ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

HOWARDS GROVE EDUCATION ASSOCIATION

and

HOWARDS GROVE SCHOOL DISTRICT

Case 10
No. 43261 INT/ARB-5483
Decision No. 26363-A

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: 66 FTE teachers

HEARING: May 21, 1990
Conference call

RECORD CLOSED: July 28, 1990

AWARD DATE: September 25, 1990

APPEARANCES:

For the Employer: WISCONSIN ASSOCIATION OF SCHOOL BOARDS
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ARBITRATION OPINION AND AWARD

Howards Grove Teachers
and
Howards Grove School District

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of a collective bargaining contract between the Howards Grove School District (Board, District, Employer) and the Howards Grove Education Association (Association, Union) to replace their old contract which expired July 31, 1989.

The parties exchanged their initial proposals on May 9, 1989 and met thereafter on six occasions in an effort to reach an accord. On December 7, 1989 the Union filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting arbitration pursuant to the Section 111.70(4)(cm) of the Wisconsin Statutes. On February 27, 1990 Sharon Gallagher Dobish, a member of the Commission staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. On March 7, 1990 the parties submitted their final offers and Investigator Gallagher Dobish notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On March 6, 1990 the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was notified by the Commission on March 29, 1990.

An arbitration hearing was scheduled for May 10, 1990, but due to inclement weather was not held. Exhibits were exchanged via United Parcel Service. A telephone conference call on May 21, 1990 provided the parties the opportunity to provide testimony and respond to any questions regarding their respective exhibits. It was agreed that briefs would be exchanged through the Arbitrator and parties postmarked by July 12, 1990. Reply briefs would be sent to the Arbitrator and each party postmarked by July 23, 1990. Through mutual agreement the reply briefs' due date was extended to July 27, 1990. The parties agreed the record would be closed as of the conference call date for additional evidence. Subsequently, briefs and reply briefs were filed with the Arbitrator as agreed, the last one of which was received July 28, 1990.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70(4)(cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm) 7 sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in the document that I have attached to this award as "Appendix A." For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public; (d) comparisons--other teachers;(e) comparisons--other public employees; (f) comparisons--private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

The employees involved in this proceeding are composed of a collective bargaining unit represented by the Union which is described in the labor

agreement as "all contracted employees of the district engaged in teaching, including classroom teachers, guidance counselors, and librarians, but excluding the following:

a) Administrators and coordinators
b) Principals and supervisors
c) Non-instructional personnel (i.e. office, clerical, maintenance, and operational employees
d) Para-professionals
e) Per diem and substitute teachers."

There are 65.67 FTE employees in the unit.

STIPULATIONS AND FINAL OFFERS

STIPULATIONS

Tentative Agreements

The parties resolved one other issue (calendar) during their negotiations and/or the certification process. The subsequent tentative agreement on this issue is a stipulation for this preceding and is considered resolved.

Duration

In their final offers each party proposes a two year agreement, therefore the issue of Contract Duration will be handled as a stipulation and will not be considered an issue in dispute for this arbitration preceding.

Costing

The costing of each party's proposal is not really disputed in this case. The Association and the District submitted exactly the same data on salary only costs, but only the Employer submitted total package costing data. The parties, it seems, are in agreement with the Employer's costing figures.

FINAL OFFERS

In their final offers the parties submit proposals for two issues: salary increases and Employer contribution to health insurance. The two final offers of the parties reflect the following positions:

Wages

The Association proposes to retain the current salary schedule structure and increase each cell by 5.45% for 1989-90 and each cell by 5.25% for 1990-91. This would result in a BA base of $20,908 for 1989-90 and $22,006 *for 1990-91. This represents an average salary only increase of* $1,907 or 6.9% in 1989-90 and $1,954 or 6.6% salary only increase in 1990-91. Total package average per teacher costs of this offer are $2,942 or 7.9% for 1989-90 and $3,149 or 7.9% for 1990-91.

The Board also proposes to retain the current salary schedule structure and increase each cell by a percentage to give an average salary increase of $1,700 per teacher for 1989-90 and each cell by a percentage to give an average salary increase of $1,850 per teacher for 1990-91. This would result in a BA base of $20,762 for 1989-90 and $21,790 for 1990-91. This represents an average salary only increase of $1,702 or 6.1% in 1989-90 and $1,851 or 6.3% salary only increase in 1990-91. Total package average per teacher costs of this offer are $2,696 or 7.3% for 1989-90 and $2,825 or 7.1% for 1990-91.

Health Insurance

The only issue in dispute regarding the Health Insurance is the amount of contribution the District will make for the insurance premiums in the second year, 1990-91. The Employer proposes to change the amount from 100% Employer contribution to 95% effective 9/1/90. The Union wishes to maintain the status quo of 100% District contribution for the two years of the contract.

ISSUES SUBJECT TO ARBITRATION

Thus, the disputed issues related to the final offers are: , Wages, and Health Insurance. Two other issues related to this dispute are: 1) the appropriate comparables to be used for comparisons with other teachers, and 2) whether the Employer's offer on the health insurance contribution constitutes a change in the contract.

DISCUSSION

INTRODUCTION

This case is a "breath of fresh air" for this Arbitrator in that the parties here have both submitted what appear to be very reasonable offers. The two offers are really very close on the economics--a fact both acknowledge. It seems under either offer no dramatic changes in the contract are being proposed by either party, and under either offer, both parties will do fairly well with little long-term, irreversible damage. While it is true close and reasonable offers make deciding a case more difficult, there is solace in the fact that both parties should be able to do well and live comfortably under either offer.

I see the basics of this dispute as centering on the concerns over employee contributions to the health insurance premiums. The District is basically asking the Arbitrator to look at its proposed change as technical and, in view of the current and future trends in employer/employee contributions, to find its offer as more reasonable. The Association is essentially asking the Arbitrator to look at the Employer's change as a very substantial change in the status quo requiring extremely persuasive compelling reasons, and to find its offer more reasonable because the Board has not met its required burden of proof to change the contract (through arbitration). Both parties take reasonable positions both with respect to their actual

proposals, but also in terms of a reasonably defendable position based upon past and current arbitral principles and theories.

Since both offers appear to be basically reasonable, the job of the Arbitrator will be to determine which offer is more reasonable. In doing this, I will need to analyze the change being proposed by the Employer, determine the level of proof required in order for the change to prevail, and determine which offer most closely meets the reasonableness standards set forth in Section 111.70(4)(cm) of the Wisconsin Statutes, and if appropriate, Wisconsin arbitration "case law."

The report of these decisions will be accomplished in two parts of this "DISCUSSION" section. In the first, PARAMETERS OF ANALYSIS, I will respond to the parties suggestions as to how the evidence is to be viewed and establish the procedures by which the offers will be analyzed.

In the second part, ANALYSIS AND OPINION, I will analyze the data and substantive arguments proffered by the parties on each of the issues utilizing the parameters established in the PARAMETERS OF ANALYSIS. In both parts I will summarize briefly each party's specific position on the pertinent issues and criteria. "////" indicates that the Arbitrator's analysis and opinion follows.

PARAMETERS OF ANALYSIS

The parties in this case have presented evidence and argument both as to the way they believe the Arbitrator should proceed to analyze the evidence in the record as well as to the favorableness of their case on the issues being contested. In this section I will respond to the parties' objections, arguments and suggestions on how the evidence should be analyzed, and then establish the procedures and parameters by which the parties' final offers will be analyzed.

Evaluation of Evidence

The parties presented no formal objections to submitted evidence during the conference call or in their briefs. However, each raised concerns regarding the applicability or appropriateness of certain evidence presented by the other. These issues are: appropriate comparables, use of final offers, and use of total package data. Each is discussed separately.

Comparables

The District argues that in two previous arbitration awards involving this District the arbitrators basically relied upon the comparables to which the parties agreed. In this case the Employer believes that the "Yaffe 11" (Brillion, Cedar Grove, Chilton, Elkhart Lake, Kohler, Mishicot, Northern Ozaukee, Oostburg, Random Lake, Reedsville, and Valders) should be relied upon because the Athletic Conference only has two settled districts which is not enough to define a settlement pattern. The District goes on to argue that the other comparable groups proposed by the Union (geographic proximate and statewide school districts) just are not comparable and the Union presents no

supporting data relating to community interest, tax rates, levy rates, number of teachers, number of students, or other financial information that would render these districts comparable. The Board strenuously objects to the Union's self-serving selection of comparables. The Board believes Arbitrators Yaffe and Gundermann, in the previous arbitration awards, have settled the issue of comparability. Moreover, the District strongly believes that the instant Arbitrator would be doing a grave disservice to the parties' future collective bargaining relationship if he selects the Union's proposed schools as comparables, by adding another issue (of defining comparables) to the already complex list of issues facing the parties, and thereby creating chaos at the bargaining table.

The Association maintains that the districts making up the Central Lakeshore Athletic Conference (Cedar Grove, Elkhart Lake, Kohler, Northern Ozaukee, Oostburg, Random Lake) should be used as primary comparables for this arbitration. However, because only two districts in the Conference have settled, the Union believes there is justification to widen its scope to include other area schools in keeping with the principle of geographic proximity. The Union suggests that Brillion, Campbellsport, Fond du Lac, Hilbert, Kimberly, Manitowoc, Reedsville, Sheboygan, Two Rivers, and Valders should be considered as comparable for this arbitration award. Finally, the Association submits a tertiary group of comparables including the settlements statewide. The Union suggests that it is not uncommon for an arbitrator to look at other schools in addition to the primary set of comparables as a secondary backup if the primary set does not provide adequate information. The Union submits that the primary set of comparables is the Athletic Conference, with a secondary emphasis given to other area school districts, and with statewide averages deserving of a review. The Union points out that the "Yaffe 11" proposed by the Board do not exist and never did. Arbitrator Yaffe rejected 3 of the 11 districts agreed to by the parties on the basis of salary schedule similarities without mentioning size, number of teachers, etc. The Union agrees with the Board that previous arbitrators have settled the issue of comparability by adopting the Central Lakeshore Athletic Conference.

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[Refer to CHART I, next page for information pertinent to this discussion.]

It seems to me, on this issue of appropriate comparables, the parties are engaged in a "heated agreement." Despite quite a few pages of written argument in both their briefs and reply briefs, I am unclear exactly what the dispute really is over the comparables. I think I am confused because of the following apparent agreements of the parties.

First, both parties admit that the previous arbitration awards, one eight years ago and the other four, have (or at least should have) settled the issue of comparability. Both awards relied upon comparables initially submitted and stipulated to by the parties themselves. For the most part, the arbitrators in those cases used the comparables proposed by the parties.

Second, both parties suggest that Howards Grove should be compared to districts within the Central Lakeshore Athletic Conference. The Employer proposes one group of comparables which includes all the schools in the Athletic Conference--the Union proposes as "primary" all the districts in the Athletic Conference.

CHART I
COMPARABLE DISTRICTS AND SETTLEMENT DATA

District	Sub By	Teach FTE	89-90 Increases Salary Dlrs	Salary Prcnt	Package Dlrs	Package Prcnt	90-91 Increases Salary Dlrs	Salary Prcnt	Package Dlrs	Package Prcnt	% Health Ins Contrib 89-90	% Health Ins Contrib 90-91
+Brillion	# M	52.8	1620	6.00	2433	6.80	1830	6.40	2614	5.90	95	95
Campbellsport	U	80.5										
+Cedar Grove	*# M	40.2	1838	5.89	2912	6.98	n/s	n/s	n/s	n/s	97.5	n/s
Bd/Un			1888	6.05	2933	7.03	n/s	n/s	n/s	n/s	100	n/s
Chilton	# E	65.2										
Elkhart Lake	*# M	45.2	m	m	m	m	m	m	m	m	m	m
Fond du Lac	U	371.2										
Hilbert	U	33.7										
Kewaskum	U	115.9										
Kimberly	U	104.1										
+Kohler	*# M	35.5	1826	5.60	3578	8.30	1918	5.60	3134	6.70	100	100
Manitowoc	U	247.1										
Mishicot	# E	56.0										
+North Ozaukee	*# M	53.3	1989	6.30	3175	7.50	2068	6.20	3249	7.10	100	97
Oostburg	*# M	46.8	n/s	n/s	n/s	n/s	n/s	n/s	n/s	n/s	n/s	n/s
+Random Lake	*# M	64.2	1775	5.75	m	m	1800	5.51	m	m	100	95
Bd/Un			1850	5.99	m	m	1900	5.80	m	m	100	100
+Reedsville	# M	41.3	1857	7.20	2851	8.30	1737	6.37	2725	7.40	99	99
Sheboygan	U	571.2										
Two Rivers	U	126.1										
+Valders	# M	68.6	1631	6.10	2371	6.70	n/s	n/s	n/s	n/s	93	n/s
Average (of +)	Low	50.8	1791	6.12	2887	7.43	1871	6.02	2930	7.03	97.8	97.2
	High		1809	6.18	2890	7.44	1891	6.07	2930	7.03	98	98.2
Howards Grove	Bd	65.7	1702	6.10	2696	7.27	1851	6.30	2825	7.10	100	95
	Un		1907	6.90	2942	7.93	1954	6.60	3149	7.87	100	100
Board:	Low		-89	-.02	-191	-.16	-20	.28	-106	.07	2.21	-2.20
+/- Average	High		-106	-.08	-194	-.17	-40	.23	-106	.07	1.86	-3.20
Union:	Low		116	.78	55	.50	83	.58	218	.84	2.21	2.80
	High		98	.72	52	.49	63	.53	218	.84	1.86	1.80

\+ districts used as comparables for this arbitration
* Athletic Conference
\# Yaffe 11

m data missing
n/s not settled
M mutually submitted
U submitted by Union
E submitted by Employer

Sources: Employer Exhibits 16, 53, 54, 68, 92, 103, 105; Brief p.4, Reply Brief, p.4.
Union Exhibits 42, 46, 48, 62, 88, 89.

Third, both parties believe the Athletic Conference, with only two settlements, is too limited and the "pool" should be expanded to include other districts. The Employer expands the pool using districts from what it calls the "Yaffe 11," the originally stipulated comparable group from the eight-year-old arbitration. The Union expands by creating a "secondary" pool of comparables of geographic proximity. However, even though both use a different approach, three of their additionally proposed districts are the same.

And last, even though the Union proposes two comparable groups (primary and secondary) and the Employer proposes only one group (Yaffe 11), the Association, by proposing a secondary group, although not so stating explicitly, seems to be saying the primary group, because of the lack of settlements, needs to be given less weight than normal. If the arbitrator weighted the primary group less than normal and considered it with a secondary group normally weighted, the result could effectively be one group equally weighted. Whether or not this is the position of the Association, both parties agree that two voluntary agreements (within the Athletic Conference) do not comprise a settlement pattern, that other districts need to be added to get a clearer picture of the bargaining outcomes within the region, and that all of these districts (Athletic Conference and added districts) should be considered when making wage and benefit comparisons.

In my opinion the Employer makes an important point regarding the impact on the bargain process of arbitrators making-up a completely different, or changing an established, comparable pool. I think the District is right that sticking with prior accepted comparables is important for the bargaining stability between employers and unions. It would not be in the best interest of good labor relations and/or collective bargaining between the parties for this Arbitrator to change or even modify slightly the normal and traditional comparables of the parties. The problem is that the "normal and traditional" comparables are not explicitly identified for this Arbitrator--either by way of a clear and unequivocal past practice and/or record, or in terms of an explicit, stipulated list of comparables. Lacking these, I must look to some basic principle to apply here in order to derive the "proper" comparable list by which comparisons can be made.

I think the most important principle that should control here is that of mutual agreement of the parties. Two prior arbitrators accepted (for the most part) the comparables these parties had mutually proposed. Therefore, I think it is reasonable that I should try to do the same. While the parties did not present a neat list of stipulated comparables as they did in the past, it is clear that they mutually submitted, by way of their individual lists, nine comparable districts that are the same. These include the six Athletic Conference districts (of Cedar Grove, Elkhart Lake, Kohler, North Ozaukee, Oostburg, and Random Lake) and three other area school districts geographically proximate and/or from the "Yaffe 11" (Brillion, Reedsville, and Valders). So, based upon this mutually agreeable principle, the nine agreed-to regional and athletic conference districts will be the comparable pool for this proceeding.

[It is somewhat tempting to expand this pool even beyond these mutually submitted districts. While most of the districts submitted by the Association are clearly not comparable based upon size (primarily FTE teachers--for example, Sheboygan at 571.2 FTE, a whopping 8.7 times the 65.78 FTE of Howards

Grove, or Fond du Lac at 341.2 FTE or 5.7 times), there are some that were proposed (like Chilton at 65.2 FTE or 99.2% or Mishicot at 56.0 FTE or 85.2% of Howards Grove) which are very close in size and geographic proximity to be very good candidates for comparability. However, I think in this case it is more important to maintain the mutually agreeable principle than to add to the list one or two other districts that may be comparable but were submitted by either party individually. I encourage the parties in the "off-season" to analyze these two districts to see if they are comparable enough to mutually agree to their being added to the pool.]

Of the nine districts mutually submitted and accepted above, five have reached voluntary settlements for 1989-90 and four have settled for 1990-91. The remaining four are in various stages of interest arbitration, most with certified final offers. Although five out of nine districts settled is not a very large group for determining a settlement pattern, the parties submitted final offer and costing data related to the final offers of two of the remaining four non-settled districts. So, this comes to seven districts with settlement information for 1989-90 and five for 1990-91. Not an over abundance of settlement data, but perhaps adequate considering the important principle (of mutually agreeable) to be maintained.

Therefore, for this arbitration the nine districts mutually proposed by both parties are selected as comparable. Excluding two districts without settlement data, the following seven districts are found as appropriate comparables: Brillion, Cedar Grove, Kohler, North Ozaukee, Random Lake, Reedsville, and Valders.

Use of Final Offers

The parties do not discuss this issue directly, however, in this case, the use of certified final offers in the place of settlements is an important issue. The Association, in its data of the primary comparables, uses only the two settled schools for 1989-91 (Kohler and North Ozaukee). The District presents settlement data on four other schools (Brillion, Mishicot, Reedsville, and Valders). The Union, in addition, presents data relating to certified final offers of two other districts in the Conference (Cedar Grove and Random Lake). With only five districts of nine settled for 1989-90 and four settled for 1990-91, there are not enough data upon which to test the reasonableness of the parties' final offers using settlement data only.

While final offers are certainly not settlements, they offer a range of settlements that is probably fairly accurate. Because of the limited number of actual settlements among the comparables, these final offers will be used. However, where feasible, any calculations (e.g. averages) will be made using both the higher and the lower of the offers.

Use of Total Package Costs

The Union strongly urges the Arbitrator not to use the "average total compensation rates" or "total package" arguments provided by the District because: 1) overall compensation data are very difficult to acquire in a consistent manner from the comparable districts; 2) data among the comparables can vary significantly (e.g. in this case the salary schedules vary

considerably in terms number and designation of lanes as well as number of years to reach the top step); 3) various insurance benefits vary from district to district (including criteria for UCR payments) and plans are difficult to interpret; 4) the data, taken from the Employer's surveys, can be based on completely different costs, or have faulty and inconsistent assumptions as to future insurance rates; and 5) the "average total compensation rates" do not indicate the experience and education of the teachers in the various districts resulting in lop-sided figures of questionable value.

The District submits that the total package cost is the best measure of the entire range of wages and fringe benefits that are bargained between teachers and schools boards. While there may be slight variances in the degree of completeness of the Settlement Report Form, the Board believes the information to be a reasonably accurate portrayal of the total package cost of teacher settlements. The Board submits that if the Union believes the District's figures to be inaccurate, the Association is free to submit its own version of total settlement costs of the comparable districts.

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It may be that the Union's arguments here are really a disagreement with the procedure of doing comparisons between the comparable districts on total package costs, whether or not the data are accurate. I interpret the statute criteria of "Overall Compensation" to include the costs to the Employer of wages and benefits--another way to analyze overall compensation. Thus, I will discuss, and place weight upon, this interpretation of the Association's concerns/position under "Overall Compensation" below.

Concerning the explicit concerns raised here by the Union, the only practical way to get information about the total costs of settlements to the comparable districts is though a survey. This is what the Employer did in this case. As I have mentioned before elsewhere, until a neutral (governmental?) agency takes on the task of compiling this data, the parties and arbitrators are going to have to rely on the parties themselves developing and conducting surveys. As long as the integrity of the process is maintained--objectivity, neutrality, equity and accountability (something which I think has been done in this case)--the data derived from the surveys ought not to be excluded merely because they are based on surveys.

The Union, on the other hand, points out some important problems with attempting to obtain and rely on total cost figures from employers. And the District seems to acknowledge some of these problems when it says (Reply Brief, p. 13) that "...there may be some slight variances in the degree of completeness of the Settlement Report Form." Conducting these types of surveys certainly is not an exact science, but, apparently, is the best we can do now. The Employer's other comments I think are pertinent too; that is, if it is the data (and not the comparisons) to which the Union has objections, the Association can certainly put together its own survey and present its own data. By not so doing does not necessarily mean the Employer's data need be accepted carte blanche, but by not presenting opposing information, it makes it more difficult the reject "out of hand" the Employer's efforts.

The issue, in my opinion, is not one of whether or not to accept the Employer's costing data, it is a question of how much weight to place on the submitted information. Based upon important concerns raised by the Union, the

total package costing data submitted by the District will not be eliminated, but will receive less weight than the salary only data.

Reasonableness Tests

As mentioned earlier, the statutes require the Arbitrator to judge the reasonableness of the offers. Normally the ten statutory criteria are sufficient, but when a change is proposed by one or both parties, criteria and level of burden of proof need to be established by the Arbitrator. Therefore, two reasonableness tests' criteria will be discussed in this section: change tests and comparative tests.

Change Tests

Health Insurance Change

The most important and perhaps pivotal question of this case is the question of whether and to what extent the District's offer in the second year to set the level of Employer contribution for the health insurance at 95% constitutes a change. This is an important question because of the resulting level of burden of proof that may be required of the Employer depending on the answer. If the Employer's proposal constitutes a significant change in the past practice and/or the contract, then an extremely high level of burden of proof will fall upon the Employer and I will need to apply extraordinary test(s) (such as the Reynolds Test or Malamud Test) in order to determine whether the change is justified. If the proposal does not constitute a substantial, substantive change, then ordinary comparative reasonableness tests (as discusses and weighted below) would be used to determine reasonableness of the District's offer.

The District argues that the health insurance issue is really an economic one--it boils down to where the money available will be placed. The Employer flatly states that its offer is not a radical change--it is on the same level of yearly percentage or dollar changes to the salary schedule to which no one really pays much attention.

The Association submits that there is no dispute between the parties as to what constitutes the status quo regarding the Employer's contribution to the health insurance premiums, and the District's offer in the second year is a substantial change in this status quo.

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Dealing with change through the arbitration process is one of the most fundamental and important jobs of an interest arbitrator. Whether initiated by the Employer or the Union, changes in the rights and benefits of the employer and the employees are at the root of good labor/management and collective bargaining relationships. Interest arbitrators, sitting at the end of the continuum of the negotiation process, cannot escape the demands and pressures of contract evolution. While restraint is necessary in order to discourage over-use of the arbitration process, complete rigidity on the part of interest arbitrators could result in one party forever precluding the other from achieving change, even when it is proved necessary and acceptable to other comparable employers or employees groups (William Petrie: Mukwonago

School District, 7/88; Employer Brief, Appendix A). The problem is not so much deciding whether change per se is desirable or necessary, but rather in trying to decide whether change is actually being proposed, and if so, the importance or impact of that change on the organization and the parties, and the standards of proof to be applied to justify the change. In analyzing these questions, perhaps it will be helpful (and appropriate seeing this is a teacher contract) to take a few steps "back to the basics."

The Random House College Dictionary (Revised) defines change as: "to make different the form, nature, content, future course, etc. of something." I suggest this definition can be applied to collective bargaining and interest arbitration, and propose the following clarifications of the major terms in this definition:

- form: the language as it appears in the contract.
- nature: the underlying philosophy, intent or purpose, expressed or implied, of a benefit or right.
- content: the specific conditions and/or limitations of a benefit or right that impact upon or effectuate behavior of one or both parties.

Perhaps this doesn't help much because any difference that is made, even in the form (the contract language) would constitute change. A problem still remains in determining the degree of a change.

The record in this case does not offer much help in trying to establish this degree of change. Both parties submit much arbitral opinion in the form of quotes from prior arbitration decisions, but most are void of true guidelines for making this determination. As a matter of fact, most of the Union's supporting references (Union Brief, pp. 38-39) appear to come from cases where the arbitrators were dealing with very significant, perhaps critical, contract language changes. Some of their language is: "...to significantly modify past practice, to add new language or new or innovative benefits..." (Petrie, Elkhorn, 6/62); "...the elimination of a clause..." (Elkouri & Elkouri); "...to take away...rights which have been freely negotiated..." (Stern, Greenfield); "...change from existing language..." (Kerkman, Fort Atkinson). Arbitrator Malamud (Antigo, 3/89) proposes a 3-part test to be applied when there is a change in the status quo, however the quote is taken out of context and it is unclear to what kind or degree of change Arbitrator Malamud was applying his test.

So, without any guidance offered by the record in this case, I tentatively propose the following degrees of contractual change:

- technical: difference in the form, with no difference in the nature and content. (Ex: correcting a typographical error.)
- ordinary: difference in form and content that is commonplace and usual, and/or takes place or is considered on a regular basis. (Ex: replacing the dates in the duration clause.)
- substantial: important difference in form and content, and/or nature of primarily a benefit. (Ex: changing the carrier and benefit level of health insurance.)
- critical: important difference in form and content, and/or nature of a right or an established, negotiated benefit. (Ex:

proposal to restrict access of some employees to the grievance procedure.)

The point to all these definitions and (perhaps too) technical discussion, is that I think parties try to engender, by convincing each other through the bargaining process or the arbitrator through the arbitration process, different kinds or levels of change. Some, but not all, of these changes are critical or substantial. While it may not be important for the parties in the negotiation process to know or understand the level of the change being proposed, in arbitration it is an essential element in determining the degree of proof required by the proposing party in order to prevail.

The Association in this dispute bases a great deal of its case on the undisputed fact that the Employer is changing the "status quo" in the contract. My position is that any change in the contract is a change in the status quo, but that it is unreasonable for one party to demand that the other present an "extremely persuasive case" in order to convince the other party or an arbitrator to make even small, technical changes. I believe just as there are different types or degrees of changes, there should apply a corresponding in level or degree of persuasiveness or burden of proof needed to prevail.

Based upon the levels of change described above, I suggest that the substantial burden tests (e.g. Malamud test as suggested by the Union here) are meant to be applied to substantial and critical changes, and not to ordinary and technical changes. This is to say, if the change being proposed is not substantial or critical, the high scrutiny and great burden of proof is not necessary for the proposing party to prevail. As the Employer mentions, in contract negotiations, no one pays much attention to technical and ordinary changes (changes in the salary schedule caused by across-the-board percentage increases, for instance) made in bargaining or proposed in arbitration. To expand on an example above, it would be difficult to imagine a case where an arbitrator would need to apply more than an ordinary comparative test (the statutory criteria) and require more burden of proof for one party in a dispute over contract duration.

With this basis, we now come to the questions at hand: Does the District's offer on health insurance contribution constitute a change? And if it does: What level of change is it, and what reasonableness test should be applied?

Of course, the District's offer constitutes a change in the contract--a difference will take place (100% to 95%). In my opinion it is clear this proposed change is neither technical nor critical, so it comes down to determining whether the change is substantial (as argued by the Union) or ordinary (as purported by the District). Based upon the discussion above and the parties arguments, I lean toward the District's view of the change being more ordinary than substantial for the following reasons.

First, the District's proposed change is severely restricted and limited in kind. That is, the only impact of the employer's proposed change is economic--there is nothing that relates to the "conditions and/or limitations" of the health insurance benefit. Also, the change will not affect the "underlying philosophy, intent, or purpose of the [health insurance] benefit." As opposed to, for example, a change to a dollar amount of contribution which would have a greater, long term impact upon the parties and their bargain than

just the immediate economics (particularly during a contract hiatus or when insurance premiums increase), the change in percentage proposed here is very limited and confined to only the amount to be paid by each party. The Union has not convinced me that this change is in the same league as, say, changing benefit levels of the health insurance, changing hours of work, or even changing the structure of a salary schedule. These I see as being classified as at least substantial changes because of how much more extensive in degree and kind the impact of these changes would be. But this proposed change is limited to fundamentally economics.

Second, it seems to me that Employer's contribution to the health insurance is something the parties consider (if not discuss/bargain) every time they sit down to the table--it is considered on a regular basis. Unlike, say, the grievance procedure or the recognition clause that probably receive little attention from the parties before, during and after contract negotiations, it is my hunch the health insurance premiums and the Employer's contribution (as with wages, holidays, vacations, and other benefits) are considered regularly and consistently by the parties. Perhaps it is not currently the case with these parties, but some groups bargain and change the percentage of employer contribution of insurance premiums each time they renew their contract as they change the wage rates.

Also it has become a practice among some school districts bargaining multi-year contracts to negotiate a wage/benefit package amount in which the wage percentage increase would fluctuate (up or down) depending upon the health insurance premiums. I think this is an indication that other parties in the "industry" view wages and employer contribution to insurance premiums as tied economically and are, or ought to be, routinely considered jointly.

Third, I tend to take the position that the proposed change is not an "important" change. While I am convinced this is an important change to the Union and especially to those employees who would have to again contribute to the health insurance premiums because of the change, compared to the range of the possibilities the District could have offered (e.g. 90%, 85% contribution, or less, or even switching back to a dollar amount), I think this change fits better in the category of not being an "important" change.

And finally, while eight years of full payment of health insurance premiums seems like a great precedent and "an established, negotiated benefit" for the employees, the Union seems to have forgotten that the equivalent of 100% contribution got into the contract in the first place through arbitration in 1982 (Employer Exhibit 1). The record does not show how long the parties had 95% or its equivalent in their contract before it was changed through arbitration, but it is possible the precedent could have been just as long back then. The record is not specific, but apparently some time between 1981-82 and 1987-88 the parties renegotiated the health insurance contribution language to remove the dollar amounts and replace them with "the full premium." Even though the District (apparently) has not attempted to change back to 95% or its equivalent dollar amount in the recent years, the fact that the parties contract, prior to 1981-82, had an employee's contribution to the family health insurance premium and it was changed by arbitration then, and voluntarily at least once since, certainly weighs against, and perhaps cancels, the eight-year, no-change precedent.

Based upon this discussion, I find the District's proposal to change the health insurance contribution from 100% to 95% is an ordinary change and, therefore, will require only a standard comparative reasonableness test based upon the ten statutory criteria (as discussed and weighted below).

Comparative Tests

The ten statutory criteria have been established for the purposes of making arbitral decisions regarding the comparative reasonableness of each final offer. The relevancy of the criteria and the weight to be placed on each criterion will be establish for both the wage and health insurance issues.

Criteria Not Relevant

Lawful Authority

The lawful authority of the Employer has not been challenged or denied, so this criterion will not be used in this decision process.

Changes

The parties present no evidence of relevant changes in circumstances during the pendency of the arbitration proceedings so this criterion is eliminated from the discussion.

Other

Both parties present evidence and argument regarding certain criteria that probably fit under this general criterion of Other. These criteria (e.g. Quid Pro Quo, Demonstrated Need, etc.) are criteria suggested by change or substantial burden tests similar to the one proposed by Arbitrator Malamud. Since, as indicated above, a change test is not required for an ordinary change, these criteria will not be considered relevant for this arbitration decision.

Relevant Criteria and Appropriate Weight

Stipulations

The Association states in its brief (p. 12) that the stipulations between the parties are not being contested by either party. The Board believes it deserves credit for the stipulations to which the parties have agreed, especially those benefits that will continue in the successor contract.

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The parties do not really discuss this criterion very much. Since the Board does make a strong argument that over-all compensation should receive great weight (discussed below), it will be important to consider along with the total package the economic parts of the contract that are being rolled-over. Thus no specific weight will be placed on this criterion but the

stipulations will be considered as part of the Overall Compensation criterion for both the wages and insurance issues.

Interests and Welfare of the Public

Both parties place some importance on this criterion. The Union maintains that the Employer has not raised an ability-to-pay issue, therefore the question before the Arbitrator is clearly a "willingness-to-pay" issue.

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The Interests and Welfare of the Public is indeed an important criterion in an interests arbitration, and this case is no exception. The Union is correct that there is no ability-to-pay argument here being made by the District, so that portion of the criterion will not be considered. Interests and Welfare of the Public will receive a moderate amount of weight in this case for both issues.

Comparisons--Other Teachers

There is not much disagreement as to the weight to be placed on this criterion--it is a major criterion for both parties. The Association devoted much of its brief and exhibits to comparisons with other teachers. The Board devoted a substantial amount of its brief and its exhibits to comparisons with other teachers. There is no doubt in my mind that the parties think this criterion should receive major weight.

An important consideration, however, is the amount of evidence that is available in the record. While both parties provide literally reams of paper in the form of exhibits, as often happens, still not enough data were provided on all the comparables that have been selected for this decision. This is particularly true for historical benchmark comparisons. The Union provided benchmark data back to 1984-85 for its comparables, and the District provided data back to 1986-87 for its. What with districts not being settled and others just missing, a reasonably complete set of historical data to do benchmark average dollar and ranking comparisons is just not available.

Even considering that limited comparisons can be made, a major amount of weight will be place on this criterion for both wages and insurance.

Comparisons--Other Public Employees

The Board submitted some exhibits and presented some argument related to pay rates and salary increases among other employee groups state-wide. The Union rejected such comparisons because: 1) comparisons with groups other than teachers are generally not made unless there is not enough information to make comparison with teachers (which is not the case here); and 2) the preponderant weight of arbitral authority clearly rests on the side of comparing teachers to teachers.

The District admits that the Arbitrator will likely give more weight to the "teacher-to-teacher" comparability criteria for measuring wage settlements. However the Board maintains that comparisons of fringe benefits

is entitled to more weight. The District believes arbitral opinion is moving in this direction and suggests that the Arbitrator should give greater weight to the public sector employee fringe benefits data that they submitted.

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Based upon the evidence in the record the "other public employees" referred to here will be made up of external comparables and internal comparables. The evidence regarding wage increases, presented mainly by the Board (e.g. Board Exhibits 127-133) primarily covers State and national settlement data. [No settlement data (that I could find) were submitted for local or comparable governmental units.] Because the information submitted is more general nature, the external comparisons for wages will receive very little weight.

The statistics provided for internal wage comparisons (Employer Exhibits 163-164) are much more specific. These data entail historical comparisons for the salary increases for the other groups within the Howards Grove school district. This information is very helpful, especially for establishing historical patterns between the teachers and the other groups within their own school district. As part of this criterion on wages, the internal comparables will receive substantial weight.

The data provided by the Employer (Exhibits 102 & 163) relate to the insurance premiums and the amount of contribution paid by the District for the administers. [This type of information is not in the record for the support staff.] This information will receive considerable weight for internal insurance comparisons.

Comparisons--Private Employees

The District submits statistics and information on private employers (Employer Exhibits 126-131, 165-166) both nationally and locally upon which it argues substantial weight should be placed especially for fringe benefit comparisons. The Association argues that the scant information supplied by the District is not complete and does not provide an adequate basis for comparisons. The Union believes no or very little weight should be place upon this criterion and sites several arbitrators in support of this position.

The Board suggests that the Union misses the mark with its criticism of the District's use of private sector statistics--all the citations used by the Association do not deal with the major issue of this case: health insurance. The Board maintains that recent arbitral opinion has changed, and more arbitrators are looking to private sector comparisons for making fringe benefit determinations.

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In my opinion, the Board's distinction between comparisons with the private sector on wages and the comparisons on benefits is a very valid distinction. Where it may be very difficult to compare job titles, duties and responsibilities, and compensation systems of teachers to private sector professionals (for all the reasons put forth in the Union's citations), fringe benefits are a somewhat easier and more valid comparison. And I think the trends in benefit level in the private sector, especially locally, are considered by the parties during the bargaining process, especially for those

"at risk" teacher positions (e.g. mathematics, sciences) where the lure of better pay and benefits of the private sector is the greatest. Further, the Board's survey of local private sector businesses is unusually complete--providing excellent information on the health insurance benefits offered by these employers.

The Union's criticism of the Board's evidence on the wage increases (being incomplete) is an important point also. It is very difficult to make comparisons with general, incomplete data. The parties provide no real specific, local data on private sector settlements.

Based on all of this, private sector comparisons for this case are considered relevant and will receive very little weight for wage comparisons, but will receive moderate weight for insurance comparisons.

Cost of Living

The Board strongly agrees with Arbitrator Richard J. Miller and Neil Gundermann who departed from previous attempts by other arbitrators to weigh and define the "cost of living" criterion in terms of the settlement pattern among the comparables. The District maintains that the two criteria ought to be separate, and that the Cost of Living criterion ought to receive substantial, independent weight.

The Union submits that most arbitrators (including Zeidler, Christenson, and Rice), while not ignoring CPI figures, conclude that the voluntary settlement pattern ought to receive greater weight than the weight given to the cost of living as indicated by the CPI.

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The parties disagree over how to define cost of living and how much weight ought to be place on this criterion by the Arbitrator. But, they think it is relevant and so do I.

On the issue of whether or not the Cost of Living criterion is a separate, independent criterion, it is clear to me that the statute makes a distinction between the two and thus cost of living should be distinct from the comparable settlement pattern. However, when establishing the local cost of living for a particular time period, it may be necessary (primarily because of a lack of local cost of living information) to use a number of measurements (e.g. CPI as well as the labor contract settlements in the area). But because of the number of variables, some of which have nothing to do with the cost of living, which can affect labor contract settlements, I do not think it reasonable and wise to equate the local cost of living with the comparable settlement pattern. While there may be an interdependent relationship, in my opinion they are separate and ought to be discussed and weighted separately.

In determining the amount of weight to place upon this criterion, a major concern in my mind isn't how much weight other parties or even other arbitrators have placed upon CPI or other such data, but how the parties themselves used cost of living information in their bargaining. Board Exhibits 23-25 contain historical comparisons of CPI increases with salary and total package increases for Howards Grove. The evidence is just not clear and

convincing that the parties use or place a great amount of weight on cost of living information (e.g. CPI) in reaching their own voluntary settlements.

Something that the evidence does show is a steady, gradual closing of the gap between the salary only settlement percentage increases and the increases in the CPI during the 1980's. Where in the early 80's the difference ranged from 7.3% to 4.6% higher, during the later 80's the gap ranged from 3.2% to 1.0% higher. This trend to settle closer to the CPI could be for a variety of reasons but my hunch is that it relates in this case to a couple of things.

First, during the seventies and early eighties, there was a general perception in the "industry" as a whole that teachers as a profession were under-paid. There seemed to be a general push, at least in Wisconsin, to improve the salary and benefits for teachers. This attempt to "catch-up" to other professional groups meant teacher settlements needed to be above average--above the cost of living. Howards Grove was no different.

And second, it appears from the record that specifically Howards Grove perceived itself as behind the other teachers in comparable districts. While not conclusively, the record seems to indicate that over the years 1984-1988 the teacher's salary schedule did some above-average improving compared to other area school districts which increased their ranking among comparable districts.

Thus having "caught-up" as an profession in general and specifically in relation to the other comparable schools, the teachers overall may possibly place more weight on and look closer at the cost of living when determining increases to their salary schedule. Although this trend could continue in the future, the evidence is too preliminary to place greater weight on this criterion in this instance.

Thus summarizing, I agree with the position that the Cost of Living criterion is a separate (from settlement pattern) criterion, but, because it appears the parties themselves historically haven't place much emphasis on the cost of living (although there are some indications this is changing), I place a small amount of weight on the Cost of Living criterion for this decision for both the wage and insurance issues.

Using the data available, it seems reasonable that the cost of living in the Howards Grove ran approximately 4% in the period prior to 1989-90 and about 5% in the period prior to 1990-91.

Overall Compensation

The Board firmly believes that a total package approach is essential given the tremendous increases in health insurance costs to the District in recent years. Numerous arbitrators are cited by the Board to support its position that concentrating on only salary would be inappropriate in this case.

The Union rejects the District's attempts to cost-out the financial impact of the parties' final offers upon the District, but more importantly, rejects

the Board's attempts to cost-out the comparable districts' total package costs and then compare Howards Grove's package costs with the comparable districts.

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I agree with the District that in this case Over-all Compensation is an important criterion. While there is the issue of the change with the insurance contribution, in this case the two issues are primarily economic in nature. At the bargaining table economic issues normally are inter-related and are dealt with as a package. In my opinion, arbitration should follow this principle whenever possible and analyze the offers on their overall benefit to the employees and impact upon the employer. Although total package costing and comparisons is but one, albeit important, method to make this analysis, when possible other methods (e.g. direct benefit comparisons) should also be used.

This is an important, relevant criterion. It will receive substantial weight.

Other

Equity

The District raises an equity issue when arguing that the employees of the district need to be in a partnership with the District in order to solve the health insurance dilemma and this requires a financial obligation on their part also. The Union also raises several equity concerns primarily around the insurance issue. Thus the criterion of Equity is considered relevant for the insurance issue and will receive moderate weight.

Summary

In summary, in determining whether the parties' offers are reasonable, seven criteria have been found relevant and are weighted as follows: Stipulations, considered with Overall Compensation (both issues); Interests and Welfare of the Public, moderate (both); Comparisons--Other Teachers, major (both); Comparisons--Other Public Employees, little (wages) and moderate (insurance); Comparisons--Private Employees, little (wages) and moderate (insurance); Cost of Living, small (both); Overall Compensation, substantial weight; and Equity, moderate (insurance).

Prioritization and Weighting of Issues

The parties have presented the Arbitrator with two substantive issues. Based upon what the parties have specifically stated in their briefs and/or reply briefs as to how the issues ought to be weighted, and also upon the amount of effort (primarily amount of space) each spent in their written arguments on each of the issues, I place weight on the issues in the following manner: Insurance, majority; Wages, substantial.

ANALYSIS AND OPINION

In this section I will discuss each of the issues and determine the reasonableness of each of the offers using the criteria and weight assigned to each as described above. Each issue will begin with a brief summary of each party's position on the issue. In deciding the reasonableness of the final offers I will thoroughly consider the relevant criteria as it applies to each of the issues, although I may not make a direct reference to each criterion in discussing the issues.

Wages

To review the wage offers, the Association proposes to retain the current salary schedule and increase each cell by 5.45% for 1989-90 and each cell by 5.25% for 1990-91. The Board also proposes to retain the current salary schedule structure and increase each cell by a percentage to give an average salary increase of $1,700 per teacher for 1989-90 and each cell by a percentage to give an average salary increase of $1,850 per teacher for 1990-91.

The Employer argues that its wage offer is more reasonable because: 1) based upon its comparables, comparability data favor the Board's final offer on every measurement including salary only and total package dollars and percentage comparisons; 2) historical settlement evidence in the record proves that Howards Grove has settled competitively in the past which refutes any "catch-up" argument by the Union; 3) the District's offer is not only closer to the prevailing settlement trend measured by the dollar and percent increases on the salary schedule benchmarks, but is superior or closer to the settled average on 24 of 28 cases; 4) Howards Grove ranks competitively at the benchmarks, and actually has improved its rank over the past few years; 5) no other public or private sector employee group has received increases of the magnitude being offered by the Board; 6) the District's offer is once again above the cost of living, with the CPI increasing 48% from 1982-1989 while the teacher salary schedule increased an average of 112%; 7) with an extremely liberal longevity plan and excellent health and dental insurance with above average premiums, the overall fringe benefits clearly favors the Board's offer; and 8) the interests and welfare of the public (based upon low teacher turn-over rate, no teacher shortage, and a need for spending restraint and lower taxes) are best reflected in the Board's final offer.

The Association maintains that its wage proposal is more reasonable because: 1) the District has the ability to pay the Union's offer and if awarded, the Board's offer would have a negative effect on teacher morale; 2) national reports show that "average teacher salaries have actually declined by nearly 15% in real dollar terms between 1971 and 1981"; 3) using the Athletic Conference, the Association's proposal is right on target while the District's offer is very low (for instance, it lags far behind (-$203) the average of dollars per returning teacher; and 4) the Union's offer is closer to the average of the comparables in 6 of the 7 traditional benchmarks.

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For this (the wages) issue I will discuss the pertinent statutory criteria under separate headings. Refer to Chart I, p. 6.

Interests and Welfare of the Public

It is always difficult to try to understand, as an outsider, just what the real interests and welfare of the "public" of a community are, much less try to reconcile the various conflicts of interest. Both offers are really very close ($37,426 over two years) (a tribute to the part of process leading up to arbitration) so the economic impact each offer would have on the "public" or the taxpayer of Howards Grove is probably minimal. While it is true, as the District argues, it would probably be a welcomed tax relief to the taxpayers of Howards Grove, the actual dollar amount returned to individual taxpayers would probably be negligible. So, it seems economically anyway neither offer is necessarily better.

On the issue of the economy and the "ability" or "willingness" of the District to pay, the record is mixed. The farm economy is somewhat improved, but indicators are mixed whether things will continue. Howards Grove taxpayers earn below average income and pay above average property taxes vis-a-vis the comparables, but teacher salaries are below average. The school levy rate is above average and equalized evaluation per pupil is below average. Thus on this concern neither offer is preferred.

The Union insists that if the Employer's offer is adopted, the morale of the teachers will suffer. As the District suggested (Reply Brief, p. 5), it could be argued that if the Union's offer is selected the morale of the taxpayers or the School Board or even the management team could suffer. Arbitration is a win-lose proposition. By the rules, one side loses. But in my opinion the morale of the loser (or even the winner) is not necessary dependent upon the outcome. Many more things than just wages and benefits, income levels and tax rates contribute to the morale of people--one not insignificant being how people relate to each other. And no matter which side wins, people still have to relate to each other; to set aside their disappointment and elation and get on with relating in ways that meet everyone's needs, interests, and welfare. And how the parties to this dispute, whether public and school board or teachers and administration, relate to one another is not under the control of this Arbitrator--it is in the hands of the affected people themselves.

I find that neither offer better meets the best interests and welfare of all the people of Howards Grove.

Comparisons--Other Teachers

As indicated above, a lack of data in the record for some of the comparable districts makes an accurate historical benchmark comparisons both dollars and ranking not possible. This leaves comparisons based upon average salary and total package dollars and percent increases (summarized in Chart I, p. 6).

The data reveal that on seven of eight of the salary only comparisons, the Employer's offer is closer to the average. With the high average dollar increase for 1989-90 being $1809, the Board's offer of $1702 is $106 below and the Union's is $98 above this average. This is the only comparison for the two years both dollars and percentage the Union's offer is closer. On all other salary only comparisons the District's offer is closer, with some

differences being significant (e.g. the salary only percentage low average increase for 1989-90 at 6.12% and the Union's offer .78% above it at 6.90% and the District's .02% below it at 6.10%). Therefore, on the salary only (both dollars and percentage) increases, the Employer's offer is considerably more reasonable.

On the lesser weighted average total package increases (both dollars and percentage) the offers are a bit closer. In 1989-90 on the average total package dollar increases, the Union's offer is only a little more than $50 above both high and low averages while the District's is nearly $200 below. This seems to be off-set in the second year when the Association's offer is more than $200 above both averages and the Board's is a little more than $100 below the averages. However, on the average percentage of total package cost increases, the District's offer is consistently closer to both the low and high averages. Thus, on the average total package cost increases both dollars and percentage, the District's offer is more reasonable.

Therefore, in summary, on this criterion of comparison with other teachers, the Employer's offer is closer to the dollar and percentage increases than the Union's proposal and is more reasonable.

Comparisons--Other Public Employees

Regarding comparison with the external comparables, it appears that the Employer's offer is closer to the average increases received by unionized public employees around Wisconsin. Employer Exhibits 132-133 indicate that wage settlements for State employees were 3.75% for 1989-90 and 4.25% for 1990-91. Thus the District's final offer on wages (at 6.1% for 1989-90 and 6.3% for 1990-91) is closer to these settlements than the Union's wage proposal (at 6.9% for 1989-90 and 6.6% for 1990-91). [Missing from the record (at least that I could find) are data on the settlements of local governmental/public sector units.] Therefore, regarding these comparisons with other public employees, the Employer's offer is more reasonable.

On the internal (within the school district) comparables the Employer provides data that can be summarized by Chart II on the next page.

Comparing teachers salaries directly to support staff (or other non-teacher) salaries is a comparison of questionable validity. In my opinion the most important relationships for comparison purposes are the historical ratios between the teachers and the other internal groups. The theory here is that if the parties had negotiated a voluntary settlement, they probably would have settled at an increase somewhere close to what would have maintained the same ratio of increase as in previous years.

To me Chart II reveals that the teachers over the years have consistently maintained a higher increase over both the administrators and the support staff. The average ratio of increase of the teachers over the administrators is 111% for wages only and 109% for total package. This means the teachers in recent years received on average 11% more in salary increases than did the Administrators. The situation is the same comparing the teachers to the District's support staff. The ratio of increase of the teachers over the support staff is 158% for wages only--meaning teachers received on average 58% more in wage increases than did the support staff.

CHART II
COMPARISON OF PERCENTAGE INCREASES
AMONG THE INTERNAL COMPARABLES

Group	Percentage Increases 1986-87 Wages	1986-87 Pkge	1987-88 Wages	1987-88 Pkge	1988-89 Wages	1988-89 Pkge	1989-90 Wages	1989-90 Pkge	Average[1] Wages	Average[1] Pkge
Administrators	6.19	5.78	4.80	6.03	8.31	9.01	4.91	5.90	6.43	6.94
Ratio (Teach/Admin)	128	126	148	138	77	78	124 140	124 134	111	109
Teachers Board Union	7.90	7.30	7.10	8.30	6.40	7.00	6.10 6.90	7.30 7.90	7.13	7.53
Ratio (Teach/Sup Stf)	158		203		128		152 172		158	
Support Staff	5.00		3.50		5.00		4.00*		4.50	

[1] excludes 1989-90.
* average of percentage impact of cents per hour increase.

Sources: Employer Exhibits 163, 164

Chart II also shows that the ratio of the Board's offer over the Administrators' salary increase is 124% and the Union's is 140%. With the historical average or the ratio at 111%, the Board's offer is closer. Regarding the total package ratios, again the Employer's offer at 124% is closer to the historical total package ratio of 109% than the Union's proposal of 134%.

Relating to the percentage increases of the Support Staff of the district, Chart II again shows the Employer's offer closer to the historical ratio--6% below the average while the Union's is above by 14%. [No total package data were provided.]

Based upon this the District's offer is considerably more reasonable than the Union's regarding both the internal and external public sector comparisons.

Comparisons--Private Employees

The Employer provides (in Employer Exhibits 126-131) salary data for private sector employees nationwide. This data indicate that private sector salaries for 1989-90 increased in the range of 3.3% to 5.3%. Based on these data the Employer's offer is closer to the private sector settlements and is more reasonable on this criterion.

Cost of Living

With the cost of living running about 4% for the period prior to 1989-90 and 5% for 1990-91, the Employer's offer (at 6.1% and 6.3%) is closer than the Union's (at 6.9% and 6.6%) to the cost of living and is more reasonable on this criterion.

Overall Compensation

This criterion will be combined with the health insurance issue and is discussed below.

Summary of Wages Issue

On this Wages issue I have found: 1) neither offer preferred on the Interests and Welfare of the Public criterion; 2) the Employer's offer is more reasonable on the Comparison-Other Teachers criterion; 3) the Board's offer is more reasonable on the Comparison--Other Public Employees criterion; 4) on the Comparison--Private Employees criterion the Employer's offer is more reasonable; and 5) the District's offer is more reasonable on the Cost of Living criterion. Overall on the Wages issue the Board's offer is somewhat more reasonable.

Health Insurance

The Employer proposes to change the amount from 100% Employer contribution to 95% effective 9/1/90. The Union wishes to maintain the status quo of 100% District contribution for the two years of the contract.

The Association argues that the Employer's offer is a substantial change in the status quo which will result in additional out-of-pocket expenses to the employees and reduce the take-home value of the salary portion of their compensation. The Union maintains the District has failed to present "extremely persuasive compelling reasons" for this change because: 1) it has not been proven that Howards Grove's insurance rates are skewed as compared to the comparables; 2) there is no pattern among the comparables which would substantiate the Board's offer--only one of the primary comparables includes a cost-sharing of the health insurance premium; 3) the District has offered nothing as a "quid pro quo" for its proposed change; 4) there exists no compelling pattern among the comparable districts that support the Employer's change; and 5) shifting a portion of the cost of the health insurance premium to the teachers will not produce health insurance cost containment for the District.

The District suggests that its proposed change in the health insurance language is technical change in the status quo on the same level as yearly changes in the salary schedule (percentage increases) to which no one pays much attention. The Employer argues it has met any standards of proof to institute this change because: 1) two recent settlements (and two certified final offers) contain changes in health insurance premium contribution in which the employee share has increased; 2) there is overwhelming evidence that

health care costs (felt by the District with insurance premiums) have sky-rocked in recent years (33% per year increases in family coverage premiums); 3) the Board's offer is not a change in an expensive and valuable benefit, only asks employees to participate in paying the premiums, which is not an unreasonable burden; 4) the change will be an immediate cost savings to the District and will help motivate employees to participate in redesigning health care benefits by educating them on how expensive they are; 5) the Board's proposal includes a quid pro quo by offering each teacher $87 more than the average prevailing settlement amount even after the 5% is taken out for the health insurance contribution; 6) prevailing practice among other public and private employers is to shift the burden of health insurance to employees; and 7) arbitral opinion supports reasonable attempts, like the District's here, to contain exorbitant insurance premium increases.

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I have responded in the PARAMETERS OF ANALYSIS section of this decision to many of the parties' arguments summarized just above. Please refer to that section for analysis and discussion of those arguments.

Interests and Welfare of the Public

This criterion is discussed thoroughly above under the Wages issue, and that discussion is applicable to this Insurance issue. Neither offer better meets the interests and welfare of the public of Howards Grove.

Comparisons--Other Teachers

There are five settled districts among the comparables for 1989-90 (see Chart I, p. 6). Three of the five (60%) have some employee contribution for health insurance--ranging from 1% to 7% with the average of the three being 4.33%. For the year 1990-91, there are three settlements with two (66%) having some employee contribution--ranging from 3% to 5% with the average of the two being 4%. The remaining comparable districts have final offers for 1989-90 in which one of the two has an offer that includes an employee contribution (of 2.5%) to the insurance premiums; and for 1990-91 the only comparable with final offers includes a proposal for an employee contribution (of 5%) for the health insurance premium.

The Employer points to these data as conclusive evidence that there is a trend that comparable employers are moving to employee contributions for health insurance. Although it might be tempting to draw such conclusions from these data, I just do not think there is adequate information and/or that the available data persuasively identify such a trend among the comparables to justify choosing one offer over the other. Therefore, on these comparisons, neither offer is found more reasonable.

Comparisons--Other Public Employees

The only data provided for internal and external public sector comparison of health insurance relate to the Administrators of the district. It appears, from the very limited information, that the Administrators receive 100% contribution from the District for their health insurance premiums. This

weighs against the District's proposal to require the Teachers to contribute to their insurance premiums. The Union's proposal is more reasonable on this criterion.

Comparisons--Private Employees

The Employer argues that there is a trend among all employers to require some contribution to health insurance premiums by their employees. Employer Exhibit 165 is a survey of five of the largest employers in Howards Grove. It is very significant I think that every one of these employers require substantial contribution (ranging from 10% to 50%) by their employees to health insurance premiums. The Employer's comment that private sector employees would be glad to have a 5% contribution certainly seems warranted based upon this survey. Employer Exhibit 166, a survey of four of the larger businesses in Sheboygan, is not as supportive of the District's proposal. There, only one of the four requires a contribution.

It is my conclusion, based upon this information, that a majority of private sector employers, especially in Howards Grove, require an employee contribution (some being a significant percentage amount) to the health insurance premiums. Therefore, the Employer's offer is considerably more reasonable than the Union's on this criterion.

Cost of Living

The cost of living preceding the time periods (1989-90 and 1990-91) in question are 4% and 5% (respectively). Employer's Exhibit 102 shows that the family insurance premiums increased at 21.5% and 22.1% for those comparable periods. The District's proposal to have the employees of the district participate in the costs of these large increases is justified by these figures. The District's offer is more reasonable on this criteria.

Overall Compensation

An analysis of this criterion for this award will consist of a review of the pay and benefits of the Howards Grove teachers as well as a study of the total package costs comparisons.

In looking over the record relating to the overall salary and benefits of Howards Grove nothing significant is revealed--the District seems to provide all "standard" benefits that are provided by the comparable districts. While health insurance premiums seem somewhat higher than the average, dental insurance premiums are lower. Although there is confusion over the existence of a longevity program, even without the program it appears from the record that Howards Grove's overall benefits and compensation are fairly average. Thus on this point both offers are reasonable.

The second analysis concerns a comparison of total package costs of both offers with that of the comparable districts. [Chart I, p. 6 summarizes data submitted by the parties.] These total package cost comparisons are not all that conclusive either. For 1989-90 the Union's offer looks better on the dollars comparison--about $55 above average to the Employer's approximately

$190 below average. However, on the percentage comparisons, the District's proposal comes out better--around .17% below average to the Union's .50% above average. For 1990-91 the data are a bit more consistent with the Employer's offer closer to the average on both the dollars and percentage--$106 below to $218 above; and .07% above to .84% above. Thus, on this statistical comparison the Employer's offer is somewhat more reasonable than the Union's.

Perhaps an important point here is that the Employer's offer calls for the implementation of its change in the second year--1990-91. This is noteworthy for a couple of reasons. First, I think it is a sign of reasonableness when a party stretches out the implementation of a policy or benefit change. It not only gives people time to "get used to" the idea, but also helps to smooth out implementation and perhaps soften the "blow" (economically or otherwise) of the change. Second, the Employer here was able, I believe, to put together a very competitive package by holding off to the second year. The above discussion and data relating to total package costs in Chart I substantiate that the District's proposal in the second year, despite a shift in contribution to the insurance premiums, overall is reasonable compared to the comparable settlements.

Based on this, the District's offer is somewhat more reasonable on this Overall Compensation criterion.

Equity

There are a number of issues raised by the parties that relate to this Equity criterion.

First, there is the matter of a quid pro quo. The parties discuss at length whether each offer contains an appropriate quid pro quo. As I indicated above in the PARAMETERS OF ANALYSIS section, because the Employer's proposal is an ordinary change, neither party is required to demonstrate its offer contains a quid pro quo. Even so, the idea of a fair agreement that contains gains for both parties is central to the collective bargaining process. Each party should expect to receive something when it gives something. It is very difficult for a third party to assess this giving and getting in the process because the value and weight placed on concessions and gains is based almost entirely upon the perceptions of the parties themselves. What may seem as a big concession to one is seen as a small (or non-existent) concession to the other. In my opinion the best that can be done is to look to see if the agreement (in this case the offers) are "balanced." And as I alluded to at the beginning of this DISCUSSION section, to me both offers are reasonable (and thus balanced).

Next is the idea of "cost shifting" brought up by the Union. The Association rejects the District's attempt to shift to the employees some of the costs of the insurance premiums because it is just not fair. Besides, the amount being shifted will not solve the problem of increased health care costs. The District counters with the idea that the relationship between the parties is (or at least ought to be) a partnership regarding the benefits, and that if the employees learn first-hand the costs of their benefits, they will be better and more motivated partners.

On this I think the Employer makes an important point--that the relationship is (or ought to be) a partnership. Also in my opinion there is a certain inherent fairness in both parties participating in the costs related to the partnership. In my mind it is uncertain whether the employees will change significantly their use of health care services because they have to pay $15 to $20 per month towards the premium. However, rightly or wrongly, we in our society seem to value most those things for which we have to pay. Having the employees participate with the Employer's health care benefits on the financial level I believe is fair in terms of the (implied if not actual) partnership that exists, and may have other educational benefits as well.

Finally, is the concern of the Union that the Employer's offer is an unreasonable (thus unfair) burden on the employees. First of all, regarding the inherent unfairness, the Union I think down plays the significance of the 5% contribution to health insurance when it states (Brief p. 44) that the employees already pay 10% of the dental insurance premium. On the principle (and for now ignoring the economics), I am not sure what is unfair about making a 5% contribution to health insurance when a 10% contribution to the dental insurance is already being made. Also, further confusing the argument is the fact that previously (8 years ago) the employees made a 5% contribution to health insurance--if it was fair then why is it unfair now?

But relating to the unreasonable burden, just on the economics, it is difficult for me to see how $234 per year ($19.50 per month) in a premium contribution would be an unreasonable burden for professional teachers making between $20,762 and $36,441 per year. In my opinion the $234 per year contribution being asked by the District is very reasonable and fair considering how much, based upon the record, other employees in the community of Howards Grove and elsewhere around the State contribute to their insurance premiums.

On this Equity criterion the Employer's offer is substantially more reasonable.

Summary of Health Insurance Issue

On this major issue in this case, I have found that: 1) neither offer is preferred on the Comparison--Other Teachers criterion; 2) neither offer is preferred on the Interests and Welfare of the Public criterion; 3) the Union's offer is more reasonable on the Comparison--Other Public Employees criterion; 4) on the Comparison--Private Employees criterion the Employer's offer is considerably more reasonable; 5) the District's offer is more reasonable on the Cost of Living criterion; 6) the Board's proposal is somewhat more reasonable regarding Overall Compensation; and 7) on the Equity criterion the District's offer is substantially more reasonable. Overall on the Health Insurance issue the Board's offer is somewhat more reasonable.

SUMMARY AND CONCLUSION

This case has been a welcomed change of pace for this Arbitrator because both parties have presented very reasonable offers. The dispute over the changing of the health insurance contribution from 100% to 95% in the second

year has been the major concern of the parties. However, the criticalness of the issues is dampened, among other reasons, by the limited nature of the proposal, the reasonableness of the Board's implementation schedule (second year), and the fact the parties had an employee contribution (dollar equivalent of 95%) previously in their contract. All in all both parties have made very reasonable offers and have reasonable arbitral theories upon which to base their arguments.

In this Arbitration Opinion and Award I have discussed each of the issues that were presented to me by the parties in their final offers, exhibits, briefs, and reply briefs. In my deliberations and analysis I have considered all the relevant statutory criteria and all pertinent evidence and argument present in the record of this case. Base upon these deliberations and analyses as presented in the discussion herein, I conclude the following:

- The school districts comparable to Howards Grove for this arbitration should be based upon a principle of mutual agreement, and thus are determined to be those districts both parties suggested: Brillion, Cedar Grove, Kohler, North Ozaukee, Random Lake, Reedsville, and Valders.

- The major issue in the dispute is the change in the Employer's contribution to the health insurance premium (from 100% to 95% in 1990-91), and a major concern is the kind of change being proposed and the amount of proof required by the Employer in order to prevail.

- Based upon (this Arbitrator's) developed definitions and levels of change criteria, the District's proposed change in health insurance contribution ratio is an "ordinary" change requiring standard reasonableness test based upon the ten statutory criteria.

- Analysis of the Wages and the Insurance issues on the statutory criteria reveals the Employer's offer is somewhat more reasonable than the Union's offer.

Therefore, overall, taking into consideration the relative weights given to the criteria and the issues, the Employer's final offer is found to be somewhat more reasonable than the Association's final offer. Based upon this, I find the District's offer is preferred over the Union's offer and make the following:

AWARD

The final offer of Howards Grove School District, along with agreed upon stipulations, shall be incorporated into the 1989-90 and 1990-91 collective bargaining agreement between the parties.

Dated this 25th day of September, 1990 at Stevens Point, Wisconsin.

John W. Friess
Arbitrator

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering an award under Section 111.70(4)(cm) 7 of the Wisconsin Statutes are as follows:

"(7) 'Factors Considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

(a) The lawful authority of the municipal employer.

(b) Stipulations of the parties.

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

(d) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

(e) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

(g) The average consumer prices for goods and services, commonly known as the cost of living.

(h) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(i) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(j) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration and otherwise between the parties in the public service or in private employment."