparisons between the faculty and non-teachers, citing arbitral precedent for the proposition that such comparisons are not valid because of the significantly different labor markets and working conditions. Non-teaching employees, whether in the public sector or the private sector, are not persuasive comparisons when adequate information exists to determine the labor market for teachers under criterion "d".

The cost of living has traditionally been viewed as a criterion whose appropriate weight is best measured by the rate of increase in other school board-teacher agreements. The same should hold true in this case. The Association notes that, whatever the cost of living, the teachers have lost a significant portion of the benefits of any pay raise because they have been denied the use of any monies generated by the raise for the entire 1989-90 school year.

The Association cautions against any reliance on overall compensation levels, since different school districts have vastly different benefit packages and it is difficult to get meaningful information for comparisons. The comparisons drawn by the District in its exhibits, for example, might potentially be skewed by inclusion of summer school, curriculum pay and extended guidance contracts. It is impossible to be sure that the comparisons are between like things. Such figures can also be distorted by the age and educational attainments of the faculty in the various schools.

The Association places particular emphasis on the "other traditional factors criterion", since it bears on the employer's failure to justify its proposed change in the status quo as it relates to insurance. The status quo is the full payment of health insurance, with the exception of transplant coverage. This is consistent with six of the seven districts in the athletic conference. Arbitrators must tread cautiously when dealing with requests for changes in status quo items, to avoid granting parties through arbitration what they could never have received in bargaining. The burden rests with the employer to prove that there is a compelling need for the requested change and demonstrate that a quid pro quo has been extended to the Association. In this case, the District has satisfied none of the conditions precedent to a change in the status quo. The District's rates are below those in comparable districts, and it has offered the teachers nothing in return for a change in the current full payment system. The shifting of costs will do nothing to contain costs, and if the Board seriously wishes to achieve some measure of cost containment, it should do so at the bargaining table rather than through arbitration.

For all of the foregoing reasons, the Association asks that its offer be accepted by the Arbitrator.

C. The District's Reply Brief

The Board reiterates its position that the three settlements within the Eastern Wisconsin Athletic Conference are a sufficient basis for the decision in this case, and that there is no need to look beyond the conference to the Association's proposed secondary comparables.

Responding to the Association's suggestion that its offer was necessary to maintain teacher morale, the Board argues first that there was no evidence presented on the

morale of the teachers and, second, that the morale of the District's taxpayers should be at least as important in this proceeding.

The Board concurs with the Association's calculations of the settlement pattern, and argues that it merely confirms that there is little difference between the offers. It notes, however, that the Association's benchmark calculations are somewhat suspect, as it has included New Holstein in the averages, and because the comparisons it draws across years show all conference schools in 1988-89, and only the three settled schools in 1989-90 and 1990-91. The Board urges the Arbitrator to ignore the comparison figures drawn from schools outside of the conference.

The Association's health insurance data is obviously dated. The 1989-90 rates show New Holstein to be above average, again excluding the anomalous Kewaskum premium. The Board takes issue with the Association's characterization of the status quo for insurance co-payments. In 1990-91, New Holstein teachers will be joined by their colleagues in Plymouth and Kewaskum in paying a portion of the health care costs. In Plymouth and New Holstein, even though unsettled, the organ transplant portion of the premium will be paid by teachers. The pattern for requiring a cost sharing system favors the Board. As for the Association's claim that there is no quid pro quo, the Board reminds the Arbitrator that the Two Rivers settlement establishes a much lower salary pattern for teachers wishing to retain fully paid health insurance, and repeats its calculation of a \$300 excess in its salary offer to buyout the insurance provision.

The Board acknowledges the Association's point in asking that teacher-to-teacher comparisons be drawn on wages, but notes that the same does not apply to insurance and other fringe benefits.

Again, the Board argues that changes in the CPI are statutorily entitled to weight as a separate criterion and should not be watered down by the comparability criterion. As for the Association's complaint that employees have gone without a wage increase for a long period of time, the Board concedes that arbitration is a lengthy process but avers that it cannot be held responsible for that fact of life. Teachers in New Holstein did, the Board notes, receive their experience increments for 1989-90, and thus have received a portion of the wage package.

The Association is correct in observing that the experience and educational levels of staff affect total compensation figures, and that there are some variances in how complete the total compensation information is from district to district. The Board's figures are, however, the best information available on this criterion and the Association was given full opportunity to present evidence on this point if it wished. Having failed to do so, it must accept the Board's figures.

As to the Association's claim that no case has been made for a change in the health insurance status quo, the Board again cites the dramatically increased costs of this benefit (314% over ten years), the educational value of cost sharing in driving home to employees how expensive insurance really is, the potential savings that may be realized by the District; the resultant willingness of the Association to entertain cost containment measures, and the fact that it is the prevailing practice in the nation to share costs. As to the Association complaints about the lack of a quid pro quo, the Board points to the salary offer and the existing benefits. In this connection, the Board inquires about the whereabouts of the quid pro quo for the Association's salary offer.

D. The Association's Reply Brief

The Association challenges the Board's recalculation of the total package costs based upon its arbitrary assumptions regarding insurance increases among the comparables. The Board's assumed 22% increase in the insurance consortium cannot be applied across the conference because two of the schools are not members of the consortium. These insurance figures appear nowhere in the record, and are not real.

The District's desire to downgrade the voluntary settlement in Kewaskum and exalt the arbitration award in Two Rivers is a transparent attempt to pick and choose among the comparables, excluding the salary settlement which is unfavorable and emphasizing the award which results in a lower salary. The Board wishes to obscure the fact that Two Rivers and Sheboygan Falls will maintain their fully paid insurance in 1990-91 and that Kewaskum achieved significantly higher salaries than the Board is offering.

The District's claim that the Association is somehow seeking to change the status quo with its percent per cell approach to salary distribution is without merit. One voluntary agreement does not a status quo make. Arbitrators have treated the means by which salary dollars are distributed as simply devices for delivering the increases, rather than continuing conditions of employment which may bind the parties to the devices in the future. The cases cited by the District are not on point, as they do not treat a percent per cell approach as a structure change.

The Board's claim to have a superior salary offer in comparison to other settled districts are simply absurd. The Board's own data shows that the increases proposed by the Association are more reflective of the settlement pattern. Again the Association's offer is closer to the benchmark increases in terms of both dollars and percentages. As for the claim that New Holstein has the second highest average salary in the conference, this is due to the very experienced faculty, not to some inherent generosity in the salary schedule.

The Board's claims with respect to severance pay are fatally flawed, since they seek to credit the wage package with the value of the payout, but do not take into account the salary savings realized by the District when it replaces an experienced teacher with a new teacher. The Association repeats its warning about attempts to use total compensation figures for comparisons, citing their unreliability.

The Arbitrator should discount the Board's arguments regarding economic conditions in rural Wisconsin, since this district is not primarily rural. Further, the District overstates the difficulties faced by farmers by ignoring the government assistance programs, the improving farm economy, and the fact that the effects of the recent drought are now diminishing.

The Board's health insurance arguments overlook the pattern of settlements. Two of the three settled districts will continue to fully pay the health insurance in 1990-91, and the teachers in the third received handsome benefits in other areas in return for a smaller co-payment than the Board seeks to obtain without any quid pro quo whatsoever. As for the Districts claim that a national pattern is emerging, the Association questions this proposition, and asks why the Board is so eager to expand the basis for comparison on insurance, while so eager to restrict it on salary.

The Board, the Association submits, is engaging in comparability shopping on the insurance issue.

IV. Discussion

A. Comparables

The historic comparables for this District are the other schools of the Eastern Wisconsin Athletic Conference, and the statewide policy favoring stability in labor relations dictates that the historic reliance on these districts be given deference. I have previously had occasion to discuss comparability and the effect of the statutory change:

"As the Association correctly notes, the statutory changes in MERA evince a legislative intent to broaden the comparisons between like employees that might be drawn in interest arbitration proceedings. The change in criterion "d", however, must be read in a manner consistent with the overall purpose of the statute, which is to promote "voluntary settlement through the procedures of collective bargaining."¹ A necessary element of successful bargaining is predictability, which in turn requires stability in the set of schools to which one looks for guidance in negotiations. Resolving the apparent tension between the legislative mandate to broaden the comparability groupings and the practical need for well-defined points of reference requires that arbitrators realistically weigh the likely impact of a settlement on the bargaining decisions of the parties.²

"In determining the persuasive weight of a settlement, the most important consideration is whether the parties themselves have

¹ Section 111.70(6), MERA: "(6) DECLARATION OF POLICY. The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employees' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and, above all, peaceful procedure for settlement as provided in this subchapter." (Footnote from Marathon City Schools Award)

² In this, the undersigned agrees with the District that the principles of comparability developed over the years are not completely eliminated by the 1985 amendments. The more realistic view of the statute is that, with apologies to George Orwell, all of the comparisons are equal, but some are more equal than others. (Footnote from Marathon City Schools Award)

expressly relied upon the cited district in the past. Where the parties have historically maintained some relationship between their bargain and that struck in another municipality, an arbitrator must respect that relationship as the most reliable guide to what the outcome of successful bargaining would have been. The use of historical comparables best meets the expectations of the parties to the arbitration..." Marathon City Schools, Dec. No. 25800-A (6/19/89)

Arbitrator Chatman has established the athletic conference schools as the appropriate comparables,³ and this is consistent with widespread practice in Wisconsin. There is no evidence that the parties have ever relied upon the collection of schools proposed as secondary comparables by the Association, nor used statewide averages in striking their voluntary bargains. While the statute requires some consideration of this data, the weight assigned to it is minimal given the availability of settlement information from conference schools. Any other approach compromises the integrity of the collective bargaining process.

B. Salary Schedule

Comparisons with the average conference salary increases in dollars per returning teacher support the Association's proposal, but it is closer to the average by only \$36 in the first year and \$1 in the second year. The Board's offer yields 97.2% of the average increase in the conference over the two years, while the Association would realize 101.8% of the average under its offer. Given that only three settlements have been realized, it is difficult to predict the final benchmark rankings, but it does not appear that selection of either offer will appreciably change the rank of the New Holstein faculty. Comparisons with the amount of salary increases gained by other teachers in the athletic conference yields a slight preference for the Association's proposal.

Balanced against the slight advantage enjoyed by the Association when the amount of salary increase is considered is the preference given to the method advanced by the Board for distributing salary dollars in the two year contract. While the undersigned does not agree with the Board that the last bargain established a status

³ New Holstein School District, Dec. No. 23920 (Chatman, 3/12/87) at page 5.

... Quo system of alternating dollars per cell with percent per cell increases,⁴ the predecessor contract does show that this system is acceptable to the parties in a voluntary agreement rather than being some radical departure from the norm. Looking at the practical effect of each offer, by alternating between the dollars per cell and percent per cell systems, the District's offer addresses a genuine need to raise the base salaries in the District, which are the weakest points in the benchmarks and benefit from a dollars per cell approach, while showing sensitivity to the concerns of experienced teachers who benefit more from a percentage approach. The Association's offer ignores the weakness of the base salaries.

Consideration of other factors bearing on the salary issue beyond comparisons with other teachers is not conclusive. The CPI data is favorable to the District, but the weight accorded this factor is generally assumed to be determined by the settlements in comparable districts, where the bargainers have already weighed the identical information in arriving at their salary figures. Neither party presents any compelling arguments related to the interests and welfare of the public. The need to control property taxes is no more acute in New Holstein than in other districts, and the same can be said for the national desire to upgrade the status of the teaching profession.

The total compensation arguments of the Board are supported in the record to the extent that reliable data is available for comparison purposes. As the Board candidly concedes in its reply brief, however, there is some difficulty in determining exactly what the total package calculations from other conference schools include, and the Board's request for credit for the severance benefit on a dollar for dollar basis does, as the Association argues, allow it credit for the cost of turnover without taking into account the savings realized by replacing experienced staff with inexperienced staff. With these caveats, the undersigned does find some support for the Board's offer when total compensation is weighed.

The wage offers are quite evenly balanced. On the whole, the undersigned believes that the wage offer of the Board should be slightly preferred, given that the structure of the wage proposal continues the process begun in the last voluntary agreement of

⁴ In this regard, the Arbitrator agrees with the Association that the Board's claim to have "paid dearly" to obtain this approach in the last contract is not supported by any evidence in the record.

strengthening the base salaries without imposing an undue hardship on the experienced teaching staff.

C. Health Insurance

The Board seeks a 5% co-payment on the health insurance premiums in the second year, and acknowledges that it bears the burden of proof in changing the status quo. In opposing the change, the Association relies primarily upon the fact that no change has been realized in any of the comparable districts save Kewaskum, where a heavy price was paid by the Board in order to entice the teachers into accepting a 3.5% contribution.

The evidence in support of the need for some change is the 22.1% increase in rates for 1990-91, which continues a pattern of dramatic increases over the past decade. The Board is quite right to be concerned over the rise in insurance costs, as well as the Association's apparent reluctance to take even modest steps to address the problem.⁵ The rate of increase in health insurance costs, and the absence of any obvious terminal point to insurance increases, justifies some attempt to deal with the issue in negotiations, and the undersigned is satisfied with the Board's showing of need.

The Board relies heavily on data showing that other employers have introduced a variety of plans designed to control insurance costs, many of them featuring premium cost sharing. The Board cites, in particular, the growing acceptance of such plans in CESA #7 schools, and across the state's school districts as a whole. The Association has a legitimate complaint about the Board's reluctance to use non-athletic conference teacher data for comparing salaries, while showing enthusiasm for such figures when discussing insurance. The undersigned believes that the principles which restrict arbitration comparables to those used in bargaining should apply with equal vigor to insurance questions as to wage questions. Contrary to the

⁵ The record demonstrates that the Board proposed a pre-certification review feature in this round of negotiations, and the Association rejected it because the package in which it was put forward did not contain a sufficient monetary incentive for acceptance. Second guessing bargaining decisions is a chancy proposition at best, and the undersigned is reluctant to criticize the tactical judgments made in the course of negotiations. Acceptance of the relatively innocuous Board proposal would, however, have demonstrated some greater level of sensitivity to health insurance issues than is shown on the record as it now stands.

Board's argument regarding teacher comparables, criterion "d" of the statute lends substantial although not uniform support to the Association's status quo position on insurance. Only in Kewaskum have conference teachers assumed the burden of paying a portion of the health insurance costs.⁶ While Arbitrator Oestreicher in Sheboygan Falls nodded in the direction of the Board's 5% co-payment proposal by finding it good public policy, he further noted that:

"...the question of whether employees should be required to contribute to the cost of that benefit, for the purpose of this proceeding, cannot be based upon this arbitrator's opinion of what constitutes good public policy." Dec. No. 26201, at page 27.

He then proceeded to select the Association offer on the basis of its effect on overall compensation.

The Association, for its part, misses the mark in suggesting that the Board's data on health insurance plans in non-education settings should be disregarded. As the undersigned has noted in a recent decision addressing this issue, there is a legitimate difference between wage issues and insurance issues:

"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."
Manitowoc Schools, Dec. No. 26263-A (6/27/90) at page 15.

There is no discernable reason to treat health insurance issues for teachers and school boards any differently than health insurance issues for any other set of

⁶ This observation excludes, of course, the Plymouth and New Holstein arrangements on transplant coverage. While an argument can be made that this establishes the general principle of cost sharing, the fact is that both plans restrict the cost sharing to a specific insurance benefit, and it is a far cry from this very limited arrangement to the District's claim that these stand for an emerging conference pattern of sharing the overall premium.

employers and workers. The District's data, while somewhat anecdotal and general, persuasively demonstrates that health insurance premium co-payments are a common feature for many non-teacher public sector and private sector insurance plans. The data does not, however, indicate whether these co-payments have been bargained with employees, nor whether they are recent responses to health insurance costs or long standing plan features. The advantage enjoyed by the District in comparisons under criterion "e" and "f" is somewhat diminished by these limitations in its data.

The District has proven a need for some change in the insurance area, and finds some support among other relevant employers. As to whether the proposed change is a reasonable response to the perceived need which does not impose an undue hardship on employees, the undersigned is in general agreement with those arbitrators who have expressed a preference for cost sharing schemes over benefit reductions. Where the parties have recourse to an arbitrator to resolve disputes over insurance, the arbitrator should strongly prefer to avoid imposing coverage changes, outside of relatively minor cost containment changes such as mandatory second opinions, hospice care, and the like. To the extent possible, the outcome in arbitration should reflect the likely outcomes of bargaining. An arbitrator can be far more confident in assigning costs in the context of an overall economic package than he can be in judging whether the parties might conceivably have agreed to changes in the scope of their insurance coverage. The cost sharing proposal of the employer does nothing to contain overall insurance costs, but is a reasonable response to the District's problem of being solely responsible for the cost of a shared problem. Whether it imposes an undue hardship is something of a question of taste. Any response other than the status quo will work a hardship on employees. Given the District's perceived need to respond in some way, assigning 5% of the cost to employees is perhaps the lowest level of hardship that could be imposed. It still leaves the District paying the full cost of insurance from 1989-90 plus approximately 72% of the increase for 1990-91.

There remains the question, however, of whether a quid pro quo has been offered to compensate for the change in the insurance provisions. The District questions whether a quid pro quo should be required for this change, since the increase in premiums is itself a change in the status quo. The District is correct in the sense that the cost of the benefit has changed, but that is true of every other district in the seven comparables as well, including the six where no change in the practice of full

employer payment has occurred. By proposing a 5% co-payment, the Board is doing more simply seeking credit for its increased insurance cost in the overall economic package. The bargaining process, as noted, is intended to be the model for the arbitration process. It is usually a very poor reflection, but some basic assumptions do carry over, among them the notion that a concession on current and future allocations of insurance costs is unlikely to happen unless there is some other element of the bargain which prompts agreement.

The Board asserts that the quid pro quo for its insurance proposal is built into the wage offer it has made, which is higher in the second year than in the first. In this regard, the Board asserts that the going rate for wage settlements where no concession is sought on insurance is established by Arbitrator Bessman's Two Rivers decision, and that all of the Board's salary money in excess of the the Two Rivers award (amounting to \$304 over the two years of the contract) may be considered the quid pro quo. The undersigned has some difficulty in reading the Two Rivers award in the same manner as the Board. Bessman makes no reference to insurance costs in his award, relying instead on salary settlements in Brillion and Valders, two non-conference schools, as the basis for selecting the employer offer. It is at least as fair to say that the quid pro quo for an insurance buyout is defined by the Kewaskum salary settlement -- \$1850 and \$1975 -- as it is to try to use Two Rivers as the benchmark. In Kewaskum, at least, the issue of co-payments was actually dealt with and resolved, at a higher cost than the District seeks to pay and with a smaller concession than the District seeks to obtain.

The District has identified a legitimate need for change in the area of insurance, and has proposed language which reasonably addresses that need. The absence of a quid pro quo for the requested 5% co-payment, however, persuades the undersigned that the Association's position on insurance should be preferred in this proceeding. The Association fails to address the problem in any way, and in preferring the Association offer the undersigned does not suggest that its position is reasonable. It is simply less unreasonable than the position taken by the Board.

V. Conclusion

The Board's wage offered is slightly below average, but directs money to the weakest points of the schedule without unduly penalizing experienced teachers, and is preferred for that reason. The Board's insurance proposal represents one reasonable response to rapidly rising health care costs, but does not contain the element of a quid pro quo that would be necessary to obtain the concession in bargaining. The Association's offer addresses neither the insurance problem nor the weakness of the base salaries.

This is a very close case, with neither offer being clearly favored under the statute. On the whole, the undersigned finds that the final offer of the Board is preferable, because it reasonably attempts to address several problems in the collective bargaining relationship, while the Association's offer takes no responsibility for solving these shared problems. On the basis of the foregoing and the record as a whole, the undersigned makes the following

AWARD

The Final Offer of the District, together with the stipulations reached in bargaining, will be incorporated into the contract for 1989-90 and 1990-91.

Signed this 11th day of August, 1990 at Racine, Wisconsin:

Daniel Nielsen
Arbitrator