BEFORE THE ARBITRATOR

In the Matter of the Arbitration between

BARRON AREA SCHOOL DISTRICT

and

NORTHWEST UNITED EDUCATORS

Voluntary Impasse Procedure

APPEARANCES:

Weld, Riley, Prenn & Ricci, S.C. by Richard J. Ricci, appearing on behalf of the Barron Area School District.

Northwest United Educators, by Michael J. Burke, Executive Director, appearing on behalf of Northwest United Educators.

JURISDICTION:

By telephone prior to September 21, 1992, the undersigned received notice from one of the parties in the above-identified matter that she had been selected as arbitrator pursuant to Section 111.70 (4)(cm)6 of the Municipal Employment Relations Act, to resolve a dispute between Northwest United Educators, hereinafter referred to as NUE, and the Barron Area School District, hereinafter referred to as the District or the Employer. On October 20, 1992, having received no notice from the Wisconsin Employment Relations Commission, the undersigned contacted the parties who elected to proceed to hearing on October 21, 1992, under a voluntary impasse procedure as provided for under Section 111.70 (4)(cm)5, Wis. Stat. and notified the Commission of their intent on that date Under the voluntary impasse procedure, the parties waived the public hearing provided for in Section 111.70 (4)(cm)6.b. but agreed that all other provisions of Section 111.70(4)(cm) Wis. Stat., including the factors to be considered by the arbitrator in picking the final offer of one of the parties, would be used by the arbitrator. Following this action, hearing was held at the Barron Area School District on October 21, 1992, at which time the parties, both present, were given full opportunity to present oral and written evidence and to make relevant argument. On October 27, 1992, the undersigned received an order from the Wisconsin Employment Relations Commission setting aside findings of fact, conclusions of law, certification of results of investigation and order requiring arbitration and dismissing the petition for arbitration and a letter requesting the arbitrator to provide the Commission with a copy of her award and fee statement. Post hearing briefs and reply

briefs were filed in this dispute, the last of which was received by the Arbitrator on December 26, 1992.

THE ISSUES:

The issues in dispute involve health and dental insurance contributions, coverage and language, payday, on call pay for boiler plant operation, inclement weather pay for cooks, IRS mileage and attendance at conferences and wages. The difference in the offers, as reflected in the final offers, are as follows:

HEALTH AND DENTAL INSURANCE

District Offer:

1991-1992: The District shall pay the total cost for health and dental insurance for those employees hired on or before July 1, 1988, and a pro rata amount based on 2080 hours for those hired after July 1, 1988. An employee needs to work at least 900 hours per calendar year to be eligible for health and dental benefits.

1992-93: Effective July 1, 1992, the District shall pay 95% of the total cost for health and dental insurance for those employees hired on or before July 1, 1988 and a pro rata amount based on 2080 hours of said 95% of the cost for those hired after July 1, 1988. An employee needs to work at least 900 hours per calendar year to be eligible for health and dental benefits.

Change of Carrier: The Board may, from time to time, change the insurance carrier or self-fund health care benefits if it elects to do so, provided substantially equivalent or better benefits are provided. However, changing carriers shall not cause an increased employee contribution to the specified insurance. NUE shall be advised of any prospective change in carrier.

Union Offer:

Health Insurance: All regular full-time employees (and those grandfathered as part of the 1988-89 settlement) shall have fully paid health insurance coverage for the 1991-93 school years Part-time employees working at least 900 hours per year shall receive pro rata paid health insurance coverage for the 1991-93 school years. The pro rata formula shall be hours worked versus 2,080 annual hours. Food service employees hired after July 1, 1988 shall have 70 percent of their health insurance premiums paid by the Board.

Dental Insurance: All regular full-time employees (and those grandfathered as part of the 1988-89 settlement) shall have fully paid dental insurance coverage for the 1991-93 school years. Part-time employees working at least 900 hours per year shall receive pro rata paid dental insurance coverage for 1991-93 school years. The pro rata formula shall be hours worked versus 2,080 annual hours. Food service employees hired after July 1, 1988 shall have 70 percent of their dental insurance premiums paid by the Board.

WAGES

District Offer:

1991-1992: Increase 1990-91 wage schedule rates by 8%
1992-1993: Increase 1991-92 wage schedule rates by 4%

Union Offer:

1991-1992: Increase 1989-90 wage rates by 9% across the board
1992-1993: Increase 1991-92 wage rates by 4% across the board

GENERAL PROVISIONS

District Offer:

Pay Days: No language
On Call Pay for Boiler Plant Operation: No language
Inclement Weather Days for Cooks: No language
Mileage: No language
Compensation for attendance at conferences, workshops or seminars: No language

Union Offer:

Pay Days: Employees will be paid on the 25th day of each month, except for September 20 and December 20. If payday falls on a weekend, payday shall be the preceding school day.

On Call Pay for Boiler Plant Operation: On-call pay for boiler plant operation - $12.00 per day for weekends and holidays from the first weekend in October to the last weekend in April plus time and one-half for actual hours worked. There is a minimum call-in time of one (1) hour.

Inclement Weather Days for Cooks: Cooks shall receive their regular pay for time missed as a result of inclement weather.

Mileage: Employees required to drive their personal vehicles for school business shall be reimbursed at the IRS mileage rate.

Compensation for attendance at conferences, workshops or seminars: The Board agrees to pay the mileage, meals and registration for any conferences, workshops or seminars approved in advance by the Administration.

STATUTORY CRITERIA:

The voluntary impasse procedure instructs the arbitrator to give weight to the factors found in Wis. Stats. 111.70 at its subsections a through j in deciding this dispute. Accordingly, this arbitration award will be rendered after considering the criteria and the evidence and arguments as it relates to the criteria.

POSITIONS OF THE PARTIES:

Both parties agree the Heart O'North Athletic Conference should be the primary pool of comparables in this dispute. The Employer, however, arguing that the athletic conference districts are not geographically proximate to one another and are not representative of the same labor market, also submits a secondary set of comparables which it posits are substantially more representative of the local labor market and are equally as comparable as the athletic conference since the District ranks in the middle of them as to size, cost, aid, equalized value per member and adjusted gross income per capita. The Employer also proposes that the private sector employers within the District and the surrounding communities is an equally appropriate pool of comparables. The Union argues that among the secondary pool of comparables proposed by the Employer, only Rice Lake sustains any measure of comparability and, relying upon a 1992 arbitration award between the District and its teaching staff as well as one in 1978, urges the arbitrator to expand the pool of comparables to no more than those established in the previous awards. Rejecting the Union's assertion that inclusion of the contiguous districts is an attempt to modify established comparables, the Employer declares "there is no established set of comparables for this unit" since this is an initial contract and urges that equal weight for comparison purposes be given to the contiguous districts as well as the local private sector since they comprise the local labor market. In reply, the Union posits there is no need to depart from the comparable pool that has been in existence and understood by the parties since 1978 since there is no evidence that demonstrates the districts within the athletic conference are not reflective of the geographic labor market and there is no compelling need to expand upon those districts

Stating the insurance contributions, the insurance language items and wages are the substantive issues in this dispute, the Employer declares the primary issue is whether employees will be required to contribute toward the cost of health insurance. Noting that both parties provide for the Employer to contribute 100% of the cost of health and dental insurance for all employees hired on or before July 1, 1988 as well as for sixteen employees working less than full time who were grandfathered as part of the 1988-89 agreement, and noting that employees hired after July 1, 1988 who work at least 900 of 2080 hours per year (with one exception) will receive a prorated Employer

contribution during 1991-92, the Employer posits the difference between the offers lies in 1992-93 where it seeks a 5% employee contribution toward the premium cost while the Union proposes to retain the 100% employer contribution. According to the Employer, health insurance rates which have increased 90.21% for family coverage and 100.79% for single coverage during the past five year period demonstrates the need to address the issue of health care costs and to secure an employee contribution. Believing that the employees will have little incentive to negotiate cost control measures if they have no monetary interest in the cost of the health and dental insurance premiums, the Employer urges that requiring an employee contribution from all employees is vital if health plan participants are to become better cost-conscious consumers.

As further support for its position, the District compares its offer with co-sharing payments required within the Heart O'North Athletic Conference and its proposed second pool of comparables and with other public sector employees and private sector employees. According to the District, within the Heart O'North Athletic Conference, two of the six districts, one of which is contiguous to this district, require an employee contribution for both single and family insurance in 1991-92 and within the districts represented by the second pool of comparables, four of the five districts require an employee contribution in 1991-92 and all require one in 1992-93. The District also contends that nearly all employees among the other municipalities in Barron County and in CESA #11 contributed toward family insurance premiums in both 1991 and 1992 Finally, the District asserts that a comparison with private sector employers shows that during 1991, only three of those employers employing ten or more employees paid 100% of the cost of family health insurance while the remaining employers required anywhere from a 10% to 60% employee contribution. It also declares that the comparison shows that employer contributions toward health insurance in 1992 are tied to the 1992 wage increases.

Specifically addressing the 1992 arbitration award between it and its teaching staff in which the arbitrator concluded that the District offered no *quid pro quo* for the employee contribution toward the cost of health insurance which it sought, the District maintains that arbitral criteria does not necessarily demand a *quid pro quo*. Further, citing other arbitration awards, it argues that since it is negotiating an initial contract in this dispute the Union's position that a *quid pro quo* must be offered is not relevant and that it is also not required to maintain the *status quo*. The Union, responding to this position by the District, states it agrees with the District that *status quo* may be less compelling in initial contract situations since it was unilaterally established but argues that it is "still incumbent upon the party proposing to change the *status quo* to demonstrate that the comparables demand such a change." Further, it posits that since the comparables support continuation of the *status quo*, a *quid pro quo* is needed to justify a change.

The Union agrees the key issue in dispute between the parties is health insurance. Noting the 1988-90 settlement between the District and its then non-represented support staff continued the District's 100% contribution toward the health and dental insurance premiums in exchange for smaller wage increases and a provision that cooks hired after July 1, 1988 would receive 70 percent payment of the health and dental insurance premiums, the Union asserts the District is now trying to change the *status quo* and has the burden to show a need for change. Responding to the first of three questions an arbitrator set forth in another arbitration as the standard to be applied in meeting this burden, the Union declares the need for change in the health insurance delivery system is not as

evident when the impact of the health insurance crisis in the United States is compared to its impact on the District; since an employee contribution of 5% is not supported by the comparables in the Heart O'North Athletic Conference and since the health insurance premiums paid by the District are below the average established by the comparables and have historically been so. Addressing the second of the three questions, the Union charges that nothing in the record suggests that a 5% employee contribution to the health insurance premium would have "any real impact on the health insurance costs" of the District since cost shifting does not moderate health care costs nor is there evidence it will alter an employee's short or long term use of health care. Responding to the third question, the Union submits that the District offers no *quid pro quo* in exchange for changing the *status quo* and notes that an arbitrator rejected this same offer made to the District's teaching staff for the same reason. Making further reference to the teaching staff, the Union posits that because the District was unsuccessful in securing a 5% employee contribution toward the cost of health insurance premiums from the teachers, it is now setting its sights on the support staff in an effort to have the "tail wag the dog." The Employer rejects this assertion stating that this bargaining unit represents all employees other than the bus drivers and is almost half the size of the teacher unit, thus it is hardly a small unit that constitutes "the tail "

Continuing, the Union asserts the District's effort to eliminate its 1988 agreement to pay 70 percent of the health insurance premiums for cooks hired after July 1, 1988 is an attempt to remove a benefit secured for new cooks without offering a *quid pro quo* and declares it should also be noted that the Employer did not eliminate this provision from its 92-93 supervisory contracts. The Union adds that if the pro rata formula were based on fewer than 2,080 hours, a standard uncommonly high in the conference, the District's attempt to put cooks on the same level as other school year employees would be less burdensome.

According to the Employer, the Union's proposal to continue the Employer's 70% contribution toward health and dental insurance premiums for food service workers fails to treat all employees who work at least 900 hours equitably since those employees hired after July 1, 1988 would receive a prorated employer contribution based upon 2,080 hours while any new cooks would continue to receive a 70% contribution. It also argues again that because this is an initial contract there is no *status quo* for which a *quid pro quo* must be offered. And, finally, it declares that it believes the Union's proposal that the *status quo* be maintained is particularly weak when it is noted that all of the District's food service personnel, except one, were hired prior to July 1, 1988 and receive a 100% employer contribution under the grandfather clause.

Addressing its proposal regarding the right to change insurance carriers provided the coverage under the new carrier is substantially equivalent or better or self-fund health care benefits, the Employer asserts that it has demonstrated a need to control health insurance costs and that as a means of controlling them it has tried to bargain an employee contribution; has added pre-admission authorization to the health care plan and has changed carriers and that this proposal would allow it to more effectively administer it health insurance programs As support for its proposal, it states that within the Athletic Conference, three of the six districts retain the right to change carriers as long as coverages are not reduced, that two of the three unionized contiguous districts have language similar to that which it proposes, and that its teachers' contract contains language giving it this right. As further reason for the language, citing changing carriers as a mandatory subject of bargaining, the

District argues that it needs the ability to change carriers "without having to bargain the impact and 'pay' for the privilege of trying to reduce health insurance costs" as a primary means of containing its health care costs. The Union posits that it does not believe this issue to be a major one since the District changed carriers for both the teachers and the support staff in July, 1992, without the language it seeks; since the District has the legal right to change carriers without contractual authorization provided the benefits and services are substantially equal and since the District has this language in its teacher contract and the support staff is not "legally equipped to prevent the Board from imposing the change upon them." The District rejects the Union's assertion that it is not "'legally equipped' to prevent a change" and states that since the District has the contractual right from the teachers, "there is simply no justification for the support staff to reject the same language."

With respect to wages, the parties agree upon the salary schedules which already existed in 1989-90 and upon the number and types of job classifications but they do not agree on the increases to be applied to the salary schedule. The Employer proposes an 8% increase in 1991-92 and a 4% increase in 1992-93 while the Union proposes a 9% increase in 1991-92 and a 4% increase in 1992-93. According to the Union, both proposals "are in the ballpark" but its proposal is more reasonable since the support staff did not receive a wage increase during 1990-91 and its proposal is closer to the athletic conference average established over the three year period. It continues that its offer is also more reasonable since it has shown that the rates paid the support staff are "below the average of their athletic conference counterparts, since the teaching staff received a 5 percent per cell increase in both 1990-91 and 1991-92 and since the non-union administrative secretary pay increases far exceed either final offer.

The District asserts that its wage offer of 8% for 1991-92 far exceeds the pattern in both the Heart O'North Athletic Conference and among the contiguous districts and that the extra 3-4% provided for in its offer could be considered a *quid pro quo* for the employee contribution toward health and dental premiums that it is seeking, if a *quid pro quo* is needed. In making this offer, the District rejects any Union effort to suggest that the 1991-92 offers make up for the fact that these employees continued to work at 1989-90 wage rates during 1990-91 as a result of their filing a petition for election whose certification timing prevented the parties from being able to bargain for 1990-91. The District posits this argument ignores the fact that the District was not required to bargain for that year and that, despite no agreement, it continued paying 100% of the employees' health and dental premiums during a year when it experienced a 30% increase in premium cost. Continuing, the District asserts a comparison of its wage rates with rates paid among the contiguous districts and with rates paid in the private sector establishes the reasonableness of its offer just as does the fact that the Union contends wages are not a major issue.

Addressing what it considers less substantive issues, the District maintains that its request for an employee contribution toward the dental insurance premium is reasonable since area employers are beginning to require an employee contribution for the cost of dental insurance and since the cost of a 5% employee contribution is not a burden to the employees. With respect to the payday language proposed by the Union, the District challenges the Union's assertion that it is seeking *status quo* with this language stating that it only sets forth a schedule that excepts weekends from that schedule and that it has been the District's practice to pay employees on the day before a holiday when payday occurred on a holiday The District also argues that this language is far more

restrictive than the language contained in the teacher contract and would "spawn unnecessary hardship on the District and potential grievances." Finally, the District rejects the Union's proposal with respect to inclement weather days for cooks stating that once again the Union wishes to continue inequitable treatment of employees since no unit members would be entitled to receive pay for days missed due to inclement weather and denies that the proposal represents the *status quo*. Recognizing that it has been the District practice to pay cooks the wages lost on days when school is closed due to inclement weather, the District posits that in bargaining initial contracts there must be some give and take in order to establish equitable treatment for all unit members and that is why it has agreed to three paid holidays for all employees working less than full time and did not exclude cooks from this holiday pay even though that too, under the Union's argument, would be the *status quo* It adds that extending the paid holidays as a benefit to the cooks is sufficient *quid pro quo* for the potential loss of wages due to days when school might be closed due to inclement weather.

The Union asserts that the District's proposal for an employee contribution toward the cost of dental insurance proposes to change the *status quo* and posits that all the same arguments that pertained to the Employer's health insurance premium contribution apply to this proposal. It also maintains that the five other general provisions it proposes, payday, on-call pay for boiler plant operation, inclement weather pay for cooks, IRS mileage and attendance at conferences, reflect the *status quo* which existed prior to NUE representation. It continues that while these proposals are relatively minor, the District would be able to unilaterally discontinue the *status quo* on these issues without contractual protection that the language provides.

In conclusion, the District argues that the economic climate supports its position in this dispute. Directing its attention to the interest and welfare of the public criterion, the District suggests that the adjusted gross income per capita for the District does not reflect the ability of the farmers to meet their tax burden since it does not reflect the decreases in the price of corn and milk that have occurred. Continuing, the District posits that farmers faced with declining land values and decreasing farm commodity prices have had their financial condition worsen over the years and that this has had a more devastating impact on the Barron School District that on other conference schools which have considerably less reliance on farm incomes.

Following an extension of filing time for reply briefs, the Union submitted a review of recent settlements as further support for its position. Among those settlements was one reached by the District with its teaching staff and one reached in the Ladysmith School District. In this District, the settlement reached with the teaching staff provided for a 5 % per cell wage increase in both 1992-93 and 1993-94 and full Board payment of the health and dental insurance premiums through 1993-94. According to the Union, "the importance of internal comparisons . . . is well documented" and in this instance, since the District is willing to continue full coverage for the teachers "it is almost unheard of for the Board to seek a co-pay provision from the support staff via interest arbitration." In Ladysmith, the settlement with the support staff incorporated a 3.75% wage increase in each of three years and continued full District payment of the health and dental insurance premiums throughout the term of the contract. Adding these two settlements to the data provided regarding the other conference schools, the Union concludes that both the internal and external settlement pattern supports its offer when it is coupled with its previously submitted arguments dealing with *status quo* and *quid pro quo*

Reacting to the settlement data included in the Union's reply brief, the District charges that the request for a time extension must have been made when the Union knew that a mediation session with the teachers was scheduled and that this was "a surreptitious attempt by the Union at getting something into the record after the record had, to our understanding, already been closed." Acknowledging that the Union will be placing the settlement agreement into the record, the District states it believes some background regarding that settlement must also be given. According to the District, its settlement with the teachers resulted from a *quid pro quo* demanded by the Union which the District simply could not justify in exchange for a 5% employee contribution toward the cost of the health and dental insurance premiums.

DISCUSSION:

The parties' voluntary impasse procedure directs the arbitrator to give weight to the statutory criteria found in Wis. Stats. 111.70 in deciding this dispute. Some of the criteria, specifically (a) the lawful authority of the employer; (b) the stipulations of the parties; that part of (c) relating to the employer's financial ability to meet the cost of any proposed settlement; (g) the average consumer prices for goods and services, and (i) changes in circumstances during the arbitration proceedings, are not argued by the parties. Consequently, following is a discussion which takes into consideration the remaining criteria.

While the parties agreed that the Heart O'North Athletic Conference is the primary pool of **comparables**, the District urged that districts contiguous to it as well as the local private sector be considered equally comparable to the athletic conference since they more appropriately represent the local labor market from which the non-certified staff is drawn. The Union, however, argues against expanding the comparables beyond the athletic conference, unless Rice Lake is added, since prior arbitration awards in this District have established the athletic conference as the most appropriate comparables. Although it is recognized that prior arbitration awards between the District and its teaching staff have established the Heart O'North Athletic Conference as the primary comparables for the teaching staff, there is no similar determination for this unit either through bargaining history or arbitration This is the first contract between these parties and, as a result, the comparables are yet to be established

Since both parties agree that the Heart O'North Athletic Conference is the primary pool of comparables, it is tempting to declare the conference districts as the primary comparables in this dispute There is some validity, however, to the District's argument that proximity to the District, as well as similarities in economic and demographic background, is an important test of comparability when the dispute involves non-certified employees since there are limits to the distance these employees will travel for higher wages or improved working conditions Further, since the Employer has presented strong evidence that the District lies primarily within an agricultural economy and is greatly affected by that economy, it is determined that the most appropriate set of comparables is comprised of those districts which primarily lie within Barron County, some of which are within the athletic conference and some of which are not. They are the following school districts: Chetek, Cumberland, Cameron, Prairie Farm, Rice Lake and Turtle Lake. Not only are these districts geographically near the Barron School District, but they are similarly affected by those economic

factors which impact upon the county as a whole. Further, they share similar reliance upon agriculture and manufacturing or commercial production and have relatively similar adjusted gross incomes per capita. Finally, while some of the contiguous non-conference districts are smaller in size and FTE than this District, their cost per member as well as their mill rates are relatively similar to the District's, thus, they are comparable when the cost of providing services and benefits is considered. Selection of these districts for primary comparison purposes does not mean, however, that appropriate consideration won't also be given to those districts which constitute the Heart O'North Athletic Conference as well as to other municipal employers and the local private sector.

Since the parties agree the health insurance issue is most important in this dispute, the reasonableness of the parties' proposals with respect to this issue will be considered first. Prior to this unit becoming organized, the District agreed under "meet and confer" to provide health and dental insurance for all employees hired on or before July 1, 1988 and to pay the full cost of these insurances. In 1988, it also agreed to pay 70% of the cost of providing health and dental insurance coverage for its food service employees hired after July 1, 1988 and that all other employees hired after July 1, 1988 that worked less than full-time would receive health and dental insurance contributions prorated on the basis of 2,080 hours annually. As part of this agreement, certain employees agreed to less wage compensation. In 1990, the parties were unable to reach an agreement on wages and health insurance contributions and the employees in this bargaining unit filed a petition for an election. As a result, no bargaining on these issues took place until the unit was certified. In the interim, during 1990-91, the District's health insurance premiums increased 30% and, since there was no agreement between the parties, the employees continued to work at 1989-90 wages and the District paid the full cost of the premium increase. Now, the District seeks a 5% employee contribution toward the cost of the health insurance premium in the second year of this agreement (1992-93) and that it no longer contribute 70% of the health and dental insurance premiums for newly-hired food service employees but instead include them in the parties' agreement that employees hired after July 1, 1988 who work at least 900 hours will receive a prorated employer contribution based on 2,080 hours. The District also seeks a similar contribution and arrangement toward dental insurance premiums and language which allows it to change insurance carriers or to become self-funded as long as it provides equivalent or better benefits. The Union seeks to maintain what it perceives is the *status quo*. full employer payment for health and dental insurance premiums for full time employees and continuation of the 70% contribution toward the cost of health and dental insurance premiums for newly-hired food service employees. Further, it contends the District does not need the language it seeks with respect to the right to change carriers since that language already exists in the District's contract with its teachers which enables it to make changes that leave this unit powerless to oppose since it is a smaller unit than the teachers' unit.

Much of the District's argument for its **health insurance cost-sharing** proposal is framed in terms of the need to control health care costs. A comparison of the single and family rates paid in this District with those rates paid among the selected comparables as well as with the rates paid among the districts within the athletic conference indicate, however, that the District's cost, while high, are generally less than the cost absorbed by other districts. Among the selected comparables, this District ranks fifth out of the seven districts in lowest single and family premium costs in 1992-93. Only Chetek and Rice Lake have lower costs. Further, there is no evidence that the District's costs, despite its cost increases over the past five years, has experienced cost increases that differ

much from the comparable districts. In 1988-89, the District also ranked fifth out of the same seven districts in lowest single premium costs and third out of the seven districts in family premium costs. When compared with the athletic conference districts, the District's costs are still not among the highest since it ranks fourth out of seven in both the cost of the single and family premiums. There is evidence, however, that the District's cost has increased more than some of these districts' have over the past five years. Despite this fact, it appears that without cost-sharing, the District has been able to hold its cost of providing health insurance to a greater extent than the comparable districts have. Perhaps part of this is explained by the fact that the District has an insurance plan, which among the athletic conference districts, with the exception of one district, causes employees to pay more out of pocket than the other districts do

In addition to the fact that the District's health insurance costs are not as high as others who are considered comparable, the external and internal comparisons do not support a need for cost sharing. While it is true that several of the districts in the selected comparables do have cost-sharing, all of the districts within the athletic conference, with the exception of the Chetek custodians and the employees in the Maple School District, pay the full cost of the single and family premiums and among the contiguous districts, Rice Lake provides the full cost of the single premium and 95% of the family premium while Prairie Farm only provides 99% of the full cost (with an employee contribution only secured in 1992-93). Further, the evidence shows that among those districts who do have cost-sharing, the idea is not new and that it has existed in those districts since at least 1990. When this evidence is factored in with the data that shows the teachers in this District, as a result of a recent settlement, still do not cost-share and that the non-union employees in the District will not cost-share either since the Board approved a "me too" provision attached to the teacher's unit for these employees, it must be concluded that these comparables do not support the District's proposal.

The same is not quite as true when the District's proposal is compared with the cost-sharing that occurs among other public employers and their employees Among the five public employers in the area for whom data was provided, only one secures an employee contribution toward the cost of the single premium, however, four secure employee contributions toward the cost of the family premium, some at a much greater cost-sharing than the 5% sought by the District. Consequently, to the extent that the public employer comparisons support an employee contribution toward the single premium it cannot be concluded that the District's proposal is supported. To the extent that there is cost-sharing on family premiums, however, there is support for the District's proposal, although, again, it is noted that cost-sharing among these comparables has existed as least as far back as 1990.

There is also support for the Employer's proposal when it is compared with the local private sector data which shows that of the eighteen employers who replied to the District's questionnaire, only seven of them pay the full single premium and only four pay the full family premium. While this data does support the District's proposal, this comparison is given less weight than that of the external and internal comparables since there is no way to know the extent to which there has been a change in these provisions in recent years, nor, contrary to the District's assertion, is there evidence that any insurance cost-sharing is tied to wage increases, nor is there an indication that the parties have relied upon these private sector comparisons in the past when it has made its insurance arrangements.

The District presents less comparative data with respect to its proposal seeking a 5% employee contribution toward the cost of **dental insurance**, making comparisons only with public employers. Again, the athletic conference comparisons as well as the selected comparable comparisons indicate little support for the District's proposal. Among the athletic conference districts, all of the districts provide a 100% contribution toward the cost of dental insurance and, again, the District's premium payments are among the lowest. Among the selected comparables, all of the districts provide full coverage for their full time employees, except Rice Lake who secures a 5% employee contribution on the family premium and Turtle Lake who provides no insurance. On this basis, it must be concluded that the District's proposal with respect to dental insurance cost-sharing is not supported by the comparisons.

There is more support for the District's proposal, however, when it is compared with other public employers. Among the five public employers compared by the District, three of the districts provide no insurance, one provides only a percentage of the cost toward the insurance and only one, the CESA district, provides the full cost of dental insurance. While this evidence supports the District's proposal, it is concluded that greater weight should be given to the other public sector comparisons since the evidence establishes it is these comparisons upon which the District primarily relied in the past.

While the evidence does not support the District's proposal for health and dental insurance premium cost sharing, its proposal with respect to eliminating the provision that it pay **70% of the cost of the premiums for all food service employees hired after July 1, 1988** deserves merit and if the arbitrator were allowed to select item by item instead of total package, the District would prevail on this issue, despite the Union's argument regarding the *status quo* and the District's need to provide a *quid pro quo*. The District's argument that the Union's position on this issue results in inequitable treatment of employees is accurate. Although the food service employees work the full school year, they clearly fall into a part time category. It may be that the Union wishes to bargain separate benefits for these employees since their part time schedule may differ from the part time schedules of other support staff employees as was evidenced by the fact that the parties felt they needed to negotiate special insurance compensation for them prior to their being organized. Now that they are organized, however, and particularly since all but one of the food service employees have been grandfathered under a full coverage provision, it is only just that all employees who work less than full time be treated the same unless the parties choose to negotiate differences between school year employees and part time employees. Since they have not, however, and since they have agreed that all other employees who work 900 hours or more, except the food service employees, shall have their contribution prorated on the basis of 2,080 hours, any newly-hired food service employees should be included in this provision.

There is also strong support for the District's proposal with respect to the **change of carrier language**. Language similar to that sought by the District exists in all of the selected comparables, is contained in contracts in three of the six athletic conference districts and is contained in the contract the District has with its teachers. Since the language provides that any change made will result in substantially equivalent or better benefits, this proposal places little, if any, burden upon the employees and can only result in cost savings to both the District and the employees since it is inconceivable that any District would opt to change carriers if the end result is higher premiums.

According to the District, the wage issue is also important in this dispute although the parties are only 1% apart. The District's offer is 8% across the board in 1991-92 and 4% across the board in 1992-93 while the Union's offer is 9% across the board in 1991-92 and 4% across the board in 1992-93. The District offers no justification for its offer in 1991-92, an offer which is substantially above settlements among any of the comparables, whether public or private, other than it is to be considered a *quid pro quo* if one is needed in order to secure its proposal for cost-sharing with regard to the insurances. In this respect, however, the District also argues that there is no need for a *quid pro quo* since there is no *status quo* when a first contract is being bargained. The Union does not agree with the District on this issue and has argued several times that the District needs to offer a *quid pro quo* to secure changes in the *status quo* which existed prior to organization. Further, it contends that the 1991-92 increase offered by the District, as well as the increase it seeks, are intended to offset the fact that the employees in this unit worked all of 1990-91 at 1989-90 rates since certification of its election prevented the unit from being able to bargain for 1990-91.

As to the *quid pro quo* issue, it is this arbitrator's perspective that while "any benefit previously received by the employees in the newly-created and represented bargaining unit is the result of unilateral employer largesse or goodwill," [*Benton School District*, Dec. No. 24812-A (2/16/88)] the fact that a benefit was unilaterally imposed does not make it any less the *status quo* since the benefits were in all likelihood granted to maintain comparability with other employees performing similar work in similar districts and with the intended purpose of keeping its employees from wanting to organize Just because the employees became dissatisfied with the *status quo* in some instances and choose to organize does not mean that the *status quo* ceases to exist when the employees become organized and seek to improve their benefit level beyond that of the *status quo*. The fact that it is the *status quo* does not mean it should remain the *status quo*, however, if either party can show that there is compelling reason for a change or that the internal and/or external comparables do not support it, standards normally applied in interest arbitrations.

With regard to the **wages** issue, no bargaining history evidence was provided which showed that the Employer's offer was intended to be a *quid pro quo* for its cost sharing proposal with respect to the insurance premiums. What the record does show, however, is that without the 1991-92 percentage increase proposed by either party, the wage rates paid the employees in this bargaining unit would fall far short of the rates paid other employees performing similar work in either the selected set of comparables or the athletic conference districts since the rates paid them even with the proposed increases do little more than keep the compensation paid comparable to the rates paid in the other districts

Further, while the percentage increase appears excessive (12% or 13% over two years), when the zero percent increase in 1990-91 is factored in, this percentage increase does nothing more than reflect the percentage increases other public sector employees received over the three year period and eliminate a need for any "catch up" argument. The mean increase in 1990-91 among the selected comparables was 4% - 4.25%; among the athletic conference, 4 5%, and among other public employees in the area, 3.8%. The mean increase in 1991-92 among the selected comparables was 4.25% - 4.5%; among the athletic conference, 4.75%, and among other public employees in the area, 3.5%. The mean increase in 1992-93 among the selected comparables (with two not settled) was 4.5%, among the athletic conference (with four not settled), 4%, and among other public employees

in the area (with one not settled), 3.5%. Further, the bus drivers in the District received a 4% increase in 1990-91, a 4.5% increase in 1991-92, and a 4% increase in 1992-93. Also during 1991-92 and 1992-93, the teachers in the District received a 5% increase. Consequently, based upon these settlement figures, it can only be concluded that the 1991-92 percentage increase offered by the District and sought by the Union reflect only area settlements over the last three years. Further, based upon the means, it is clear that either offer is reasonable and that the Union's offer, at least among comparable districts, is closer to the mean than the District's offer and more closely reflects the percentage increases given among the comparables districts over the past three years.

Although it is concluded that the Union's offer more closely approximates the cost of living as determined by the settlements in the area, it is concluded that the District's offer more closely approximates the increases in the CPI. The Consumer Price Index reflects the cost of living increase in June, 1990 as 4 1%, in June, 1991 as 4.6%, and in June, 1992 as 2.4%. Overall, however, greater weight is assigned the area settlements than the CPI increases since the settlements reflect what the increase in the cost of living has been in the area.

With respect to the local private sector comparisons, it is concluded that both offers for 1992-93 are reasonable and consistent with increases granted in the private sector. Among the ten employers of ten employees or more who reported percentage increases for their hourly workers, the percentage increase ranged from 2% to 14% with the mean at 3.45%-3 9% Further, among the eleven employers of ten or more employees who reported percentage increases for their salaried workers, the percentage increase ranged from 3% to 5.4% and the mean was 4%. Thus, based on the fact that both the District and the Union propose a 4% increase in 1992-93, it can only be concluded that both are reasonable when compared with the local private sector employers.

In addition to the issues discussed above, the Union seeks to define when employees will be paid, on-call pay for the boiler plant operation; regular pay for food service employees for time missed resulting from inclement weather, IRS mileage when employees must use their personal vehicles and paid mileage, meals and registration for any conferences unit employees attend when approved by the administration. While these proposals affect the overall benefit level achieved by the bargaining unit, nothing in them is of such consequence as to dispose of the other issues in this dispute. Further, since the District agrees these issues are less substantive than the other issues already discussed in this dispute, the weight assigned these issues will not determine the outcome of this dispute.

Finally, with respect to the interest and welfare of the public criterion, it is determined that since both offers reflect reasonable positions when compared with other districts; with other public employers in the area and with private sector employers in the area, the lower cost of the District's total package offer is more in the interest and welfare of the public than is the Union's. However, since both offers are reasonable, greater weight is assigned to the comparability criteria than is assign this criterion.

Under the voluntary impasse procedure, the parties have directed the arbitrator to choose the final offer of one party Consequently, it is determined the Union's offer is the more reasonable. This conclusion is based upon the findings made on the following page:

• The cost-sharing proposal on the health and dental insurance issue is the most important issue in this dispute. With respect to this issue, the Union's proposal, rather than the District's is supported by the comparisons among the selected comparables as well as among the districts in the athletic conference; by the internal comparisons and by the comparisons with other public employees to the extent that most of the public employers pay the full cost of the single premium. These comparisons show that the District's health care costs, while rising, are generally less costly than those incurred by the comparable districts; that those who have secured cost-sharing have done so long before this dispute occurred when the District could have unilaterally chosen to impose cost-sharing and that while cost-sharing does exist, the extent to which the District seeks cost-sharing is still not the norm among the comparables.

• The District's proposal with respect to eliminating the need to pay 70% of the cost of the insurance premiums for food service employees hired after July 1, 1988 is more reasonable in that it provides equal treatment for all employees who work less than full time within the District. Since the Union's proposal only affects one employee at the moment, however, and since the parties are about to enter into bargaining for a new contract, less weight is given to the impact of this proposal than is given to the impact of the cost-sharing proposal.

• The District's proposal on the carrier language is supported by both the internal and external comparisons and as such deserves to be adopted. Again, however, since the language does exist in its agreement with the teachers and since there is no language at all in its agreement with the support staff, the District is able to change carriers and does not need to bargain the impact as long as the change results in benefits equal to or greater than those currently secured, the impact of this proposal is not as great as the impact of the cost-sharing proposal and it is, therefore, given less weight

• With respect to wages, neither offer is unreasonable since it is viewed as an increase that takes into account no increase in 1990-91. Under these circumstances, the Union's offer is supported by the increases among the selected comparables and by the increases among the athletic conference districts. It is also supported by the internal settlements. The District's offer is supported by the comparisons with other area public employers and by the cost of living as expressed in the Consumer Price Index increases. Both proposals in their second year are supported not only by the public sector comparisons but by the local private second comparisons. Consequently, since both offers are reasonable and since the District's offer is not viewed as a *quid pro quo* for securing health and dental insurance cost-sharing, its impact is little consequence on the outcome of this dispute.

• The other proposals sought by the Union will provide additional benefits to the bargaining unit members. Since they are not substantive issues, however, they will not be given weight in determining which of the final offers should be implemented

• Finally, with respect to the interest and welfare of the public, it is determined that the District's total package is more in line with the interest and welfare of the public since it reflects a slightly lower cost. In this respect, however, it is determined that greater weight in determining the reasonableness of the offers will be given to the comparison criteria than to

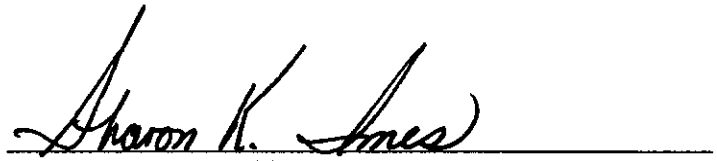
the interest and welfare of the public criteria since there is no evidence that either offer seriously impacts upon the interest and welfare of the public.

In conclusion, based upon the above findings and the foregoing discussion which reviews the evidence and arguments submitted, together with the criteria found in Wis. Stats. 111.70(4)(cm)(7), and based upon the weight given each criterion, it is concluded that the following award be made:

AWARD

The final offer of the Union, together with the stipulations of the parties, shall be incorporated into the 1991-92 and 1992-93 collective bargaining agreement.

Dated February 26, 1993 at La Crosse, Wisconsin.



Sharon K. Imes, Arbitrator

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