

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

RECEIVED  
JAN 16 1991  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Petition of  
LOCAL 1752-E, AMERICAN FEDERATION  
OF STATE, COUNTY & MUNICIPAL  
EMPLOYEES, AFL-CIO

Case 23  
No. 42494 INT/ARB-5309  
Decision No. 26421-A

To Initiate Arbitration Between  
Said Petitioner and

BEECHER-DUNBAR-PEMBINE SCHOOL  
DISTRICT

Sherwood Malamud  
Arbitrator

**APPEARANCES:**

Steve Hartmann, Staff Representative, P. O. Box 676,  
Rhineland, Wisconsin 54501, appearing on behalf of the  
Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by Robert W. Burns,  
414 E. Walnut Street, P. O. Box 1103, Green Bay,  
Wisconsin 54305, appearing on behalf of the Municipal  
Employer.

**ARBITRATION AWARD**

**JURISDICTION OF ARBITRATOR**

On April 30, 1990, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to determine the following dispute between Local 1752-E, AFSCME, AFL-CIO, hereinafter the Union, and Beecher-Dunbar-Pembin School District, hereinafter the District or the Employer, through the issuance of a final and binding award pursuant to Sec. 111.70(4)(cm)6.d. of the Wisconsin Statutes. Hearing in the matter was conducted on August 21, 1990, at the District's offices in Pembine, Wisconsin, at which time the parties presented testimony and evidence. Briefs and reply briefs were exchanged through the Arbitrator by November 1, 1990. A post briefing motion was submitted by the Union and a response thereto was submitted by the District. The motion was disposed of and the record in the matter was closed on November 29, 1990. Based upon a review of the evidence and arguments submitted and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

**SUMMARY OF THE UNION AND EMPLOYER FINAL OFFERS**

The final offer of the Union is marked as Appendix A and the final offer of the District is marked as Appendix B, and both are attached to this Award. The final offer of both parties covers the period of July 1 through June 30 for 1989-90 and 1990-91.

**Effective July 1, 1989 through June 30, 1990:**

The Union proposes that the wage rates for classifications listed in APPENDIX "A" in the expired agreement be increased by 4% over the June 30, 1989 rates for the following classifications:

Head Cook	4%
Assistant Cook	4%
Custodian/Maintenance	4%
Custodian	4%
Secretary	4%
Teacher Aides	4%
Bus Drivers	4%
(Daily rate, plug-ins and extra runs)	

The District proposes that the wage rates for classifications listed in APPENDIX "A" in the expired agreement be increased by 3.5% over the June 30, 1989 rates for the following classifications:

Head Cook	3.5%
Assistant Cook	3.5%
Custodian/Maintenance	3.5%
Custodian	3.5%
Secretary	3.5%
Teacher Aides	3.5%
Bus Drivers	
No increase in the Daily rate, plug-in or extra run rates	

**Effective July 1, 1990:**

**WAGES**

The Union proposes that the wage rates in effect June 30, 1990 be increased by 4% for the following classifications:

Head Cook	4%
Assistant Cook	4%
Custodian/Maintenance	4%
Custodian	4%
Secretary	4%
Teacher Aides	4%
Bus Drivers	
No increase in the daily, plug-in or extra run rates.	

The District proposes that the wage rates in effect June 30, 1990 be increased by 3.5% for the following classifications:

Head Cook	3.5%
Assistant Cook	3.5%
Custodian/Maintenance	3.5%
Custodian	3.5%
Secretary	3.5%
Teacher Aides	3.5%
Bus Drivers	
No increase in the daily, plug-in or extra run rates	

## INSURANCE

Both the Union and the District propose that the bus drivers be included in and covered by the health and dental Insurance provisions contained in Article XV.

The Union proposes no further change to the insurance language.

The District proposes that the language of Article XV be changed as follows:

"Current" Contract Language:

### Article XV - Hospital, Life and Disability and Dental Insurance

The EMPLOYER shall maintain the present health and hospitalization insurance program. *This program shall be made available to all employees.* [Language in italics deleted in District's proposal.]

The EMPLOYER shall maintain a dental insurance plan. *This program shall be made available to all employees.*

Both health and hospitalization and dental insurance shall be paid in accordance with the following schedule:

- Working under twenty (20) hours - 25%  
*payment*
- Working twenty (20) to thirty (30) hours -  
50% *payment*
- Working thirty (30) up to thirty-five  
(35) - 75% *payment*
- Working thirty-five (35) or more hours -  
100% *payment.*

Employees who have available to them adequate health insurance coverage from some other source may elect to substitute the Wisconsin Education Association Trust "Menu Plan" of associated fringe benefits and for that purpose the District shall contribute on behalf of that employee an amount of money equal to the District's contribution for single medical insurance coverage times the

contribution rate applicable to that category (sic) of employee in the case of a less than full employee.

District Proposed Language Change:

ARTICLE XV - Hospital, Life and Disability and Dental Insurance

Replace the first two paragraphs with:

"The Employer shall provide a health and hospitalization insurance program and dental insurance program. The Board shall have exclusive choice of insurance carriers hereunder, provided, however, that if any changes are to be made in insurance company or policy, the new policy shall incorporate the same or superior benefits to the replaced policy."

Replace the third paragraph as follows:

Both health and hospitalization and dental insurance shall be paid by the Employer in accordance with the following schedule:

- a) Working under twenty (20) hours - up to 25% of the single or family premium amounts referenced in (d) below;
- b) Working twenty (20) to thirty (30) hours - up to 50% of the single or family premium amounts referenced in (d) below;
- c) Working thirty (30) to thirty-five (35) hours - up to 75% of the single or family premium amounts referenced in (d) below;
- d) Working thirty-five (35) or more hours - up to \$387.55 per month family health premium or up to \$148.45 per month single health premium; up to \$37.84 per month family dental premium or up to \$18.21 per month single dental premium.

**BACKGROUND**

The parties have had a bargaining relationship for some time. This is the first occasion that this Employer and Union have resorted to the statutory interest arbitration procedures to

establish the wages and benefits for employees in the unit. There are fourteen employees in the collective bargaining unit. Five of the fourteen are Bus Drivers. The Bus Drivers became District employees in the 1983-84 school year. The Bus Drivers were included in the unit, and for the first time they were covered by a collective bargaining agreement in the expired 1987-89 Agreement. In that Agreement, the District picked up the employee share of the retirement contribution for Bus Drivers in the second year of the Agreement, in exchange for no wage increase for the two year duration of that Agreement. In the year prior to their inclusion under the Collective Bargaining Agreement, the daily rate for Bus Driver was increased for the 1986-87 school year from \$26.50 to \$28.00 per day.

Under the Union proposal, the daily rate, as well as, the plug-in and extra run rates for Bus Drivers would increase for 1989-90 by 4%. The rates established by that increase, for example the daily rate, would increase to \$29.12, but it would remain at that level for the 1990-91 school year, under the Union's offer.

The District proposes that the Bus Driver rates not be increased for the duration of the Agreement. The District identifies this wage concession, as well as, the changes in language summarized above as the appropriate price, the quid pro quo, for extending this substantial and increasingly expensive benefit of health and dental insurance to Bus Drivers.

The Union and District agree: on the scope and level of benefits to be afforded to the Bus Drivers in the second year of the successor Agreement; and to the extent of employer contribution for health insurance premiums, except as to the amount of the Employer's contribution for Dental insurance premiums for Bus Drivers (and other unit employees).

The District proposes changes to Article XV, the insurance provision of the Agreement, which affect all members of the bargaining unit, not just Bus Drivers. The District's offer changes the manner in which its contribution toward the payment of premium for its full-time and part-time employees is identified. The insertion of dollar caps limits the payment for insurance premiums to the dollar amount specified. The dollar amount referenced in the District's proposal would be sufficient to cover all of the single and family premium for health insurance. The amount listed for dental insurance falls 16 cents shy of full payment for the family plan for the second year of the agreement, 1990-91. Furthermore, the District proposes that it be given the unilateral authority to change carriers. It proposes that the same sentence which appears twice in Article XV be deleted from the

Agreement (the precise language is quoted above and the implications of this change are discussed below). The above is the quid pro quo which the District demands as the price for incurring the additional cost associated with extending insurance benefits to Bus Drivers.

The Union offers to "pay" for the extension of health and dental insurance to Bus Drivers through its offer of no wage increase for Bus Drivers in the second year of the Agreement. The Union offers no other quid pro quo to the Employer in exchange for this benefit change.

The Union objects to the changes proposed by the District on the grounds that these changes were made after the expiration of the Agreement, and for the first time in the case of some proposals, in the exchange of final offers. The Union argues that the District has demonstrated no need for these changes. The Union cites the Interest Award of Arbitrator Krinsky in Forest County (Highway Department) 1\90 in support of its position. The Union's argument is misplaced. There is but one issue in dispute between the parties, here. It is the price to be paid for the extension of the health and dental insurance benefits to Bus Drivers. This is not a case where the Employer proposes a change to a free standing benefit, as in Forest County.

In the Discussion below, the Arbitrator applies each of the statutory criteria to this total package of wages and insurance put forth by each side. In many ways, the approach of each party to this dispute is the product of this pricing dispute. The arguments of the parties are replete with invective, accusations and overstatements much as a buyer and seller in a market might haggle over the price of some object. The Arbitrator has spared the reader of this Award the recitation of the negative descriptions provided by each party of the other's offer in their briefs, reply briefs, and Union motion to strike a portion of the District's brief, and the District's response thereto. Where appropriate, a reference to a Union or District argument is made to provide the reader with a better understanding of the Arbitrator's analysis.

In their exhibits and arguments, the parties separately apply the statutory criteria to the wage and insurance issues in dispute. The Arbitrator has rejected this approach. The difference between the parties on the wage component is slight, \$2,051 over both years of the agreement for all employees including Bus Drivers (it is a total of \$1,041 over both years of the Agreement for the nine support personnel). The difference between the parties for wage increases for the nine support staff other than Bus Drivers for the 1989-90, first year of the

Agreement, amounts to a total of \$496.00 (District Exhibits 5A-C and 6A-C).

Furthermore, during the pendency of these proceedings, the cost of living as reflected by the Consumer Price Index has increased while in recent months, a national recession has been identified and taken hold. The Arbitrator would require fine tools indeed to distinguish between the final offers of the parties and select one over the other based solely on their wage offers.

In its exhibits and argument presented in its brief and reply brief, the District costs the Union's offer for the second year of the Agreement as if the Union had proposed a wage increase of 4% for Bus Drivers. At the hearing, the Union corrected the District's mistaken interpretation of its offer. Nonetheless, the miscalculation is carried forward by the District in its argument. The Union's final offer refers to Appendix A which sets out the wage rates for all classifications other than Bus Drivers. That final offer then refers to Article XXVII in order to increase the wage rates for Bus Drivers which are set forth in that specific article of the Agreement. The Union makes no proposal to increase any Bus Driver wage rate, plug-in rate, extra run rate, or daily rate for the second year of the Agreement from July 1, 1990 through June 30, 1991. In the determination of this case, the Arbitrator recalculated the data presented by the District in light of the final offer actually made by the Union. The Union, for its part, presented no costing data in its exhibits or its argument. It argues in its reply brief that:

. . . when ones (sic) takes a group of low wage employees, small in number, and adds a benefit of any substance and cost, it will reflect a very high package increase in terms of percent over a previous year. If, on the other hand, you give the same benefit to the same number of employees in a high wage numerically larger group, it may well be insignificant. It is a double whammy of our reliance on percentages, that the percentage wage increase is more valuable to a high grade employee, and fringe benefits are most costly in percentage terms to low wage

employees than to higher wage employees. The Union urges the Arbitrator to consider this when reviewing the "shock value" statistics of the District.

For its part, the Union chose to ignore cost calculations. The Arbitrator did not.

The resolution of this dispute over the appropriate price to be paid for the inclusion of the Bus Drivers in the health and dental insurance programs in the second year of this two year Agreement is determined through the application of the following statutory criteria.

#### STATUTORY 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 the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
  - f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and



in comparable communities.

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

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

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

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

## DISCUSSION

### Comparables

As noted above, this is the first occasion that the parties have participated in an interest arbitration proceeding under Sec. 111.70(4)(cm)6. and 7. of the Wisconsin Statutes. The parties have not identified those districts to which the support staff comprising the classifications of Custodian, Secretary, Custodian/Maintenance, Teacher Aide, Cook, Assistant Cook, and Bus Driver are to be compared and contrasted. The teachers of the District are represented by a labor organization. This Employer and the labor organization representing the teachers have participated in an interest arbitration proceeding in which the districts in the athletic conference were identified as those comparable to Beecher-Dunbar-Pembine. The Employer argues that arbitrators recognize the smaller size of the labor market for blue collar non-professional employees as contrasted with professional employees, such as teachers. The District suggests that the following school districts serve as comparables to Beecher-Dunbar-Pembine: Crivitz, Florence, Goodman-Armstrong, Wausaukee, Laona, Niagara, and Wabeno. The District offers data as to size by teacher staff and pupil population, equalized value of land in the District, etc. in support of the comparables it suggests.

The Union notes that of the seven districts suggested by the Employer, only three of those districts have employees in support staff classifications represented by a labor organization. In Florence, the secretary and aides are not organized. None of the support staff are organized in the districts of Laona, Niagara, and Wabeno. In its presentation, the Union suggests the districts of Crandon, Elcho, Florence, Goodman-Armstrong, and Wausaukee as comparables for consideration of the wage portion of its final offer. For health insurance, the Union suggests school districts where the support staff may not be organized, but where the teachers are organized. It suggests as comparables, the districts of Crandon, Elcho, Florence, Goodman-Armstrong, Laona, Niagara, Phelps, Three Lakes, Wabeno, Wausaukee, and White Lake. Although the Union attacks the District's comparables as containing districts in which support staff are unorganized, nonetheless, the Union uses "mixed" data in its analysis of the wage and insurance proposals at issue, here.

There is a division in arbitral opinion as to the weight to be given to the wage rates, benefits and other conditions of employment of employees who are unrepresented in an interest arbitration proceeding. This statutory interest arbitration procedure is dedicated to fostering collective bargaining in the state of Wisconsin among municipal employers and employees. This Arbitrator recognizes that the statutory criteria do not specifically preclude reference to data from unorganized employees. However, in Section 111.70(6), the legislature sets forth its:

(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 employes so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employes' 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.

Reliance upon a comparability pool dominated or entirely made up of non-organized groups of employees does not further the intent or policy underlying this statutory procedure. Such reliance would yield wage and benefit patterns based upon a process where wages

and benefits are unilaterally set, rather than collectively bargained.

Therefore, in the first instance, greater weight should be given to settlements achieved in bargaining units which are organized as opposed to contrasting wage rates to classifications of employees which are not represented by a labor organization. The data from the unorganized units do not reflect the give and take inherent in a collective bargaining setting.

Under the District's analysis, only three or at most four districts could serve as the comparable pool, in this case. A comparability pool of at least five is necessary to establish a comparability base for purposes of comparison. Otherwise, a wage or benefit level which is at substantial variance from the mean will have a distortive effect on the comparability analysis. On the other hand, the Union's use of "mixed data" and its lack of evidence in support of its suggested comparable pool, does not afford the Arbitrator with a basis for selecting its pool of comparables. Therefore, the Arbitrator does not identify a particular comparability grouping.

The lack of a comparability pool has little impact on the analysis of this dispute. The comparability data generated by both the Union and the District in their exhibits would be of greater significance, if the issue in this case related to whether health insurance should be extended to a larger number of employees. Whatever the outcome of this dispute, the Bus Drivers will be afforded health and dental insurance benefits in 1990-91.

At the time of the hearing in this matter, the electorate of the school districts of Beecher-Dunbar-Pembine and Goodman-Armstrong were to vote on the consolidation of both districts. By the time of the writing of this Award, that vote should have taken place. In recognition of the possibility of consolidation of these two districts, the Arbitrator provides greater weight to the data from the Goodman-Armstrong District than the other districts suggested as comparables.

With the resolution of this threshold issue of comparability, the Arbitrator now turns to apply each of the statutory criteria to this quid pro quo dispute.

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

Neither criterion serves to differentiate between the final offers of the parties for selection of one in a successor two year agreement.

### 7.c. The Interest and Welfare of the Public . . . .

Certainly, it is within the interest and welfare of the public for a greater number of employees and their families to be covered by health insurance programs. It increases the size of the pool of those insured. It also reduces the potential number of individuals who are uninsured and whose medical needs would have to be provided, by other means. Since the Bus Drivers are to receive health and dental insurance benefits under both offers, this portion of the statutory criterion does not serve to differentiate between the offers of the parties.

The District does not claim that it is unable to pay the dollar difference generated by the Union's higher wage demand. This portion of this statutory criterion does not serve to distinguish between the offers of the parties.

### 7.d. Comparison Between These Employees and Other Employees Performing Similar Services . . . .

It is noteworthy that health insurance is a fringe benefit provided by school districts in this region of the state, both organized and unorganized, to full-time and some part-time employees. Of the seven districts suggested as comparables by the District, all provide health insurance to both full-time and part-time employees. The Goodman-Armstrong District agreed to pick up 100% of the cost of single and family premiums for its full-time employees. Previously, that District had a dollar cap in place under which it paid approximately 75% of the premium cost for health and dental insurance.

In fact, under the data presented by the District for the second year of the Agreement, only two of the districts which it identifies as comparable to Pembine have dollar caps in place to address the increase in insurance premiums. The other five districts pay 100% for full-time employees and a prorated amount for employees who are less than full-time.

For the reasons indicated in the discussion of comparability, above, the Arbitrator gives less weight to this data. However, the changes made by the Goodman-Armstrong District to 100% full payment of premium provides strong support to the Union position, on this issue. Accordingly, the Arbitrator concludes that this criterion supports the selection of the Union's final offer for inclusion in a successor Agreement.

7.e. Comparability of the Wages and Benefits of the Support Staff to the Wages and Benefits of Employees in Public Employment in the Same Community and Other Communities, Generally

The District's proposed changes to the insurance language are fully evaluated under this criterion. Criterion 7.j. may be applied to this portion of the District's proposal, as well. The Arbitrator consolidates under this criterion the discussion of the changes to the insurance language, because of the close relationship these changes have to language which appears in the Pembine Teachers' Agreement. The teachers are employees in public employment in the same community as the support staff.

The District proposes that its contribution towards health insurance be stated as a dollar amount rather than as a percentage, 100%. As a result of the inaccurate information provided to it by the carrier, the amount stated for dental insurance is 16 cents per month shy of a full contribution for family coverage. The Teachers' unit in Pembine, which is the larger and more influential bargaining unit in this District, does not have dollar caps stated in their labor agreement. This internal comparable provides strong support to the Union suggestion that it is being placed in a position of leadership in the administration of a fringe benefit in a situation where the teacher bargaining unit, which is the more dominant and larger unit in this district, should set the tone for the administration of this benefit. The Union argument would be compelling if this were a case where the District proposed a change to an existing array of benefits. However, this case is premised on the demand of the Union for the inclusion of Bus Drivers under the District's health and dental insurance program, and the insistence of the District that the expense of providing the benefit to the Bus Drivers be offset by the inclusion of dollar caps in the Agreement. Such change may result in cost shifting of future increases in premiums to unit employees. On this issue, the Union relies upon the insightful analysis of Arbitrator Nielsen in his award in Manitowoc School District, 26263-A (6/90) where he describes the tactical advantage an employer achieves through the inclusion of dollar caps into a labor agreement.

In a case where these benefits are expanded and thereby become more costly to the Employer, the achievement of this tactical advantage for the expansion of the benefit, may well be justified.

However, the District structures its proposal in a fashion such that it pays less than the full premium for dental for all employees in the second year of this Agreement. Furthermore,

since the pattern of bargaining established by statute and as recognized by the parties in their collective bargaining relationship is for two year agreements, increases in insurance premiums during the second year of the Agreement would not necessarily be picked up by the District. This is a double change proposed by the District. Again, such proposal may be justified to offset the large cost associated with the expansion of this benefit at a 50% level of contribution by the Employer for approximately 36% of the bargaining unit.

There is another dimension to the changes proposed by the District. The Employer deletes language from the expired agreement which appears in Article XV wherein the health insurance and dental insurance programs are referenced. The District would delete the sentence:

"This program shall be made available to all employees."

The District argues that this language is surplusage. It is an editorial change which is necessary with the addition of the Bus Drivers to the unit. With the inclusion of the Bus Drivers, all employees may now receive the benefit. In its Reply brief, the District emphasizes that:

The Union has not demonstrated how this language has any current relevance in the contract.

The Union decries this change in language. The Union argues in its original brief that:

This allows for the potential of denying coverage to some employees, or in the alternative assumes that this sentence is without meaning in the present agreement. No evidence was presented at hearing with respect to this, nor was any basis presented for this change.

The Arbitrator infers from the presentations of the parties that this language has not been the subject of any dispute, nor have the parties discussed the specific purpose of this language. The District's reference to current in its argument introduces some ambiguity as to the intent of its proposal. However, there is no basis in the record for the Arbitrator to reject the District's explanation that the language is surplusage, and that it intends no substantive change with the deletion of this language. Its obligation to provide health and dental insurance to all employees covered by the Agreement continues into the successor Agreement.

If the District intended this change to limit its obligation to provide insurance to employees covered by the Agreement, the Arbitrator would have considered this change so important, as to undermine the reasonableness of the District's offer.

The District proposes that language be added to the Agreement providing it with the right to change carriers. The District proposes language similar, but not identical, to the language which appears in the Teacher Collective Bargaining Agreement.

The Union argues that the right to change carrier should not be afforded to the District. The Union argues it should be trusted to act rationally should a cheaper carrier appear with equal or superior coverage to the existing plan. The Union notes that the language which appears in the Teacher agreement is not identical to the language proposed by the District.

The Union argument would have greater force, if it had incorporated in its final offer the language which appears in the Teacher Agreement. That language provides the District with the unilateral right to change carrier. It goes on to provide that:

The board shall make whole any insured person for monetary losses brought about by any change in insurance company or policy.

The quoted language does not appear in the District's offer. Otherwise, the District's proposed language change is identical to the language contained in the Teacher Agreement.

The Union position is unreasonable. It argues that the District should pay 100% of the cost of premium for insurance. Yet, it refuses to give the District the latitude that the larger and more dominant unit has already provided to the Employer. The Union does not propose the language which appears in the Teacher Agreement as part of its final offer. Rather, it argues that the foregoing of a 4% wage increase by the five Bus Drivers which would amount to approximately \$1100.00 should be sufficient to offset the premium cost for health and dental insurance at a 50% contribution level by the Employer which amounts to a total of \$12,361 for 1990-91. The Union's lack of a proposal to provide the District with the flexibility to switch insurance carriers, one that would provide benefits which are the same or superior to the replaced policy, weighs heavily against the Union's offer.

It is often stated in collective bargaining that where one unit is recognized as the lead unit, the "dog" so to speak; the other unit(s) is(are) viewed as the "tail". It is well accepted that in the area of fringe benefits, it is the dog that wags the

tail rather than the reverse. In its proposal for dollar caps, the District suggests that the tail wag the dog. In its proposal to maintain the status quo and not include any language to permit the District to change carrier, the tail, this bargaining unit of support staff, proposes to wag the dog.

A brief summary of the various issues reviewed under this criterion is necessary. Although the District's proposal provides for a double change, caps which result in cost shifting during the term of the Agreement and at the expiration of the Agreement, the failure of the Union to provide the District with the necessary flexibility to move quickly to change carriers weighs against the Union's offer. The Arbitrator concludes that this criterion provides support for the inclusion of the District's final offer over that of the Union's.

**7.f. Comparison of the Wages and Benefits of the Support Staff to Employees in Private Employment in the Same Community and in Comparable Communities**

The District has provided limited data with regard to the private sector on the wage and insurance issue, in this case. The five private employers identified by the District which are located in the Northeast corner of the state contribute to the cost of health insurance premiums. Two of the five pay 100% of the premiums. It is unclear from the District's Exhibit 38 the extent to which these benefits are provided to part-time employees.

The Arbitrator concludes that this criterion does not serve to distinguish between the final offers of the parties for inclusion of one in a successor agreement.

**7.g. The Average Consumer Prices for Goods and Services Commonly Known as the Cost-of-Living**

The District and Union look to the Consumer Price Index, CPI, as the measure of the cost-of-living. The District notes that this measure has increased from the end of June 1989 through the end of June 1990 by 4.1% under the Non-metro Wage Earner index of the CPI. The Union argues that it is the wage proposal and not the total cost of a wage and fringe benefit offer which should be measured by this criterion. In support of its position, the Union cites the interest Award in Brown County, 26207-A (5/90), in which Arbitrator Kerkman observes that:

Finally, we turn to a consideration of the cost-of-living criteria. The record evidence establishes that the 1980 cost-of-living



increase for the year ending December, 1989, calculated to 4.6%. The Employer argues that its offer is preferred, because the total cost impact of the Employer package amounts to 5.57% for 1989 and 4.78% for 1990. The Employer's reliance on the cost of the package is misplaced. When considering the cost-of-living criteria, it is the opinion of this Arbitrator that it should be compared to percentage wage increases and not to the cost of the package. It is the wage increase which insulates employees against the erosion of the dollar caused by inflation, the cost to the Employer does not. Since the Union offers 4% each year, compared to 2.96% and 3.25% for the first and second years respectively in the Employer offer, it follows that the Union offer is closer to the cost-of-living increases than is that of the Employer.

The issue in Brown County was limited to wages. The Kerkman argument precludes the use of roll-ups, the cost of social security and pensions, when applying the cost-of-living criterion. This case is substantially different from Brown County. Here, the dispute encompasses wages and health insurance. Medical costs constitute a service measured by the CPI. It certainly is appropriate to include the increased cost of health and dental insurance premiums in the application of the cost-of-living criterion.

The total package cost of the Union offer for the first year of the Agreement is 6.56% versus the District's 5.52%. The difference in the total package offers of the Union and the District in the second year of the Agreement is 12.91% for the Union and 12.68% for the District. The large percentage increase in the second year of the Agreement is the product of the provision of health and dental insurance to Bus Drivers with a District contribution level of 50% for family and single coverage.

The District's proposal more closely approximates the increase in the cost-of-living. Its inclusion in a successor Agreement is preferred under this criterion.

#### 7.h. Overall Compensation

The District added all fringe benefit costs to the hourly wage rate for each of the classifications covered by this Agreement, and it contrasted those wage rates to the wage and fringe rates paid by other districts. The Arbitrator discounts

this analysis because of the District's insistence upon using what it considers "actual hours worked" by Bus Drivers rather than the Agreement's "recognized hours worked". The Agreement recognizes that Bus Drivers work 4 hours per day, 20 hours per week in that the Employer has agreed to contribute to the insurance premiums for Bus Drivers as if they are working 20 hours per week. During the hearing, the District introduced testimony through one of the Bus Drivers that demonstrated that some of his work days approximated 3 hours per day. However, the Agreement's recognized hours encompasses the short periods of time which drivers spend servicing buses, as well as, weather delays which occur during a school year. Buses are parked at the homes of the Drivers. There is a benefit to both Driver and Employer inherent in this arrangement. The additional time spent on the job which is the result of parking the busses at the drivers' home, may well add up to the 20 hours recognized by the Agreement.

The Arbitrator discounts the District's data which converts the total wage and fringe package into an hourly rate for unit employees and to employees of "comparable" districts. The distortion produced by the District's use of hours actually worked rather than the recognized hours in the development of its data, undermines its usefulness. The Arbitrator concludes that this criterion does not serve to distinguish between the final offers of the parties.

#### 7.1. Changes in Any of the Foregoing

There have been enormous changes in the economy during these negotiations, since the close of the hearing on August 21, 1990. However, none of these changes provide a basis for distinguishing between the final offers of the District and the Union, in this case.

#### 7.1. Such Other Factors

This is a catchall factor. The District's proposal to refrain from providing any wage increase to the Bus Drivers for the duration of the successor Agreement is problematical. The Union is concerned that the emphasis on the cost of fringe benefits to the exclusion of the level of wages paid to the District's Bus Drivers, may cause the wage level of the Bus Drivers to remain inordinately low. The District answers this charge by acknowledging that the wage rate for Drivers will be driven by the market. The District argues that the inevitability of the increase of the Drivers' wage rates justifies its demand for the inclusion of its proposed language changes in the successor Agreement.

The Arbitrator concludes that a wage increase of some kind,

not necessarily 4%, during the first year of the Agreement would be appropriate and would address the problem inherent in increasing fringe benefits to the exclusion of wage levels. Otherwise, a distorted wage structure for Bus Drivers may continue to burden the future bargaining of these parties. The Union addresses this problem in its proposal. In this regard, its proposal is to be preferred over the Employer's.

#### **SELECTION OF THE FINAL OFFER**

In the above discussion, the Arbitrator concludes that criteria 7.d. and 7.j. support the selection of the Union's final offer for inclusion in a successor Agreement. The Arbitrator finds that the District's offer is supported by criteria 7.e. and 7.g., and that the latter two criteria deserve greater weight. Nonetheless, this scorecard does not provide a complete analysis of the matters in dispute. The central question to this dispute is the fair price for the change in fringe benefits.

The District demands a high price. The changes in language which it proposes affect all employees, not just five Bus Drivers. The District's demand for sufficient control to change carriers is reasonable, where it pays for 100% or 99+% towards the cost of premiums for health and dental coverage. The Union stand is unjustified. However, the District proposal to impose dollar caps which would have an impact, both during the term of any agreement and at the expiration of that agreement, is excessive. The need to build into the bargaining structure between these parties a moment for the assessment of any increase or decrease in costs of premiums for health and dental insurance is apparent from the Union's discounting of the cost of expanding health and dental insurance benefit to include Bus Drivers.

The Arbitrator is concerned with the deletion of the sentence, "This program shall be made available to all employees." In the above discussion, the Arbitrator accepts the representation of the District that this language is surplusage. It is important to note that if the intent of this District is to limit, in any way, its obligation to provide insurance to all employees, the Arbitrator would not have selected the District's offer for inclusion in a successor Agreement.

The District demands too high a price, and the Union offers much too little for the substantial increase in cost generated by providing this benefit to Bus Drivers. The Union's offer contains an \$1100 offset for a \$12,000 benefit. The Arbitrator recognizes that the Union is in no position to offer dollar for dollar for the expansion of this benefit to the Bus Drivers. However, it is in a position to offer the District the opportunity to control the

increase in cost of this benefit. The Union even failed to include in its offer language identical to the language in the Teacher Agreement. In the final analysis, the Union offers too little for the change in benefit.

It should be clear from the above discussion that a more equitable price for the extension of this benefit to the Bus Drivers would be a final offer which includes: a small wage increase for the Bus Drivers in the first year of the Agreement; language affording the District the right to change carriers; dollar caps in the Agreement, with the District picking up any mid-term increases in insurance premiums. In this manner, the issue of increasing insurance premiums would become part of the bargaining agenda for the parties at the expiration of their Agreements. The District would continue to pay the full premium expressed as a dollar amount and the dollar cost of that benefit would become a topic for discussion for the parties in their future bargains. However, the Arbitrator does not have the authority to fashion a "fair price".

On balance, the District's offer is preferred. Therefore, the Arbitrator selects the District's final offer for inclusion in the successor Agreement in effect from July 1, 1989 through June 30, 1991.

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

**AWARD**

Upon the application of the statutory criteria found at Sec. 111.70(cm)7a-j, Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of Beecher-Dunbar-Pembine School District, which is attached hereto, to be included, together with the stipulations of the parties, in the Collective Bargaining Agreement between the Union and the District for the term of July 1, 1989 through June 30, 1991.

Dated at Madison, Wisconsin, this 15<sup>th</sup> day of January, 1991.



Sherwood Malamud  
Arbitrator

SM/sf.

APPENDIX A

**RECEIVED**  
FEB 24 1990

• WISCONSIN EMPLOYMENT •  
RELATIONS COMMISSION

FINAL OFFER OF AFSCME LOCAL 1752-D TO THE BEECHER-DUNBAR-  
PEMBINE SCHOOL DISTRICT

1. All wages in Appendix A and in Article XXVII Sec. 2 & 5 shall be increased by 4% effective July 1, 1989.
2. All wages in Appendix A shall be increased by 4% effective July 1, 1990.
3. Effective July 1, 1990, Article XXVII Sec. 6 shall be revised as follows:

Bus drivers shall receive no fringe benefits except those of Article IX and XV.

4. Incorporate as appropriate all tentative agreements of the parties (see attached)
5. No other changes to the current agreement between the parties.

APPENDIX B

FINAL OFFER OF  
BEECHER-DUNBAR-PEMBINE SCHOOL DISTRICT

1. Previous tentative agreements numbered 1 through 7.
2. Effective 7/1/89, 3.5% wage increase for all employees other than bus drivers.
3. Effective 7/1/90, 3.5% wage increase for all employees other than bus drivers, and inclusion of bus drivers under health and dental insurance provisions of Article XV.
4. Revise Article XV as follows:

ARTICLE XV - Hospital, Life and  
Disability and Dental Insurance

Replace the first two paragraphs with:

"The Employer shall provide a health and hospitalization insurance program and dental insurance program. The Board shall have exclusive choice of insurance carriers hereunder, provided, however, that if any changes are to be made in insurance company or policy, the new policy shall incorporate the same or superior benefits to the replaced policy."

Replace the third paragraph as follows:

Both health and hospitalization and dental insurance shall be paid by the Employer in accordance with the following schedule:

- a) Working under twenty (20) hours - up to 25% of the single or family premium amounts referenced in (d) below;
- b) Working twenty (20) to thirty (30) hours - up to 50% of the single or family premium amounts referenced in (d) below;
- c) Working thirty (30) to thirty-five (35) hours - up to 75% of the single or family premium amounts referenced in (d) below;
- d) Working thirty-five (35) or more hours - up to \$387.55 per month family health premium or up to \$148.45 per month single health premium; up to \$37.84 per month family dental premium or up to \$18.21 per month single dental premium.